

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review**

ECUADOR

I. BACKGROUND AND CURRENT CONDITIONS

Ecuador hosts the largest number of refugees in Latin America. As of 30 September 2011, there were 54,965 persons recognized as refugees, of whom, 98.42% were of Colombian origin who fled the country in recent years due to the internal conflict. Approximately 60% of the refugee population lives in urban areas, while 40% lives in rural zones. Roughly 48% of the refugees are women and nearly 40% are children.

The Ecuadorian Constitution guarantees the full exercise of basic human rights irrespective of nationality and migratory status, and includes the right to seek asylum. Ecuador ratified the *1951 Convention relating to the Status of Refugees* in 1958 and its *1967 Protocol* in 1969. Executive Decree 3301, of 6 May 1992, regulates the application of the norms found in the 1951 Convention, its 1967 Protocol and the 1984 Cartagena Declaration. Currently, this Decree is under revision.¹ Ecuador ratified the *1954 Convention on the Status of Stateless Persons* in 1970; and is considering accession to the *1961 Convention on the Reduction of Statelessness*.

In September 2008, Ecuador adopted a comprehensive refugee policy. Under this policy, the Government implemented the Enhanced Registration Project, which registered, documented and provided refugee status to some 27,740 refugees between March 2009 and March 2010. This exercise is considered a successful best practice both by the Government and by UNHCR.

In 2010, a total of 22,211 persons of Colombian origin applied for asylum, at a rate of 1,850 persons per month. This trend continued in 2011 with 20,279 asylum applications as of September, at a rate of 2,253 persons per month. The majority of the asylum-seekers originate from the Colombian departments of Nariño, Valle del Cauca, Cauca and Putumayo. However, the recognition rate for asylum-seekers decreased from 74% in 2009 to 53% in 2010 and to 24% as of September 2011. According to the Refugee Directorate, 21,076 asylum applications are currently pending a first instance decision.

The security situation, especially in the northern border areas, continues to be a major concern. Although the Ecuadorian Government reinforced its military presence, the worsening of the conflict in all border areas of Colombia, together with the special geography of the northern

¹ As highlighted in the 2008 Refugee Policy adopted by the Government, Ecuador should consider the adoption of an organic Asylum Law to implement its obligations under the 1951 Convention/1967 Protocol.

border, composed of remote and inaccessible areas, resulted in the reported presence of Colombian irregular armed groups in some parts of Ecuador, where they undertake criminal activities.

Over the last few years, discrimination against people of other nationalities, including the refugee population, has grown in Ecuador. The latent insecurity along the northern border, as well as the increasing presence of refugees, asylum-seekers and the spill-over of the conflict itself into Ecuador, have spawned anti-Colombian feeling among part of the local population. Women and girls are particularly vulnerable to violations, including sexual and gender-based violence. While such feelings are not the norm, it is a cause for concern to UNHCR, since the situation could deteriorate in the near future.

II. ACHIEVEMENTS, CHALLENGES AND CONSTRAINTS

Issue 1: Ensuring protection of refugees and asylum-seekers

The Enhanced Registration Project continues to represent one of the most generous contributions to the protection of refugees in Latin America. The application of the refugee definition contained in the Cartagena Declaration is considered to be the most innovative protection tool in the region, positioning this exercise as an example of regional solidarity and a landmark contribution to the protection of refugees.

Following the implementation of the Enhanced Registration Project, UNHCR noticed a change in the practice of the Government of Ecuador, which led to the introduction of a series of measures that resulted in the restricted access to the asylum system and in the reduced number of refugees in the country. This new practice adds to the existing difficulties in accessing asylum procedures, especially for people residing in remote border areas, due to the distance and the high cost involved in reaching several times a representation of the Refugee Directorate, to present an asylum claim and follow-up on the procedure.

In UNHCR's view, the improvement of the existing refugee status determination procedure will allow the Government of Ecuador to manage the current level of arrivals. UNHCR is ready to assist the Government to ensure that all persons with international protection needs will have access to the asylum system and that procedures have all the necessary safeguards.

a. Pre-admissibility procedures:

Since January 2011, in accordance with Ministerial Agreement 000003, which regulates the applicability of Article 3 of Executive Decree 1635², the Refugee Directorate has been given the prerogative to declare inadmissible asylum requests determined to be manifestly unfounded or abusive. According to the Refugee Directorate, around 30% of asylum requests are declared inadmissible.

UNHCR in general advocates against introducing admissibility procedures, which hinder the effective right to seek asylum. In particular, the pre-admissibility procedure introduced in

² As this admissibility procedure is regulated by a Ministerial Agreement, which does not have to be published in the Official Gazette, concerns could be raised about the legality and constitutionality of this procedure. The newly introduced measures negate the right to appeal administrative decisions, affecting directly the right of legal recourse of asylum-seekers who wish to challenge the lawfulness of a negative decision on their asylum application.

