

**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<sup>1</sup>, of whom, 98.42% were of Colombian origin who fled from the country in recent years due to the aggravation of the internal conflict. Approximately 60% of the refugee population lives in urban areas, while 40% live in rural zones. Roughly 48% of the refugee population are women and nearly 40% are children.

A total of 22,211 persons of Colombian origin applied for asylum during 2010. The influx rate per month stood at 1,850 persons, who crossed through the northern border to find protection in the country. This trend has continued into 2011. At the end of September 2011, Ecuador has had 20,279 persons of Colombian origin enter the country,<sup>2</sup> at a rate of 2,253 persons per month. Primarily, they are fleeing from conflict areas in Colombia namely, Nariño, Valle del Cauca, Cauca and Putumayo.

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 being revised.<sup>3</sup> Ecuador ratified the *1954 Convention on the Status of Stateless Persons* in 1970; however the State is not yet a party to the *1961 Convention on the Reduction of Statelessness*, but is considering accession to that instrument.

Although the Ecuadorian Government has reinforced its military presence, the worsening of the conflict in all border areas of Colombia has resulted in the reported presence of some Colombian irregular armed groups, especially along the northern border of Ecuador. These groups undertake criminal activities and commit serious human rights violations against the civilian population,

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<sup>1</sup> 27,740 Colombians were recognized as refugees through the Enhanced Registration process run by the Government and UNHCR from March 2009 to March 2010.

<sup>2</sup> This is a gross figure of total applications received. After the admissibility procedure, the numbers are reduced by some 30%.

<sup>3</sup> Rather than regulating asylum related issues in the form of a (new) decree, Ecuador should adopt an organic Asylum Law to implement its obligations under the 1951 Convention/1967 Protocol and in line with other (regional) commitments made. The need for a comprehensive Asylum Law is also highlighted in the 2008 Refugee Policy adopted by the Government, which should be fully implemented.

affecting both Colombians and Ecuadorians. The security situation in communities near the northern border zone continues to be a major concern.

Since January 2011, and in accordance with the Ministerial Accord 000003, which regulates through administrative means the applicability of Article 3 of Executive Decree 1635,<sup>4</sup> the Refugee Directorate (RD) is given additional powers to declare inadmissible asylum requests that are determined to be manifestly unfounded or abusive. This procedure lacks basic procedural safeguards to asylum, such as a complete interview and the real possibility to appeal a negative decision. According to the RD, around 30% of asylum requests are declared inadmissible. The recognition rate for asylum-seekers has decreased from 74% in 2009 to 53% in 2010 and to an average of 24% as of September 2011. According to the RD, 21,076 asylum applications are pending a decision on first instance. However, the backlog is greater than that. Admissibility procedures are also being applied to unaccompanied minors, despite UNHCR's recommendations against such a practice.

UNHCR is of the opinion that admissibility procedures lack the minimum requirements of fair and due process. Admissibility procedures should only be considered acceptable where adequate safeguards are in place to guarantee fairness of procedure and quality of decision-making.

The following points highlight a few of these concerns: a) the lack of sufficient and adequate information on the admissibility process itself; b) the request for identity documents as a *condition sine qua non* to be given an appointment for the interview; c) asylum-seekers admitted into the eligibility procedure are not given a document that protects them from arbitrary detention and possible deportation; d) long waiting periods are experienced before gaining access to the admissibility procedures (up to 90 days in some provinces). During this time, the asylum-seeker is subjected to harassment, arbitrary detention and possible deportation; e) retroactive application of the admissibility procedure to persons that had applied for asylum before the new regulation came into effect, causing legal uncertainty; and f) its applicability to unaccompanied adolescents and children.

The fact that the RD has recently suspended registration brigades to the northern border areas means that asylum-seekers are facing additional difficulties to access the asylum system, not only to register a new asylum application, but also to renew their refugee visa or documents. These difficulties include the inability of asylum-seekers to approach the RD offices, as this implies high costs (for transport and accommodation) and serious risks of detention at military and police checkpoints. This serious lack of access to the RSD procedure causes persons fleeing from the armed conflict in Colombia and crossing the border into Ecuador to remain in the border regions, where they continue to face security risks and often end up in a marginalized situation. The combined effect of the high number of new refugee arrivals with the deficiencies of the asylum system results in a steadily increasing "invisible population" of persons in need of international protection. This situation is gaining increasing resemblance to the situation that Colombians in need of international protection found themselves in before the Enhanced Registration project was carried out.

