



Universidad del Azuay

Faculty of Law

School of International Studies

"ANALYSIS OF PUBLIC POLICIES IN ECUADOR RELATED TO THE DETERMINATION OF
REFUGEE STATUS"

Graduation thesis prior to obtaining a bachelor degree in International Studies with a mention in
Bilingual Foreign Commerce

Author: Ana Marina Calle Alvarez

Director: Dr. Esteban Segarra Coello, Master

Cuenca, Ecuador
2017

TITLE

**"ANALYSIS OF PUBLIC POLICIES IN ECUADOR RELATED TO THE DETERMINATION OF
REFUGEE STATUS"**

Acknowledgments

To them, those who are different, displaced, and refuged because they are the ones who enrich all our lives; tolerance and impartiality towards them will open new worlds for everyone, and will make us welcome anywhere we go.

"Human rights are rights. Take them. Defend them. Promote them. Understand and insist upon them. Nurture and enrich them...They are the best of us. Give them life."

-Kofi Annan

Table of Contents

Acknowledgments	iv
Abstract	vi
Introduction.....	7
CHAPTER 1	8
A BRIEF ANALYSIS OF INTERNATIONAL RIGHTS OF REFUGEES AND INTERNATIONAL HUMANITARIAN LAW	8
1.1 International Rights of Refugees.....	11
1.2 Post-World Wars and the International Organization for Refugees.....	12
1.3 Protection by international humanitarian rights	20
CHAPTER 2	22
ANALYSIS OF THE PUBLIC POLICIES IN ECUADOR IN ITS MODALITY OF EXTENDED REGISTRATION AND THE EXECUTIVE DECREE 1182	22
2.1 The two extremes of public policy between 2008-2012.....	23
2.3 Extended Registration	25
2.4 The relative success of Extended Registration	27
2.5 Human mobility and state sovereignty.....	29
2.6 Executive Decree 1182	30
2.7 Principal aspects presented before the Constitutional Court.....	32
2.8 Resolution of the Constitutional Court on Decree 1182	35
CHAPTER 3	37
"MODALITY OF RECEPTION AND ADMISSIBILITY OF DECREE 1182 BASED ON SURVEYS AND REPORTS BY REFUGEE APPLICANTS"	37
3.1 Reports of rejection according to articles 24, 25 and 26 and time frames.....	43
The admissibility report for failure to comply with the time limit.....	43
Report of Admissibility, Art. 24	44
Report of Admissibility, Article 25.....	46
Article 26.- Illegitimate applications	49
3.2 Peace Accord in Colombia and its impact on the refugee population	53
Conclusions	56
Recommendations	58
References	60

Abstract

This research was conducted to analyze public policies on refugee status in Ecuador, specifically two policies that can be considered polar opposites - The Registro Ampliado (Extended Registration) that was the norm from 2008 to 2009, and the current decree “1182” - in order to understand the dynamics of the refugee regulations and their evolution over the last several years. The first chapter is a brief analysis of International Refugee Law and International Humanitarian Law, subjects that include the issue of refugees. The evolution and history of refugees is generally analyzed to help us understand that it is not a new issue, but one that has been around for decades. The second chapter focuses on the analysis of the modality of Extended Registration and its procedures, as well as Decree 1182 and its evolution since its publication in extended registration, changes and criticisms that led to constitutional lawsuits. The main changes and the resolution of Constitutional Court are laid out. Finally, the third chapter bases itself on the development of the previous two chapters, through interviews with refugees and professionals in the field of asylum. The procedures to be followed of each policy are also explained, as well as the current actions by Colombian government, specifically the peace agreement negotiations between the government of Colombia and FARC and its effects on the refugee population, are considered.

Introduction

Analyzing public policies related to the topic of asylum not only implies understanding the legal framework in which it develops, which is why it is pertinent to begin this analysis with a brief review of the Theory of Human Rights and International Rights of Refugees.

Public policies on the subject of asylum have evolved over the years. These decisions, according to the authorities responsible for their design and application, have been built upon a focus on human rights and seek several objectives.

The two policies and most representative changes could be considered polar opposites. The first, called the Extended Registration, is focused on the protection of the rights of migrants, and its only objective being to legalize thousands of migrants who are stuck in migratory limbo and they are in need of international protection.

The second, executive decree 1182, is a much more restrictive policy, as it has the desire to block or prevent the arrival of an excessive number of applicants and to thereby avoid the costs the situation incurs on the country, while at the same time impeding the entrance of people who only move for a better lifestyle and not because of a sense of persecution which is the basis of acquiring refugee status in Ecuador.

The result of this analysis represented in this text reveals that, despite the official discourse, the protection of migrants has not constituted central part of State action. As a matter of fact, despite continuous mention of the rights of this group, in norms and within institutions, the efforts developed for their recognition and guarantee are quite limited. It is the dimension of the migrant as a factor of development that appears to interest the authorities, not their condition as a subject to rights. It is not possible, therefore, to sustain that this policy is rights-based.

For this analysis, an extensive essay will be written that explains the differences between these two policies, and the policies themselves; the advantages and disadvantages and the results that the application of this new decree has had on the population, on authorities, on institutions, organizations and others who are involved in the defense of the human rights of refugees.

CHAPTER 1

A BRIEF ANALYSIS OF INTERNATIONAL RIGHTS OF REFUGEES AND INTERNATIONAL HUMANITARIAN LAW

The topic of refugees is one of the most complex points that the world community faces, which is why it causes intense debates for the fight to find more effective ways to protect and assist this vulnerable group. Although some human displacements can be avoided, it must be admitted that they are never voluntary or without motive "No one likes to be a refugee and of course no one chooses to be one" (UN High Commissioner for Refugees (UNHCR), National Human Rights Commission (NHRC) and Universidad Iberoamericana).

Being a refugee goes beyond being foreign or a simple migrant. It means living in exile and depending on others to cover basic needs such as food, clothing and shelter, and often being a victim of xenophobia, racism and abuse by the population of the receiving country. The situation of refugees has become a classic example of the interdependence of the international community, since it completely manifests how the problems of one country can have immediate effects on other countries.

It is true that it is the responsibility of each State to keep watch over the rights of its citizens; however, the world being a stage full of conflicts since immemorial time, governments often cannot or simply do not want to take on this responsibility this leads to people being victims of violated human rights and forced to abandon their families, their homes, and finally implore for protection in other countries. It is an obligation of the international community to ensure those rights are respected by intervening.

"Rights are inherent to individuals, not to States. States are seen as 'agents' exercising rights in the name of individuals...thus, given an international order, every individual has the right to 'belong' to a State, from which State he or she must cease to live for reasons of direct duress, economic survival or cultural preservation he or she would have the right to 'belong' to or be assigned another State" (P.L. Benavides 113).