Ecuador raises a number of concerns, including: retroactive application to asylum-seekers who applied for refugee status before the introduction of the new procedure; application to unaccompanied adolescents and children; lack of adequate information on the admissibility process, uncertainty among asylum-seekers about the procedure that they must follow; lack of possibility to appeal a negative decision; persons in the pre-admissibility procedure (which can last up to 90 days in some provinces) are not provided with a recognized document, being exposed to detention and possible deportation.

b. Asylum-seekers are requested documentation to apply for refugee status:

As of October 2011, asylum-seekers are requested to provide a valid identity document and criminal record from their country of origin to be given an appointment to submit an asylum claim. Therefore, persons without documentation will not have access to the asylum system or will be obliged to approach their consulate, in order to request a national identity document.

c. Mobile registration brigades to the border areas have been suspended:

Registration brigades to the northern border were suspended during the year 2011, as a result of which asylum-seekers face more difficulties to access the asylum system. This suspension adds to the existing challenges to offices of the Refugee Directorate, especially for persons residing in remote border areas due to the high costs of transportation; the need for several appointments to finalize an asylum application; and the risk of being detained at military and police checkpoints in the absence of documentation.

d. Revision of refugee status recognized under the enhanced registration project:

The Refugee Directorate is conducting a revision of refugee status for those Colombian refugees recognized during the Enhanced Registration Project at the moment of renewing their refugee document (which has a validity of one year), which may result in the revocation of their status. This procedure is of concern, as it is not adequately spelled out in the law, falling short of the necessary safeguards and due process in accordance with UNHCR's guidelines.

e. Documentation is requested to refugees for their refugee visa to be renewed:

Recognized refugees are currently requested to present a valid identity document of their country of origin for their refugee visa to be renewed. If refugees lack such form of documentation, they are encouraged to approach their consulate, in order to obtain the national identification document.

Issue 2: Combating discrimination and xenophobia

The Government of Ecuador has been engaged at different levels in combating discrimination and xenophobia towards refugees. The campaigns “*Todos Somos Migrantes*” and “*Convivir en Solidaridad*” aim at eliminating discrimination, *inter alia*, against women, girls, afro-descendants, indigenous people, asylum-seekers, refugees and migrants.

According to a 2008 study of the *Centro de Estudios de Población y Desarrollo Social (CEPAR)* refugees' unemployment rate was almost double of the local population, which officially stands at 7.9%. While refugees are officially allowed to work, one of the main obstacles they have in accessing the labour market is the recognition of their refugee visa by employment actors. The situation might be compounded by the introduction of a decree that requests refugees to obtain a separate work permit that would need to be renewed every 90 days and in the capital Quito.

Refugees and asylum-seekers face discrimination in accessing the labour market and are sometimes forced to accept exploitative labour conditions, such as lower payment, or no social security benefits. According to the CEPAR study, 39% of registered refugees indicated that they received lower remuneration than Ecuadorians doing similar work. Additionally, 35% of registered refugees indicated that they did not receive the same social security benefits as nationals.

Discrimination is not only limited to accessing the labour market, but can be felt in several aspects of the refugees and asylum-seeker's lives, such as education and medical services. Access to accommodation is also difficult, as owners are generally reluctant to rent apartments to Colombians, particularly large families, who are often forced to live in overcrowded rooms.

Issue 3: Capacity building for law enforcement officials

In accordance with article 8 of the Executive Decree 3301, police and migration officials are empowered to receive requests for asylum and to channel them to the Refugee Directorate. In addition, the law stipulates that once a person of concern is detained, the detaining authority is required to check the status of the person with the Refugee Directorate. As a consequence, it is important that law enforcement authorities continue to receive training to be aware of the rights as well as the obligations of asylum-seekers and refugees.

Issue 4: Taking appropriate measures to further improve the conditions of detainees in prison as recommended by the Committee against Torture in 2006 and 2007

The detention of asylum-seekers and refugees is inherently undesirable³ and detention should be considered only as a last resort. In Ecuador, detention of asylum-seekers and refugees is not widespread. In the northern border region, detained persons of concern are kept in provisional detention centers and in migration checkpoints, mingled with regular criminals, sometimes under uncertain legal grounds. The number of separate cells for women should be increased to ensure their safety and well-being.