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<sup>4</sup> As the admissibility procedure was regulated by a Ministerial Agreement, which has not been published in the Official Gazette (as it is not mandatory for norms of this type), it raises concerns about the legality and constitutionality. 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.

The Enhanced Registration Project for the determination of refugee status, as a component of the refugee policy of Ecuador adopted in September 2008, has been considered successful by the Government and UNHCR at the time. Despite the great achievement of the Enhanced Registration Project, it is now being discredited by some local actors, largely due to the fact that general security considerations have dominated over human rights and refugee protection concerns and principles.

In addition, UNHCR and its partners have been informed about the revocation of refugee status of Colombian refugees who had been recognized as refugees in the context of the Enhanced Registration Procedure conducted from March 2009 to March 2010. Without prior notice, revocations were discussed in several cases at the sessions of the Eligibility Commission, in which UNHCR participates in an advisory capacity (with voice, but without vote). UNHCR has expressed its concerns about the lack of due process as regards this ad-hoc revocation procedure.

## **II. ACHIEVEMENTS, CHALLENGES AND CONSTRAINTS**

### **Issue 1: Ensuring protection of asylum seekers and refugees**

There is a steady influx of asylum-seekers, mainly from Colombia into Ecuador, at an average rate of 1500 persons per month. Given the challenges created through the restrictions of the asylum policy and procedures since the beginning of 2011, it has become increasingly difficult to ensure that all asylum-seekers have access to the asylum procedure and that they have an effective opportunity of renewing their identity documents. Access to legal aid is crucial to ensure admission to the RSD procedures and a fair evaluation of the merits of the asylum claim.

### **Issue 2: Providing information in the future on further advances regarding the penitentiary reform and combating discrimination**

The Ecuadorian Constitution guarantees the full exercise of basic human rights irrespective of nationality and migratory status, including the right to human mobility and migration and the right to seek asylum.

UNHCR wishes to commend the Government of Ecuador for its recognition of the fact that discrimination against migrants is a problem, and its efforts to combat it, mainly through the launch of State sponsored campaigns, such as “*Todos Somos Migrantes*” and “*Convivir en Solidaridad*”. President Correa has entrusted the Ministry for Foreign Affairs to look into joint campaigns with UNHCR to display a positive image of refugees and prevent further discrimination. The campaign of “*Convivir en Solidaridad*” was done with the support of UNHCR and aims at eliminating discrimination, *inter alia*, against women, girls, afro-descendants, indigenous people, asylum-seekers, refugees and migrants.

UNHCR wishes to note, that over the last few years, discrimination against people of other nationalities, including the refugee population, has increased in Ecuador. The insecurity along the northern border zone, as well as the increased presence of refugees, asylum-seekers and the expansion of the Colombian conflict into Ecuador, coupled with a stream of negative messages in

some local media outlets, have spawned anti-Colombian sentiments among part of the local population. While such feelings are not the norm, it is a cause for concern to UNHCR, since the situation could persist and be exacerbated in the near future. UNHCR is therefore developing a Public Information campaign (“*Convivir en Solidaridad*”) to raise awareness and sensitize the public on the situation and needs of refugees. Local authorities and the central Government have also been encouraged to participate and support such activities.

According to a *Centro de Estudios de Poblacion y Desarrollo Social* (CEPAR) study, dated 2008, refugees’ unemployment rates were almost double those 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 failure of administrative authorities, such as the civil registry or the social security system, to recognize refugee visas. These difficulties are compounded by the fact that a 2011 decree has introduced another precondition for refugees in order to access their right to employment (the need to obtain a separate work permit that would need to be renewed every 90 days in the Capital Quito). These requirements are not imposed on other categories of foreigners in Ecuador, and therefore are not in line with art. 17 of the 1951 Convention relating to the Status of Refugees. Coupled with the systematic discrimination that refugees face when looking for work, they are forced to accept exploitive labour conditions, are paid lower or sometimes no wages and generally do not have access to social security benefits, despite formally being entitled to these. In the 2007 CEPAR Survey, 46% of unregistered and 39% of registered refugees indicated that they received lower remuneration than Ecuadorians doing similar work. Additionally, 35% of registered and 28% of unregistered refugees indicated that they did not receive the same social security benefits as nationals. Other rights commonly disregarded include those concerning family allowances, working hours, overtime arrangements, paid holidays, and minimum age of employment. Finally, when refugees lose their job, employers frequently ignore their obligations to provide notice and dismissal pay.