Refugee status is closely related with human rights. To be more specific, the mere fact that refugees exist or are in need of international protection is a clear manifestation that human rights violations exist. Therefore, human rights violations are one of the primary causes of human mobility.

Respect for human rights, in the current stream of refugees, is a necessary condition for both the prevention and the solution to these involuntary mobilizations. As the UN High Commissioner for Refugees, Sadako Ogata, once pointed out, "The issue of refugees should be brought to all governments and all peoples as proof of their respect for human rights" (Mirabet 20). All those seeking asylum and refugees, without exception, should enjoy the fundamental rights and liberties established in international human rights instruments.

Classic doctrine reveals that the international protection of humans appeared from a vision compartmentalized into three aspects of protection: human rights, refugee rights, and humanitarian rights (in the case of international refugee rights, to re-establish the minimum human rights of individuals upon leaving their countries of origin, and in the case of international humanitarian rights, to protect the victims of armed conflicts). The convergences of these three aspects are not equivalent to a complete uniformity, which means, they are in the same compartment but separated from each other and therefore it is unfitting to refer to specific branches of international protection, but rather to a single one (Triadade 322).

One more recent doctrinaire contemporary theory allows for normative interaction accompanied by a difference in means of implementation, supervision or control in determined circumstances, but without ceasing to signal complementarity among the three aspects. For example, there is a distinction in the moment of application by which international human rights has recognized the right to individual petition this does not exist in international humanitarian rights nor international rights of refugees. But this does not exclude the possibility, already cemented in practice, of the simultaneous application of the three aspects of protection, or of two of them, precisely because they are essentially complementary. And, furthermore, they allow themselves to be guided by an identity with the same basic purpose: the protection of human persons in any and all circumstances (Triadade 322).

There have been many cases, however, in which the three have intervened in a complementary way, since many of their articles coincide in some treaties and international practice is full of many cases that act simultaneously; what is unquestionable is that there is a common purpose, which is to safeguard human beings. For this reason, neither international humanitarian rights nor international rights of refugees exclude the binding application of the basic norms of international human rights. The approximations and convergences between the three aspects merely allow them to extend and strengthen the means of protecting human persons.

1.1 International Rights of Refugees

The practice of asylum as a way of evading a persecution has existed since antiquity. Originally, it was applicable to any person persecuted for any reason, including for what are known today as common crimes. The individual could keep safe by entering a sanctuary, temple or other sacred place associated with religion, since there they could not be subject to any detention or punishment. The basis of what on occasion has been called "the right to sanctuary" comes from the divine authority that reigned over those places. It was believed that violating the consecration of asylum in a sanctuary would bring with it a severe divine punishment. This practice was common in various religions and existed in different parts of the world (D'Estefano 877).

Later on, with the advent of the modern State and the consecration of the principle of sovereignty, the persecuted person did not take refuge in temples or under the protection of religious figures to remain safe, but rather more commonly went to another state and found safeguard in the lack of authority of the persecutor in other territories. And that is how we deduce that with the appearance of the nation-state the simple concept of asylum transformed into international protection of individuals who found themselves in dangerous situations.

While it is true that there have been migratory movements for centuries, it is much more notable in history to relate them as a result of revolutionary wars, power struggles for causes political, religious, and ethnic, etc. So much so, that we could relate them to processes of territorial conquest, of which there have been many. For this reason, States saw the need to establish norms to regulate this situation independently and which exist to this day, despite efforts of the international community that seek common norms and universal reach.

Although different States had previously given protection to refugees independently and based on their own norms and interests, it was in the period between the two World Wars that the first concerted efforts to internationalize norms took place in the framework of the Society of Nations. These actions were encouraged by the desire to guarantee what, at that time, was called political and legal protection of refugees in the absence of protection by their own States of origin resulting from different warlike conflicts produced in the later context of the World War

(UN High Commissioner of Refugees (UNHCR), National Commission of Human Rights (NCHR) and Universidad Iberoamericana).

At that time, the work was done by separate groups of refugees. That is to say, a general definition was not reached that would allow the application of the statute to other people who at the time were considered refugees. But at the end of World War II, the international community organized in the United Nations took the initiative to create a specific organism to take charge of the international protection of all those who for any reason found themselves out of their countries, as long as the reason was a consequence of violence; this is how the UN High Commissioner for Refugees (UNHCR) was formed and in 1951 in Geneva the International Convention was adopted which regulates the international protection of this vulnerable population.

According to Ruiz de Santiago, the International Rights of Refugees also has as historical reference in World War I with the Peace Treaty of Versailles of 1919, since it dealt with the situation of hundreds of thousands of people who had been deported, persecuted, and who were victims of abandonment, hunger and sickness.

An important fact is that the Society of Nations, which can be called the first attempt of the world's nations to form what would later become the United Nations, had special help from the government of Norway which proposed the need to prioritize the effects of the war, above all the refugees. This was especially thanks to Fridtjof Nansen, in whose name after his death, the Nansen International Office was founded in 1930, and which is dedicated to providing material and political sustenance to refugees.

1.2 Post-World Wars and the International Organization for Refugees

By 1946, and as a post-war result, the International Organization for Refugee was created as a specialized organism of the United Nations that had no permanent character, since its mandate ended in 1950 but lasted until 1952. That is how, for the first time, the refugee problem was presented as the responsibility of this organization with an all-encompassing focus, including registration and classification, legal and political protection, assistance, transportation, repatriation or relocation and reinsertion (UNHCR).

Undoubtedly, the work done by the IOR was enormous. In its almost 5 years of existence, it managed to aid millions of people, but in the year the organization ended and had to cease its functions there still remained many refugees to assist, which is why the member States of the UN agreed that it was necessary to continue cooperation in regards to refugees. However, there were many contradictions on the methods and objectives of that cooperation. Socialist countries considered the IOR to be used by the West as a political instrument to impede the refoulement of their nationals. On their part, the United States contributed more than 66% of the IOR's operational funds and they reproached the cost of operation, which was higher than those of the UN. In this context, at the end of 1950 the General Assembly decided to create the Office of the UN High Commissioner for Refugees (UN High Commissioner for Refugees (UNHCR), National Commission of Human Rights (NCHR) and Universidad Iberoamericana).

