

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 4th Cycle, 41st Session

ECUADOR

I. BACKGROUND INFORMATION

In 1955, Ecuador acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in 1969 (hereinafter jointly referred to as the 1951 Convention).

In 1970, Ecuador has acceded to the 1954 Convention relating to the Status of Stateless persons; and in 2012 to the 1961 Convention on the Reduction of Statelessness Ecuador has acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Ecuador has been at the centre of multiple and overlapping population displacements for the past several decades. To date, nearly 600.000 people who have fled their homes found a place to rebuild a life in Ecuador in safety, while thousands more transit through the country elsewhere every year.

As both a place of transit and destination, Ecuador starts 2022 as the country hosting the largest recognized refugee population in Latin America and the Caribbean, with over 72.000 currently registered by the Government. Ecuador is also one of the top three countries in the region hosting Venezuelan refugees and migrants. Since many Venezuelans and persons of other nationalities are in an irregular situation in Ecuador, a new regularization process announced by the Government in mid-2021 is a promising development. A regular status will improve their precarious protection situation while providing them with the opportunity of contributing positively to Ecuador – specially to recover from the impacts of the COVID-19 pandemic.

As for the refugees recognized to date, it is worth noting that 96% are of Colombian nationality. According to UNHCR's annual statistical report, as of December 2021, there are 53,000 Colombian refugees and 11,401 asylum seekers in Ecuador. Regarding asylum seekers pending eligibility interview, 60.18% of applications are from Venezuelan nationals, 37.33% of applications are from Colombian nationals, 0.74% of applications are from Cuban nationals, and the remaining 1.75% of applications are distributed among citizens of Afghan, Yemeni and Syrian nationality, among other countries.

According to official statistics provided by the Government, the breakdown of recognized refugees by gender and age is as follows: 56.13% corresponds to adult men and women between 31 to 64 years old, 26.36% to men and women between 18 to 30 years old, 8.37% to adolescent men and women between 12 to 17 years old, 6.1% to elderly men and women between 65 or older, and 3.04% to unaccompanied and separated male and female children between 0 to 11 years old.

The profiles of recognized refugees of Colombian nationality include members of social and political movements associated with the Havana Peace Process, persons in professions susceptible to extortion, including agricultural workers and small landowners, as well as persons involved in informal and formal commerce.

Other profiles recognized as refugees are local and regional government authorities, public officials working in the administration of justice, human rights defenders, including land restitution claimants and their leaders, women with certain profiles or specific circumstances,

children in areas where criminal gangs or guerrilla groups recruit minors, and persons with diverse sexual orientation and/or gender identity.

In the case of persons recognized as refugees of Venezuelan nationality, the profiles are somewhat more varied than in the Colombian context. Profiles have been identified concerning former officers of the Bolivarian Civil Guard, former military or security gendarmes, demonstrators at risk of persecution or arbitrary detention, women victims of gender-based violence, people in situations of generalized violence and systematic human rights violations, persecuted teachers, and former public employees.

As the Organic Law on Human Mobility is currently in force, the Government is working to develop the institutional capacity to implement and monitor the mandates of the law and related projects. In this regard, Ecuador formally works with civil society organizations to establish agendas and policies related to human mobility, migration, and refugees. The National Council for Equality for Human Mobility is the body responsible for the monitoring and mainstreaming human mobility policies in the country.

Between 2018 and 2020, several proposals were submitted to the National Assembly for the amendment of the Organic Law on Human Mobility, in a political context much less favourable to human mobility than at the time of its drafting and adoption, due in a great part to the massive influx of Venezuelans. UNHCR has monitored the amendment proposals and has noticed a strong control and security approach which will certainly have a negative impact on the legal protection framework.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 118.136: “Continue strengthening universal birth registration services in the country, ensuring that they are free and accessible to all”.

Until December 2021, there were certain loopholes or legal gaps in the registration of births of children born in Ecuador whose parents were foreign adolescents, who could not be registered in the Civil Registry of Ecuador because the Organic Law for the Management of Identity and Civil Data (LOGIDAC) required the parents to present a certificate of custody, parental authority, or legal representation in their country of origin authorizing such registration. Many of the persons of interest whose children were born in Ecuador could not comply with this requirement and these children were at risk of statelessness.