Discrimination is not only limited to accessing the labour market, but can be felt in all walks of life. Teachers, classmates, and school authorities routinely harass Colombian refugee children or allow it to happen. Landlords are reluctant to rent to Colombians, particularly large families, who are thus forced to live in overcrowded rooms. Additionally, refugees are regularly charged higher prices or have to pay a higher deposit than locals.

### **Issue 3: Continuing human rights training of police forces**

According to article 8 of the Executive Decree 3301, the police and migration officials are empowered to receive requests for asylum and to channel them to the RD. This, however, is not implemented, despite various requests or proposals from UNHCR to the relevant authorities. 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 RD. In practice, nonetheless, this often is not the case and a person may be kept in detention for prolonged periods of time, in poor detention conditions, in the same cells with ordinary criminals or even deported. UNHCR has consistently reiterated to the Ecuadorian authorities the long held position that the detention of asylum-seekers is inherently undesirable<sup>5</sup> and that detention should be considered only as a last resort.

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<sup>5</sup> 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*

Persons in need of international protection that have been unable to access the asylum procedure or that find themselves in the initial admissibility stage are particularly vulnerable to such abuses, given that they do not hold any residence permits that are recognized by the law enforcement authorities.

**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**

At the northern border of Ecuador, there are no specialized centers. Therefore, persons detained are kept in Provisional Detention Centers and in migration checkpoints, in uncertain conditions. Detained asylum-seekers and refugees are often kept in the same cells with regular criminals. Additionally, there are few separate cells for women and children.

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

Although sexual work is legal in Ecuador, Ecuadorian police regularly undertake raids on brothels and nightclubs, which frequently result in the arrest of Colombian sexual workers. In some of these cases there are claims of sexual abuse during detention. Unfortunately, such acts are not properly investigated, nor are offenders persecuted or brought to justice. The same impunity occurs when refugees and asylum-seekers are victims of SGBV carried out by private persons. Given the climate of impunity, many victims choose not to denounce the incident out of concerns for their personal security, as they fear reprisals.

**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 prey to trafficking networks. A number of these trafficking networks are linked to illegal armed groups that operate at the frontier region with Colombia. Nevertheless, the police do not inspect these places with the objective of identifying women in such conditions. Furthermore, the current asylum procedure does not allow for the possible identification of victims of trafficking, nor is it the practice of the Ecuadorian Refugee Department to factor the implication of being a victim of trafficking into the Refugee Status Determination Procedure.

**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 as regards the birth registration of their children born in Ecuador, as they are often refused by the Civil Registry, 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

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*Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>

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, therefore undermining safeguards against statelessness.

### III. RECOMMENDATIONS

In view of the above, we 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. Enact an Asylum Law - following the positive examples of some countries in the region, such as Mexico and Argentina that have adopted comprehensive asylum laws - in order to enhance the protection of asylum-seekers and refugees, in accordance with the fundamental rights enshrined in the Constitution and international human rights and refugee law.
2. Take more concrete and active steps to combat discrimination and xenophobic tendencies against refugees and asylum-seekers, especially of Colombian nationality. The discrimination hampers the populations’ access to and the enjoyment of their most basic human rights, in particular the rights to work, education and housing, thus impeding their local integration. These fundamental rights are guaranteed under the Ecuadorian Constitution,
3. Guarantee the unhindered right of asylum-seekers 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 in admission, provision of general information to asylum-seekers on the admissibility procedure, length of decisions and alternatives for regularization when 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 refugee status of Colombian refugees recognized under the Enhanced Registration Procedure of 2009 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 provide 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 the police to receive and refer applications

for asylum 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 of the border where access to the RD 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 Ecuadorian Refugee Department 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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