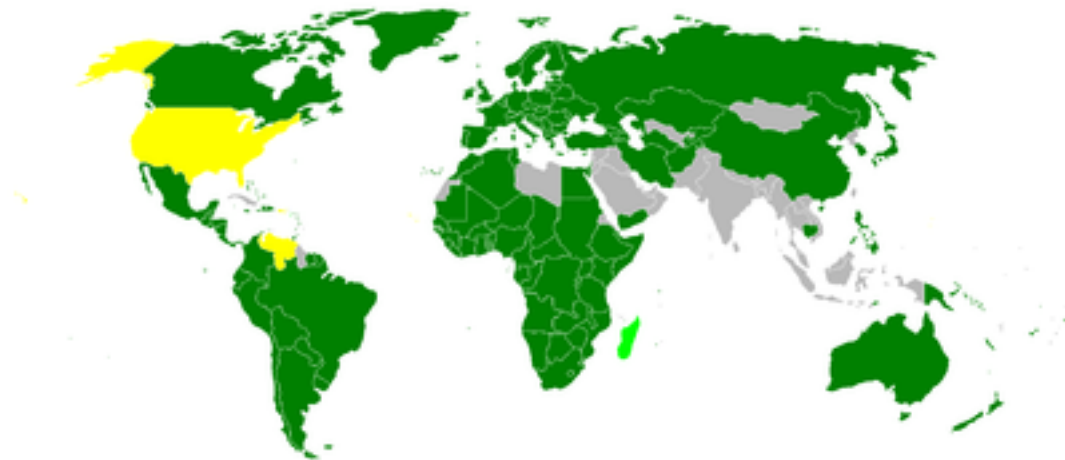
It is important to mention that the UNHCR is an apolitical organism, which means that has a strictly humanitarian and social purpose and acts under the authority or supervision of the General Assembly of the Economic and Social Council of the United Nations.

Surely we ask ourselves how the UNHCR ensures the fulfillment of its function, and it is, "UNHCR has the ability to use all of the technical structure to insist upon and promote to States the ratification of the international instruments on asylum, to assess and to train governments to make adequate use of international agreements," which is to say their participation is very important since it can positively influence the application and even the elaboration of internal norms to guarantee that refugee status is carried out well.

A great advance during this period was that in 1948, the General Assembly of the UN proclaimed the Universal Declaration of Human Rights. Article 14 included the right of all persons to seek and receive asylum in any country in the case of persecution for reasons other than common crime or the commission of acts contrary to the purposes and principles of the UN. Articles 11 to 20 of the Universal Declaration of Human Rights of the UN were without a doubt an important point of aid to the later institutional and legal development that all international protection of refugees would have. Equally, and of course all persons have all the rights and liberties proclaimed in this Declaration, without distinction of race, color, sex, language, religion, political opinion or of any other nature, national or social origin, economic position, birth or any other condition.

Despite the large advances undertaken, the creation of all these instruments was not producing the success required. This was due to a lack of compromise from states; it was necessary to create an international legal norm that obliged the parties to comply, which is why the General Assembly called a conference to adopt conventions. The conference took place in Switzerland in 1951 and the convention on the issue of refugees was finally written. The discrepancies on the definition of refugee status were to be expected; Western Europe proposed a wide definition of the concept of a refugee while the United States promoted a more limited definition. In the end, the convention recognized and considered refugees as those in need of international protection as a result of known occurrences before the January 1, 1951 as well as geographical limits. This limited the Convention of 1951 from the beginning. It was concluded that it was in the interest of the States to limit themselves to resolving the issue of already existing refugees, but not propose a resolution for future issues. However, after the Protocol of 1967, this limit of time and space was eliminated thanks to the efforts on behalf of refugees.

The Convention of 1951 and the Protocol of 1967 have constituted the legal base for the protection of millions of human beings throughout more than half a century. Their characteristics have made it possible, for, 145 States to be a part of one or both instruments that confers them an almost universal reach.



States that are part of the convention related to refugee status: the states party only to the Convention of 1951 appear in light green. The states party only to the Protocol of 1967 are in yellow, the states that are party to both are in dark green, and the states that are not party to either are in gray.

Ecuador has a long history concerning the reception of immigrant populations seeking international protection. Since the 1950s, experiences with political asylum can be found with Guatemalan citizens that arrived in the country seeking protection. In the 70s and 80s, a significant number of people came to escape from countries under military dictatorship, such as Argentina, Chile, and Uruguay. But the phenomenon took on great importance to be in Ecuador from the year 2000, because the country became the first receptor of a large Colombian population seeking refugee status.

Since a few decades ago, Ecuador has maintained an open-door policy and has been characterized by facilitating the reception of refugees. This is framed in the international commitments taken on by the country on the subject of the protection of refugees; those commitments will be detailed later on; however, this work does not intend to analyze the efforts to collaborate on a public policy, but rather to highlight its process and to analyze Ecuador's public policies on the subject.

Due to institutional weaknesses of the Ecuadorian State and the limited capacity of coordination and planning, it has been difficult to create integral public policies for refugees in the country. It was not until 2008, with the administration of Rafael Correa, that we can find any written document such as Ecuador's Refugee Policy, which Maria Isabel Salvador, ex-minister of Foreign Relations, deems the first of its kind not only in Ecuador, but in all of Latin America.

Commitments acquired by Ecuador at an international level on the subject of Refugee

Ecuador has signed and ratified several international instruments on the subject of Refugees, as well as Human Rights. In this manner it has taken on a series of commitments on the subject of humanitarian protection of victims of persecution.

The commitments that Ecuador has signed and ratified, both binding and non-binding and both universal and regional, sub-regional and even bilateral, on the topic of Refuge, Human and Humanitarian Rights, take on a series of obligations on the issue of humanitarian protection and

to provide ideal conditions to facilitate and protect those who need to benefit from this recognition. Some of the primary commitments made by Ecuador are here summarized:

- Havana Convention on Asylum, La Habana, 1928 – Binding and universal.
- Convention on Political Asylum, Montevideo, 1953 – Binding and universal.
- Convention on Diplomatic Asylum, Caracas, 1954 – Binding and universal.
- Universal Declaration of Human Rights, San Francisco, 1948 – Binding and universal.
- American Declaration of the Rights and Duties of Man, Bogota, 1948 – Binding and regional, which assumes refuge to be a human right; consequently every person has the right to seek, receive and enjoy this right.
- Convention relating to the Status of Refugees, Geneva, 1951 – Binding and universal; establishes the parameters for the granting of and exercising the right to asylum, determining the necessity that States issue laws and regulations to apply the convention. The content is focused on the definition of Refugee and has 35 articles that contain the rights and duties of refugees.
- Facultative Protocol of the Convention of 1951, New York, 1967 – Statute complementary to the convention.
- American Convention on Human Rights, San Jose, 1969 – Binding and regional; stipulates the recognition of other rights, such as that of due process, no discrimination, liberty, security, integrity, etc.
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly, 1984 – Binding and universal; refers to the principle of non-refoulement.
- Convention of the Child, UN General Assembly, 1989 – Binding and universal; is more specific on the topic of children in regards to refuge and help locating parents.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Belem do Pará, 1994 – Binding and regional; refers specifically to displaced and refugee women.
- Cartagena Declaration on Refugees, Cartagena, 1984- Non-binding and regional; incorporates the objective analysis of the country's situation, cataloguing general violence, foreign aggression, internal conflicts, massive violations of rights or others that have disturbed public peace as part of the Convention of 1951's definition of refugee.