However, the Constitutional Court of Ecuador issued Ruling No. 2185-19-JP and accumulated/21 of December 1, 2021, in which it developed the content and scope of the rights of children to identity, legal personality, birth registration, nationality, as well as the rights of adolescent migrants to equality and non-discrimination, protection of the family, and to be heard and to have their opinion seriously considered.

Thus, in this judicial ruling, the Civil Registry is ordered to coordinate with the Presidency of the Republic the regulatory adaptation to guarantee birth registration considering the migratory context of the country and the individual circumstances of adolescent migrants. As of March, of this year, the Civil Registry will begin implementing the provisions of the court ruling and will no longer require the presentation of this requirement for the registration of births of children born in Ecuador to foreign teenage parents who may be in a situation of human mobility.

Linked to 3rd cycle UPR recommendation no. 118.157: “Expedite the introduction of a statelessness determination procedure and ensure that it is in line with international standards and guidance from the Office of the United Nations High Commissioner for Refugees”.

Ecuador's accession to the 1961 Convention on the Reduction of Statelessness demonstrates a growing awareness about statelessness and, more importantly, the political will to address it.

Having a procedure for determining statelessness contributes to efforts to assess the size and situation of the stateless population among migrant populations in the territory. This procedure also makes it possible to strengthen the identification and access to legal documentation of stateless persons, which makes it possible to regularize their stay in the country.

Identifying stateless persons and granting them basic rights allows them to fully participate and contribute to the society in which they live.

Pursuant to the reforms to the Organic Law on Human Mobility discussed by the National Assembly since 2018 and approved in 2020, the new Government through Executive Decree No. 354 of February 18, 2022, issued the new Regulations to the Organic Law on Human Mobility. These regulations set out a procedure for the determination of statelessness status, which is very similar to the procedure for the determination of refugee status.

The person applying for statelessness, once admitted for processing will receive a humanitarian visa that will allow a regular stay in the country while their condition is evaluated for acceptance or rejection by the Refugee and Statelessness Commission.

If an individual is determined to be stateless, the Ecuadorian State will grant them a visa of international protection and issue an order of cedula so that they can obtain an identity card. This process allows, in turn, that the person recognized as stateless can obtain Ecuadorian nationality through the naturalization process that creates an exceptional and expeditious mechanism for people recognized as refugees or stateless persons who have resided for at least two years in Ecuador. The procedure is provided for in the new Regulations to the Organic Law of Human Mobility.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Prevention and actions to combat trafficking, sexual and labour exploitation and other types of exploitation of persons, in particular women and children

Linked to 3rd cycle UPR recommendation no. 118.68: "Strengthen legislation to combat trafficking, sexual and labour exploitation and other types of exploitation of persons, in particular women and children".

We wish to note that refugees, asylum-seekers, and migrants, including women and girls, are particularly at risk of falling victim to trafficking or smuggling due to the vulnerable and volatile situations they face. The social situation of migrants and refugees and the limited programmes available to facilitate their local integration in the country make them, particularly refugee women and girls, especially vulnerable to human trafficking for sexual exploitation. The situation is of concern in the context of the growing number of Venezuelan refugees, asylum-seeking and migrant women arriving in Ecuador, many of whom are in an irregular migratory situation and increasingly exposed to the risk of exploitation. No special provisions have been adopted to prevent refugees, asylum-seekers, and other persons of concern from being trafficked.

The Government should also consider the fact that victims, or potential victims of human trafficking, who are at risk of persecution if returned to their countries of origin, may qualify as refugees within the definition of the 1951 Convention. A proper referral system to the refugee status determination (RSD) procedure needs to be established, to ensure that the trafficking victim's right to seek and be granted asylum is fully and duly respected.