Issue 5: Adopting appropriate measures to eradicate sexual and gender-based violence (SGBV), in particular domestic violence

According to CONAMU⁴, eight out of ten women in Ecuador have been victims of violence. According to the National Plan for the Elimination of Violence against Women, 48% of women in Ecuador have fallen victim to violence throughout their lives. Despite the fact that SGBV affects all women regardless of their nationality, ethnicity, age and belief, refugee women and children are more vulnerable to gender-based violence. The situation of SGBV is one of the main concerns of UNHCR, particularly in border areas of the country. The main challenges are: limited access to justice and very low percentage of reported crimes as well as the scarce availability of

³ See UNHCR, ExCom Conclusion No. 44 (XXXVII), 13 October 1986, available at: <http://www.unhcr.org/refworld/docid/3ae68c43c0.html>; and UNHCR, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>

⁴ CONAMU: Consejo Nacional de las Mujeres (National Women's Committee).

support networks for victims and survivors; the fear of reprisals and shame; the unequal power relations; and, a lack of resources aimed at protecting and restoring women's rights.

Issue 6: Taking further steps in combating the trafficking in persons

Research conducted by members of civil society points to the widespread practice of trafficking of women for sexual exploitation by nightclubs and brothels. A large percentage of these women are Colombian migrants, including asylum-seekers and refugees, who, given their economic vulnerability, frequently fall into trafficking networks. The implementation of identification and protection mechanisms for victims of trafficking in the asylum determination procedure would allow for a better protection system.

Issue 7: Taking concrete steps to ensure that registration of births for children of refugees and asylum-seekers and the principle of *ius soli* is implemented by the Civil Registry

Refugees and asylum-seekers continue to face problems with regards to the birth registration of their children born in Ecuador, especially in the northern border provinces. Internal circulars have been issued to ensure birth registration of children of foreigners in cities such as Quito and Guayaquil. However, in addition to documentation requirements, refugees and asylum-seekers often face difficulties in meeting the costs of the birth registration due to their limited economic resources. This limits the application of the *ius soli* principle, which is enshrined in the Constitution, undermining safeguards against statelessness. UNHCR is ready to assist the Ecuadorian Government in its efforts to enhance the registrations mechanism for refugee children.

III. RECOMMENDATIONS

In view of the above, UNHCR would like to suggest to the Office of the High Commissioner for Human Rights to consider including the following recommendations, aimed at enhancing the protection of persons of concern to UNHCR in Ecuador, in the OHCHR compilation report in preparation of the UPR session, calling on the Government of Ecuador to:

1. Consider the adoption of an Asylum Law - following the positive examples of other countries in the region, such as Mexico and Argentina - in order to enhance the protection of asylum-seekers and refugees.
2. Take further steps to combat discrimination and xenophobic tendencies against refugees and asylum-seekers, especially of Colombian nationality.
3. Guarantee the unhindered right to seek asylum and consider the suspension of the application of the admissibility procedure at the border; or alternatively review this procedure and establish minimum legal safeguards, such as the right to appeal against the inadmission, provision of general information to asylum-seekers on the admissibility procedure, reducing length of the decision process and offering alternatives for regularization for persons not admitted. Ensure a complete interview of asylum-seekers to elicit all relevant information, guarantee a fair evaluation of asylum claims and facilitate the documentation of asylum-seekers pending a decision to the admissibility procedure. Refrain from applying admissibility procedures for cases of unaccompanied minors and

prevent the retroactive application of this procedure to already recognized refugees to ensure legal certainty.

4. Ensure that the review of the refugee status of Colombian refugees recognized under the Enhanced Registration Project by the Government of Ecuador is done under due process of law, respecting relevant human rights principles and refugee law. Likewise, as UNHCR is an observer at the Eligibility Commission, it would be desirable to inform UNHCR ahead of time of cases that will be reviewed, in order to prepare due analysis of the review of the refugee status and be in a position to support the Government in providing appropriate legal advice.
5. Guarantee the birth registration of asylum-seekers' and refugees' children born in Ecuador in full observance of the principle of *ius soli*.
6. Ensure appropriate capacity-building and training in the field of human rights and refugee law and establish clear mechanisms to enable law enforcement authorities to receive and refer asylum applications to the Refugee Directorate. This would not only relieve the initial burden on the Refugee Directorate at the border, given the steady influx of asylum-seekers from Colombia, but also facilitate the timely registration of asylum-seekers who reside in remote areas where access to the Refugee Directorate is limited.
7. Develop and adopt a protocol for law enforcement authorities, obliging them to verify the status of all foreign detainees upon detention to ensure that no person in need of international protection is deported in violation of the *non-refoulement principle* and Ecuador's obligations under the 1951 Convention. Reduce the use of detention with regard to persons in need of international protection and apply alternatives to detention.
8. Conduct training events for officials of the Refugee Directorate undertaking refugee status determination interviews to strengthen their ability to identify victims of trafficking and evaluate the impact that this condition may have on their asylum claim.
9. Accede to the 1961 *Convention on the Reduction of Statelessness*. Accession to this convention is recommended as a general step to strengthen the international legal framework applicable to Ecuador. The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

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