- Mexico Plan of Action, 2004, Mexico City, 2004 – Non-binding and regional; attempts to identify courses of action to assist asylum countries in the search for adequate solutions within the programmatic spirit of principles called for in the Cartagena Declaration.
- Andean Community of Nations - binding and sub-regional; establishes the State ID or passport as the only documents necessary to mobilize in member States of the Andean Community of Nations.
- Bilateral Agreements Ecuador-Colombia on the subject of migration, of bilateral character; they include the Colombo-Ecuadorian Agreement on Border Integration, 1966; Agreement between Ecuador and Colombia on illegal immigrants, 1994; Agreement on the Legalization of Undocumented persons, 1994; Regulation for the functioning of the Binational Ecuadorian-Colombian Committee on border security, surveillance and control, 1997; Agreement between Ecuador and Colombia that allows the circulation of citizens in the territory of both countries, carrying either a state ID or passport, 1997.

Despite the importance of the international instruments for the protection of refugees, there are shortcomings or weaknesses that make their application difficult. Even if these different instruments on the subject establish the rights and duties of refugees, it is governments that determine their procedures for deciding legal status and the rights of a refugee according to its own systems and interests. That is, each State reserves the “right of admission”, so to speak, or to establish any limitation or condition on the entrance and permanence of foreigners in its territory, according to internal norms and making full and legal use of state sovereignty. This leads to, in certain situations, States adopting policies contrary to international instruments under the justification of defending national sovereignty or national security.

There are no provisions nor any tools or mechanisms for issuing a complaint or punishing States for failure to comply. For that matter, the instruments establish that the applications of the same be vented before the International Court of Justice, of which only States may make use. Therefore, individuals cannot present a suit or complaint for failure of a State to comply with their rights.

All of this brings us to conclude that even if organisms have been formed and have generated an international regimen of protection of refugees, their application depends on the voluntary action of each State.

Therefore, they can be moral commitments more than legal obligations in regards to universal commitments, since the regional commitments are legal given that all the instruments mentioned are subject to the jurisdiction of the Inter-American Commission (IACHR) and the Inter-American Court of Human Rights, which guarantees that any person, group or legally recognized governmental entity can present complaints or a lawsuit for the violation of the Convention of 1951 before the protective agencies.

Ecuador and the Protection of Refugees

Ecuador has incorporated into its national legislation the principles established in the different international instruments to which it is party, through laws, executive orders and ministerial agreement. Among them are the following:

- Constitutional Recognition – The right to asylum/refuge as a right belonging to both Ecuadorians and foreigners according to international agreements, both territorial and diplomatic asylum, and in the Convention of 1951 and its Protocol of 1967, which the country has ratified.
- The Immigration Law of 1971 – Recognizes “Refugee” as a non-immigration status for foreigners who would have been displaced as a consequence of wars or persecutions in their country of origin.
- Order 3293 of September 30, 1987 – To apply the norms contained in the Convention of 1951 and its Protocol of 1967.
- Executive Order for the application of the norms contained in the Geneva Convention and its Facultative Protocol (Order 3301) in Ecuador, which constitutes the main legal document on Refuge in Ecuador, signed in May 1992.

After 1992, the first legal document was created as an Executive Order, Order 3301 which details the procedure for recognizing the condition of a refugee (request for recognition presented directly or through UNHCR; expedition of a provisional certificate and submission to an interview process); dedication of the principle of non-refoulement; exclusion clauses considered in the Convention of 1951; in case of acceptance, the expedition of a refugee ID card with the respective visa and the possibility of obtaining an occupational ID card; the right to appeal in the case of denial; rights and duties of recognized refugees; causes for cessation and expulsion according to the Convention of 1951.

Since 1992, it can be said that Ecuador had a guide for legal framework and, of course, this system has been amplified over the years with a series of Programs and Plans that underscore the treatment of Refugees, such as the Plan for Human Rights, the Operative Plan for Migrants, Foreigners, Refugees and Stateless Persons, as well as Ministerial Agreements.

Ecuadorian Policies from 2000 to 2007

The period from 2000 to 2007 was, as has been stated, the most critical in the history of Ecuador as a receiving country of refugee populations, especially Colombians. This happened because of an important factor – the increase of violence in Colombia.

According to UNHCR, in the period from 1979-1999, Ecuador received 709 requests for refuge, while from 2000-2007 the country received 55,691 requests, 99% of which were from Colombian nationals and of which 16,407 were accepted. It is also important to mention that this data reflects the number of applicants, not the number of people who entered the country and stayed with irregular status (which means they entered the country and stayed but did not initiate the process to request refugee status). This is according to the UNHCR Population of Interest Report, Quito, 2006.

This massive population flow, the majority from Colombia, coincided in a serious political and economic crisis in Ecuador, which can be clearly seen in the constant change of government during the years since the turn of the 21st century. This, of course, did not permit a stable policy in regards to the issue of refugees. However, it is important to remember that due to the crises at the end of the 90s, there was a wave of Ecuadorian citizens that felt obligated to leave the country due to unemployment, which would compensate to some degree the lack of work in Ecuador. Still, with an increase in poverty, crime, and unequal income distribution, the scene of crisis was put under more pressure by the increase in applications for refuge.

Despite many attempts, these problems made it difficult to establish a policy to regulate the entrance of refugees. Authorities began to question whether or not it would be correct to act on the issue, and so State controlled agencies, the Armed Forces and Police authorities began to criticize the Ecuadorian policy on the reception of refugees as too open and permissive and proposed strengthening national migration policies.

In view of this situation, Ecuador has adopted a series of policies that combine the design of plans of action to widen the framework of protection to refugees with restrictive policies that seek to reduce the recognition and acceptance of the foreign population and, clearly, of Colombians.

1.3 Protection by international humanitarian rights

International Humanitarian Rights (IHR) is a combination of norms that, for humanitarian reasons, tries to limit the effects of armed conflicts. It protects people who do not participate or no longer participate in combat and limits the means and methods of warmongering. The IHR tends to be called "rights of war" and "rights of armed conflict", as well (HUMANITARIO).

So, international humanitarian rights make a distinction between refuged persons and displaced persons. A refuged person is someone who flees his or her country for a reason founded in persecution, while a displaced person is one who abandons his or home within the borders of his or her country for reasons of armed conflict.