Recommendations:

UNHCR recommends that the Government of Ecuador:

- a) Develop standard operating procedures, to facilitate the prompt identification and referral of victims of trafficking who may be in need of international protection to the asylum system;
- b) Improve refugee status determination procedures to ensure that asylum claims from victims of trafficking are fairly and appropriately examined in line with international standards;
- c) Create specialized programmes and adopt policies to protect and support trafficked migrants, asylum-seekers and refugees;
- d) Allocate additional resources to reduce the risk of trafficking, sexual exploitation, and abuse of migrants, asylum-seekers and refugees, including through improved identification mechanisms for women at risk, and through capacity building with other institutions, and the safe houses network; and
- e) Ensure that victims, or potential victims of human trafficking, forced recruitment, generalized violence situations who are at risk of persecution if returned to their countries of origin, may qualify as refugees within the definition of the 1951 Convention or Cartagena's Declaration.

Additional protection issues

Issue 2: Access to territory and strengthening non-refoulement measures

The Organic Law of Human Mobility establishes the requirements to enter Ecuadorian territory. The law requires that any foreigner entering Ecuadorian territory must show a valid travel or identity document, entry registration and a valid visa for cases established by the country's human mobility authority.

Although the regulation provides that these requirements will not be necessary for persons in need of international protection, it does not provide for cases of persons who, despite not qualifying as refugees, need complementary or subsidiary protection (for example, unaccompanied or separated children, women, and girls' victims of violence, trafficking and smuggling, etc.). This lack of foresight may generate risks of refoulement at the border or unjustified inadmissibility to Ecuadorian territory without a prior assessment of specific protection needs by the migration control authorities and the referral of such cases for activation of protection measures according to the protocols created for this purpose.

Through the current Protocol for the Special Protection of Children and Adolescents in contexts of human mobility (which was signed by Ministerial Agreement No. 095 of 2018¹) the Ecuadorian State has tried to ensure the proper management of migratory flows with a focus on human rights of foreign citizens and children entering Ecuador. Despite these objectives, there continue to be cases in which unaccompanied children are prevented from entering Ecuadorian territory in a regular manner and are not given the possibility of being referred to specialized protection systems, impacting their access to territory, access to the refugee status determination process, the right to be heard and the right to search for and locate their families for the purpose of family reunification.

¹ https://www.inclusion.gob.ec/wp-content/uploads/2019/09/ACUERDO-095-de-09-de-mayo-del-2019_.pdf

These problems with access to the territory and migratory regularization of unaccompanied and separated children led to Decision or ruling No. 2120-19-JP/21² in which the Constitutional Court of Ecuador declared the rights of unaccompanied children who were prevented from entering Ecuadorian territory and being reunited with their mother had been violated.

On February 18, 2022, Executive Decree No. 354 was issued establishing the new Regulations to the Organic Law of Human Mobility. This new regulation establishes the obligation to register irregular entry before the immigration control authority and this registration can only be done at border points, which conditions people to have to travel to the border area with the risks of protection that this entails and may result in expulsion, return or immigration fines.

Recommendations:

UNHCR recommends that the Government of Ecuador:

- a) Generate the necessary regulatory adaptation and the application of protocols so that state entities can observe the best interests of the child in all their decisions and guarantee access to territory for unaccompanied and separated children;
- b) Make all necessary efforts to ensure that unaccompanied and separated children, women and girls who are victims of gender-based violence, victims of trafficking and smuggling, and those persons in a situation of human mobility who present criteria of extreme vulnerability can remain in regular migratory status through humanitarian visas or flexible and accessible migratory alternatives;
- c) Guarantee protection against refoulement to all persons under its jurisdiction, including within national borders and at ports and airports, as soon as a person presents himself or herself as being at risk or fearing return to his or her country of origin or any other country;
- d) Examine independently and on a case-by-case basis the specific protection needs of persons in a situation of human mobility and those in need of international protection, ensuring that they are not at risk of refoulement; and,
- e) Ensure that persons in need of international protection are not denied entry or forcibly expelled and implement complementary protection mechanisms for those cases that, even if they do not have elements of international protection, could be at risk if they return to their country of origin or habitual residence given their conditions of extreme vulnerability.

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²http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6J3RyYW1pdGUnLCB1dWlkOic5YzE5ZDNmMS04Y2E4LTRlMmUiOTIxYi0yYmJhM2I2MGVmOGYucGRmJ30=