Humanitarian rights are not vague in regards to a precise definition of a refugee and, furthermore, rarely uses the term. However, this does not mean that humanitarian rights do not protect refugees. They will always be protected when and if they are part of a conflict; in other words, international humanitarian rights protect the victims of an armed conflict, when they are displaced within their own territory, captured or in the power of one of the parties in conflict or are affected by hostilities or are captured by some kind of armed conflict in the country of the aggressor. That is, if he or she was part of an armed conflict in his or her country and moves to another country that is not involved in that conflict, the IHR does not protect him or her, as long as that country is not suffering an internal armed conflict as well. To me, it seems inconsistent that a person subject to a country in armed conflict would seek asylum in another country that is also in conflict.

The problem, however, is that there are these kinds of categorizations of person's rights, that by dividing migratory movements by categories, as previously mentioned in a quote, rights are inherent to individuals, not to States.

The paradox of this point is that international humanitarian rights according to what was stated previously, should be present in countries in armed conflict, as is the case in Colombia, apparently are not very effective, which is why that are so many applicants and refugees in Ecuador. From personal experience, many of those now refuge in Ecuador commented in their interviews that before crossing the border to Ecuador seeking protection, they had already been displaced within their territory (Colombia). They had moved to other cities, abandoning their families or their homes due to military persecution, etc. Is this not the segment of the population that humanitarian rights should address? In my personal opinion, it is not effective because by not addressing the needs of the "displaced" it does not matter because they later become "refugees" and will be the responsibility of another right to protection.

The policies addressing Human Rights and International Humanitarian Rights are therefore marked by a relative failure in their commission, given the current context of extreme violence that continues to exist in Colombia. Therefore, it is worth asking questions about the current validity of International Humanitarian Rights as an incentive to peace driven by the international community in Colombia. (Sciencespo).

The percentage of displaced persons in Colombia due to armed conflict is significant and it is important to this work to mention it, because the displaced have not been successful or have not accomplished an improvement in lifestyle. They continue to be pursued or extorted. The next step will be to seek international help which will give them the status of seeking asylum, and will endorse the responsibility of receiving countries, in this case Ecuador.

CHAPTER 2

ANALYSIS OF THE PUBLIC POLICIES IN ECUADOR IN ITS MODALITY OF EXTENDED REGISTRATION AND THE EXECUTIVE DECREE 1182

"Public policies are understood as a combination of orientations and actions coming from state or governmental institutions aimed at influencing the phenomenon of displacement and asylum. If governmental action is well understood, public policies are the result of the interaction between governmental actors, multilateral organisms and sectors of civil society (social organizations churches, academia, media), among others, that share different and even antagonistic ways of conceiving problems, strategies and end goals. That is why Policies are understood as the result of a negotiation process that is sometimes visible and explicit, at other time, no so much so, but in any case it is a social product" (P.L. Benavides).

That is, policies are or can be much more than just the norms, programs or instruments that orient or regulate them. To implement them they must be interpreted first and there are many ways of interpreting problems and their alternative solutions, but it is not only a matter of interpretation. "Public policies constitute, more than an issue in itself, a field in which it is possible to read a differentiated game of actors, interests, relations and conflicts" (Bordieu and Wacquant, 1955).

All states which have their own policies on this and other issues that need to be regulated. Ecuador has not fallen behind on this and, over the years, has implemented various policies on determining refugee status, primarily pro-society and of course paying attention to human rights and trying to follow what is laid out in international treaties, above all to those of which it forms part, in order to keep in line with more surefooted policies.

2.1 The two extremes of public policy between 2008-2012

There are in my opinion two specific extremes throughout the entire dynamic of policy changes in Ecuador. One, Extended Registration, which permits receiving thousands of refugees with little complication to the applicants. In the other hand, Decree 1182, which is an executive decree; a decree has made migratory policies more difficult to a certain degree and has

weakened the systems of humanitarian protection with a turn towards more national security. The migratory control and criminalization of immigrants has unchained multiple human rights violations and puts in question the validity of international treaties for the protection of immigrants, regardless of whether they are voluntary or forced immigrants. This puts in doubt how beneficial it is to the country to continue receiving them, a policy that intends to filter applicants in order to "correctly" select future refugees.

The primary or first response to the arrival to the country of a mainly Colombian population in need of international protection is outlined in the document "*Política del Ecuador en Materia de refugio*" ("Ecuador policy on the subject of asylum"), published by the Ministry of Foreign Relations, Commerce and Integration in September of 2008, the first in Ecuador and Latin America. A policy set off by the large population that Ecuador received at the time. According to this document, more than 180,000 thousand were refuge in the country, without including the thousands called "invisible" refugees who, for fear or ignorance, never presented themselves before the authorities to legalize their status.

"Along the way, uncertainty about where to arrive was normal for most all refugees. They cross the border and arrive at an unknown place, in which they were never met by any authority nor were they given any kind of information, a place in which, as a matter of fact, they were afraid to announce at the border that they came escaping from violence and that they were people in need of protection" (Rivera, 26).

This situation caused irregularity among the new arrivals. Fear of declaring themselves and the situation in which they were found caused them to avoid legalizing their presence and future stay in the country (a regularization that if not done at the beginning was difficult to accomplish afterwards). So, they remained in this "invisible" status or, as they would legally be recognized, as illegal within the country.

Ecuador has maintained a commitment to guarantee refugee status promised in the obligations acquired in the Geneva Convention of 1951, on the statute of Refugees, the Protocol of 1967, the Cartagena Declaration of 1984 and the Declaration and Plan of Action of Mexico of 2004, as well as with the state of Colombia and the international community in general.

The document implemented in 2008 by the Ministry of Foreign Relations has a legal base in the International Humanitarian Rights and its foundations also come from the National Development Plan 2007-2010 in its chapter on Foreign Policies, in which guidance is formed to address with concrete policies the need for protection of large contingencies of the Colombian population already present in Ecuador. That is, they both seek not only a solution to the protection of the already existing refugees in the country, but also a long-term solution for future migratory movements of this vulnerable population.

On the subject of asylum the Plan considers, "to promote the legalization of persons deserving of international protection, to execute a policy that guarantees the rights of refugees and strengthens the institutional capacity of the Ministry of Foreign Relations, Commerce and Integration in terms of refuge, and, of course, to encourage the social insertion of refugees and, finally, to formulate a public policy on the issue" (Ministry of Foreign Relations, 2008).

2.3 Extended Registration

The most representative action that was initiated by the implementation of the policy on the subject of asylum in 2008 has undeniably been the process of "Extended Registration," which "in its first phase handed out 10,603 refugee visas" (Visas handed out by the government between March 23rd and July 4th, 2009, according to data from the MINISTRY OF FOREIGN RELATIONS (20/07/2009).

"Ecuador extended its solidarity with the Colombian population that sought asylum" (Alarcón). It was implemented in March of 2009 and continued until March the following year. What did this process entail? "It entails a form of registering based on the determination of refugee status for a group, which has been applied in contexts where enough information on the country of origin, in this case the armed conflict in Colombia, provides sufficient data to establish the presumption of the need for international protection (Ministry of Foreign Relations and Human Mobility).

An antecedent of this process is that, in 2008, the Center of Studies on Social Population Development (CEPAR) was commissioned to carry out a study to determine the number of Colombian citizens that needed international protection in Ecuador. The results showed that the number was more than 135,000 persons of whom around 50,000 were housed on the northern border, which showed that the rest of the Colombian population was not registered.

The basic process consisted of mobilizing registration brigades and an eligibility commission to the most common communities of residence of the persons in need of protection in the three provinces on the northern border and Orellana and Imbabura, all with the objective of simplifying the work or the process by doing it on-site, going to them instead of making them go to the competent authorities. According to Sánchez, it is important to remember that the Extended Registration is based on the political Constitution of Ecuador. Art 41 and 393 recognize the right to Asylum and Refuge:

- The full exercise of rights.
- Non-refoulement when the life, liberty, security of the refugee and family are in danger.

Article 416.5 rejects racism, xenophobia and all forms of discrimination and article 416.6 provides for universal citizenship and the free mobility of all the world's inhabitants.

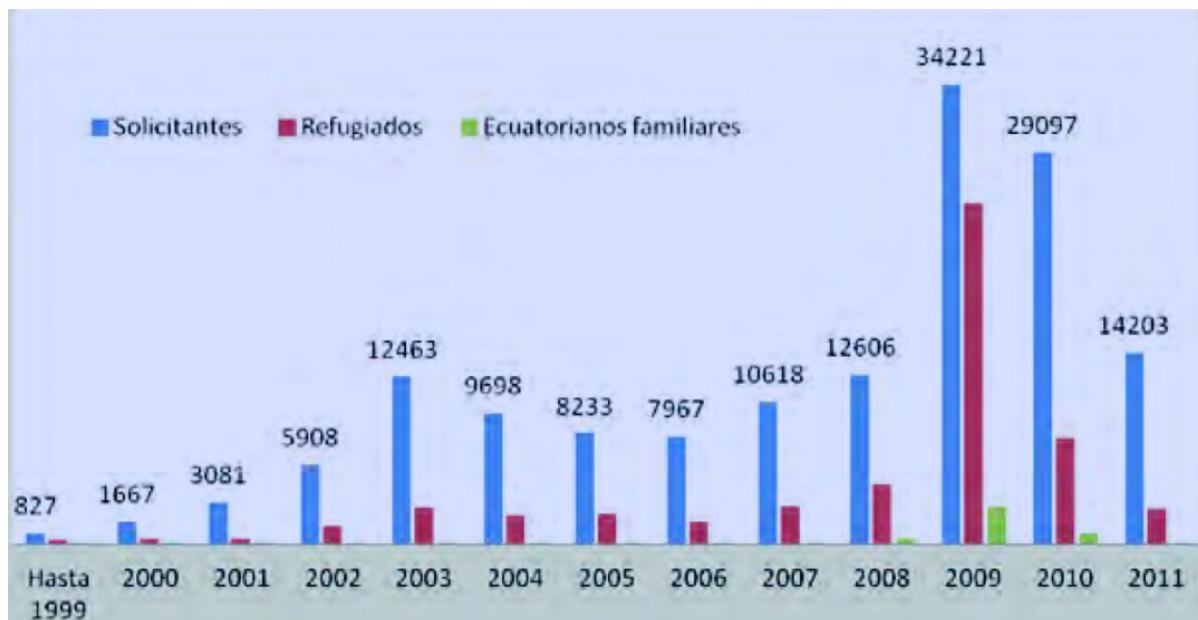
There is no doubt that Extended Registration has been a unique and innovative element of protection to refugees in Latin America since it simplified the process, as previously mentioned, in a completely streamlined fashion given that it made it possible for those with difficulties reaching an office in Quito, Lago Agrio or Cuenca to apply for and receive their visa on the same day.

In the beginning, the process included basic and simple criteria for the selection and approval of refugee status this included individual recognition by filling out a basic form with personal and familial data, and a personal interview to determine the causes of and reasons for displacement to Ecuador with questions focusing on the credibility of the applicants.

Undeniably, it was an important year for the country since it was recognized in Geneva by UNHCR as an example and model to follow around the world with the intention of promoting this initiative in other countries; it is important to emphasize that the relative success of Extended Registration, added to the continuous labor of the ordinary process, made it possible

to procure of 32,000 visas for the PNPI between 2009 and March 2010, with a total of almost 51,000 during that entire decade. Finally, it worth mentioning Extended Registration is also part of an international advocacy process, under the leadership of UNHCR.

Statistics DR of applicants and asylum until 2011



Taken from the report "Future expectations for the Colombian refugee population" (L.S. Benavides). In blue are the number of applicants, in red the number of refugees, and in green the number of Ecuadorian family members.

2.4 The relative success of Extended Registration

Once Extended Registration was finalized, the Ecuadorian population seriously questioned national security. They questioned whether refugee status was granted to persons who really needed and if such a delicate process could be streamlined it had been during that year without going very in depth in interviews. For this reason, I previously referred to it as a "relative" success.

Much of the Extended Registration process was questioned in that sense in other words having made the process extremely easy but unprofessional since it gave the opportunity to thousands of applicants without taking the time necessary to determine whether or not they were deserving of this status. Ecuador took responsibility for so-called refugees, who only sought a better lifestyle, which would later become a problem again when they had to update information or renew their visa and it was discovered that in reality they did not need international protection or, even worse, never needed it. The Coordinator of Refugee Management in Guayaquil, Yoli Pinillo, has accepted that there was abuse of the Extended Registration process and that many people invented powerful, yet untrue stories (Oña).

It became a problem because their recognition as refugees guaranteed them the right to seek employment, but did not guarantee a job. The xenophobia against Colombian refugees is so great that it makes it difficult for them to find a job, an apartment, enroll in school, among other things, and the media associate Colombians with delinquents, drug traffickers, prostitutes, etc.

On the other hand, a study by a doctor of social anthropology, Jacques Ramírez, determined that "the increase of migrants in our country, contrary to popular belief, has brought certain benefits. From the decade 2000-2009, we see that many more Ecuadorians left than foreigners entered. In other words, the labor force of the Ecuadorian population, the majority being economically active, that migrated in the last few years have been compensated for, in part, by the labor of the foreign population, which has arrived to our territory."

There is no doubt that the perception of delinquency has increased; however, statistics do not show this since 2000 until the end of March 2004, the Ecuadorian National Police registered 125,321 crimes committed in Ecuadorian territory; of them, only 1,986 crimes being committed by persons of Colombian nationality, according to the same source (Ecuadorian National Police, National Office of Judicial Police, DNPJ - statistic section: <<detainees registered in the Judicial Police, at a national level, by year, according to the type of crime, period 2000-2004 March>>).

Apparently, the resulting percentage is insignificant; however, the annoyance caused in the Ecuadorian population is notable. In my opinion, this is due to the manipulation of information by the media, which has generated the sensation that Ecuador is experiencing an increase in crime

since the influx of displaced persons from Colombia. So, according to statistics, it would seem it is solely a matter of a perception of insecurity that the numbers do not justify.

However, there are different opinions on the topic that state that it is not about a simple perception of insecurity that we are experiencing, and that it should be taken to higher authorities of the current government so that they can be dealt with and create necessary reforms, this was that refugee status is granted only to people who truly need this International Humanitarian Right and not to people with prior criminal history who, shielding themselves behind refugee status, come to disturb the peace and tranquility of the Ecuadorian people. This is what Dr. Hugo Oña considers in his master's thesis, titled "Analysis of the situation of refugees within the objectives of Ecuador's foreign policy".

The ex-president of the Republic, Rafael Correa, for his part, in Enlace Ciudadano N. 267, on April 14, 2012 gave a long speech to destroy one of the myths that had been generated in the country, which mistakenly claims that the cause of citizen insecurity is the open-door policy that Ecuador maintained in regards to the entrance of foreigners, who do not require a visa, and the policy of sheltering Colombian persons that flee their country seeking our protection. Using this opportunity, he presented a series of statistics that showed that the increase of crimes was not related to refuged persons. "Considering that all refugees are delinquents is a barbarity," Correa assured; he furthermore emphasized that Ecuador is a world-class example of sheltering persons in need of international protection.

2.5 Human mobility and state sovereignty

Let us not forget that asylum is of humanitarian nature, and therefore recognize those persons who have fear founded in persecution for not only political reasons, but for reasons of race, religion, social condition, etc. Return into their country is made impossible by the risk to consider pluralizing to avoid hissing her family.

While it is true that there have been international instruments to promote free and dignified asylum to those who need it, it is also true that each state defends its sovereignty and is free to protect its borders and filter entrances through it in the name of protecting national security. This then becomes a dispute between human rights and the right to sovereign decision of each state to decide who enters the country. There is an incongruence, since the liberty of each

country, even being part of international treaties on the issue of asylum, are free to implement public policies that fit each state to their convenience without anyone being able to deny them that right.

Even though the different instruments on the subject establish the rights and obligations of refuged persons, it is the governments that determine their procedures to decide legal status and the rights of a refugee according to their own legal systems. As expressed in Article 12 of the Convention of 1951, "the personal statute of each refugee will be determined by the law of the country in which he or she is domiciled or, if there is no domicile, by the law of their country of residence."

In other words, each State reserves the "right to admission" or to establish any limitation or condition on the entrance and permanence of foreigners in its territory, according to its internal norms. To leads to, in certain situations, States adopting policies contrary to international instruments with the justification of defense of national sovereignty or national security.

"Human mobility is seen as a danger and its actors as a threat to the stability, security and sovereignty of States, which provokes permanent tension between sovereignty and human rights, and not only a tension but rather in this case a contradiction between the defense of human rights and States' defense of right of sovereignty to control their borders, as well as to control under what parameters the quality and quantity of those admitted are filtered" (Lasimba 17).

The Ecuadorian state, making use of this right, had made various changes in its policies on asylum, making them ever stricter each time. In May 2012, the executive decree 1182 was signed, which without doubt has changed the refugee seeking process in Ecuador; the decree has even been criticized as unconstitutional, since, to a degree, it limits the extensive number of qualified refugees in Ecuador.

2.6 Executive Decree 1182

In May 2012, Ecuador made use of its previously mentioned right of state sovereignty to change its internal policies when it thought it convenient, and so, on 30 May 2012, Executive Decree 1182 came into force. Executive Decree 1182 is a, "regulation for legal application in Ecuador,

changing internal norms to recognize and exercise refugee status in Ecuador. That same year, the foundation Asylum Access Ecuador and the Legal Clinic of the Universidad San Francisco de Quito each presented unconstitutional lawsuits against the Decree due to finding among its provisions various rights infringements.

Human Rights Watch urged President Correa at the time revoked certain provisions in Decree 1182 because it considered that they violated international standards. Various human rights organizations also expressed concern over the decree.

Rafael Correa, for his part, argued that the change initiative was a national security affair and that in order to give refugee status to those who truly deserved it, he considered that the previous process was too lax and deficient. (El fin del paraíso del refugio)

In my opinion it's regretful that Ecuador has regressed in its compromises with human rights that it took a step backwards in solidarity with refugees. Unfortunately, on these topics dialogue with civil society and its organizations has been abandoned; and we call on the Government to, as an homage to World Refugee Day (June 20), retake the Latin American trajectory of human rights and asylum. We call on it to take on emigrational issues from a point of solidarity and human rights and not from visions of security traditionally imposed from other countries and other political agendas.

While arguments come and go on the issue, the Decree issued calls into question Ecuador's long tradition as a welcoming society, since, it is not congruent with its own claims before the international community in regards to the rights of the thousands of Ecuadorians that live in foreign countries. Solidarity is the basic introduction letter for that demand. It begins at home and guarantees its legitimacy elsewhere. Considering and offering the effective conditions so that all persons be considered and treated as such in any part of the world is the way to citizenry's mobility. Years of effort by Ecuador to meet its international protection obligations in regards to the refugee population, based on the recognition, enforceability of rights and protection, was abandoned with the expedition of the famous Executive Decree 1182; Ecuador ceased to be a world example on the subject of asylum.

It was to be expected that the inconformity of the contents of the decree and the controversy it generated would bring with it legal protests; two lawsuits of unconstitutionality were brought before the Constitutional Court of Ecuador, one prepared by the Legal Clinic of the Universidad

de San Francisco de Quito, while the other was brought by Asylum Access Ecuador. The two lawsuits were admitted and received a positive response.

2.7 Principal aspects presented before the Constitutional Court

The current work is limited to analyzing only two of what the author considers being the most important points brought up in the decree.

"The most attention grabbing aspect is the limited definition of a refugee person, having eliminated the content of the Cartagena Declaration (1984), content expressly incorporated in Ecuadorian legislation since 1987, and that historically placed the Ecuadorian state the vanguard of Latin American protection systems (Arcentales).

The Cartagena Declaration of 1984 is an international human rights instrument that represents the answer of the region's Central and South American countries to the need for evolution and extension of the protection offered to refugees. As indicated in the document Cartagena Initiative +30, the Cartagena Declaration reaffirmed the principle of non-refoulement, that is the absolute prohibition of refoulement or expulsions of persons to a State in which his or her life or liberty is in danger due to his or her race, religion, nationality, belonging to a certain social group, or for political opinions, and exhorted States to implement minimal standards in regards to the treatment of refugee persons, according to the norms of the Convention of 1951, the Protocol of 1967 and the American Convention on Human Rights (Cartagena Initiative +30).

In principle, by the nature of the instrument, it should not have binding force since it is a declaration and not a treaty that has passed through the process of signing and ratification by State parties. However, the Constitution obligates public servants to apply it "ex officio or upon request of a party" Additionally, the non-application of the Cartagena Declaration violates maximum Ecuadorian legislation. On the other hand, Asylum Access argued that the Cartagena Declaration has become powerful enough to be considered as a customary international legal norm since it meets the requirements of repeated practice.

That means that customary international law is composed of norms that result from "a general practice accepted as law", whose existence is independent of law. For example, treaties consist

of written agreements in which States establish determined norms in a formal manner. In contrast, customary international law is not written, but rather results from a general practice or custom that becomes law.

Therefore, this declaration constitutes an extremely important instrument because it widened the definition of "refugee" in Latin America and prosed new approaches to humanitarian rights and those of the displaced with a spirit of solidarity and cooperation.

Definition of refugee according to the Cartagena Declaration

[...] the definition or concept of refugee recommended for use in the region is that which, beyond containing the elements of the Convention of 1951 and the Protocol of 1967, also considers as refugees those persons whom have fled their countries because their life, security or liberty have been threatened by general violence, foreign aggression, internal conflicts, massive violation of human rights and other circumstances that have deeply disturbed public order.

This definition is very wide, and is very important because to begin to implement rules, norms and otherwise for the determination of refugee status, it must first be clear what or who is a refugee, since it is a very delicate issue because it is bound to human rights. It must have an inclusive definition and be in favor of the defense of these rights (Almeida).

Another important point to consider while dealing with 1182 is the issue of timeframes for applying for asylum in Ecuador. A person who flees his or her country for reasons founded in fear, persecution, etc. can enter Ecuadorian territory and seek asylum. The catch is that in Ecuador, to carry out said process, the applicant must present a formal request recognizing refugee status and once the request is made a whole administrative process is carried out and above all, the applicant - persecuted, scared, confused, etc. - will have to finish all this paperwork within 15 days, as determined by the decree.

And, of course, we expect the applicant to present enough proof to determine that he or she truly is being persecuted or has been the victim of violence in his or her country, proofs that justify that he or she has been found obligated to seek asylum. How paradoxical that a person subject to violence, exploitation, subject to intimidation, is expected to leave prepared to

demonstrate that his or her life really is an ordeal and that there was no other option but to abandon home and family with nothing but the clothes on their back.

Article 27 of Decree 1182 prescribes that applications for recognition received after 15 days of having entered Ecuadorian territory will be rejected (Decree 1182. Art. 27). The decision on the time limit was exceeded was done automatically: the person came forth to request asylum, the authority counted the days since his or her arrival and the next day sent the notification that the request was denied, alleging that it was past the time limit.

To better explain this, if the person entered the country on March 1 and on March 16 went to the refugee offices, he or she would automatically be denied without right of explanation, since for that there is also an appeal process that has a specific time frame of three days. The existence of this time limit is a violation of various rights. First, and as was emphasized in Asylum Access' lawsuit of unconstitutionality, there is a violation of due process consecrated in article 76 of the Constitution, which must be applied to both legal and administrative procedures, as has been determined.

This mechanical denial of applications due to exceeding the 15-day time limit violates several rights. First, as is noted in the lawsuits of unconstitutionality, the denial creates a category of applicant to application or of "applicant to refugee application" (Universidad San Francisco de Quito), a category that did not exist in international refugee rights and that violates the provisions of articles 31 and 33 of the Convention of 1951 (Article 31 of the Convention refers to the non-imposition of legal sanctions due to finding oneself in a territory illegally and article 33 talks about the principle of non-refoulement).

It is important to reflect on a contradiction presented by this topic. Supposedly, applicants for asylum can enjoy rights such as access to work, either as a formal employee or independently, to move freely throughout Ecuadorian territory without being detained or deported, access to basic services, etc. By taking away applicant status if not presented before the first 15 days, we leave them in an irregular migratory status, even when they are in process of repositioning or appeal.

The existence of a time limit in the issue of human rights is very contradictory and if these time limits are actually necessary they should be flexible, as determined by UNHCR. We also take

into account that the right to due process is also violated when there is rejection of application because of time limits. The person does not even have the right to an interview; he or she is just automatically denied.

Article 76, number 7 of the Constitution speaks about the right of persons to defense, including being heard at an opportune moment and in equal conditions (Constitution of the Republic of Ecuador).

In regards to the time limit for objections, Decree 1182 prescribes a time frame of 3 days to rebut denial that are deemed "unfounded" or abusive, while an application that is deemed "illegitimate" cannot be rebutted (Executive Decree 1182, Article 33. Regulation for application in Ecuador of refugee right. Official Registry 727, 19 June 2012.) and a time frame of 5 days for accepted applications but denied during the period of eligibility (Art 48).

In relation to the time limit of 15 days to request asylum, the court recognizes the unjustified discrimination established by a period of 15 days to apply for asylum based on the prevailing circumstances that oblige a person to flee his or her country and seek asylum.

2.8 Resolution of the Constitutional Court on Decree 1182

In these circumstances, and taking into account the condition, the terrain, and a feeling of reconstruction in the middle of a foreign land by complying with a minimal time limit and losing a fundamental right and putting the applicant's life at risk if the time limit is not met, inevitably led to court decisions to increase the time limit to apply for recognition of refugee status to three months, the same amount of time given to temporary visitors, indicating that people in search of international protection should have at least the same treatment as the rest of foreigners arriving to the country.

Without doubt, extending the time period for applying for asylum is a great advancement, since 15 days is definitely too short considering the quality and circumstances in which the new arrivals find themselves. It was considered that a time limit, is important for reasons of national security and because if there is no time limit the people who come into the country with the intention of applying for asylum and do not do it within a certain time frame will make their life in

the country and if the authorities do not consider them apt for international protection it will be very complicated to send them back to their country.

However, according to Daniela Urbidia Vásquez in her text *The unconstitutionality of Decree 1182 on the right of seeking asylum in Ecuador: Analysis and effects*, the establishment of time frames, be they long or short, to present an application is not the solution that should have been proposed. The answer, according to international refugee rights, says Urbidia, is that there is no time limit to the presentation of an application and, if there is, the limit cannot be fatal in any way (Urbidia).

Since sentence Nu. 002-14-SIN-CC of the Constitutional Court, which accepts the partial unconstitutionality of Executive Decree 1182 that regulates the right to seek asylum in Ecuador, the decree once again includes the definition of a refuged person.

The omission by Decree 1182 of the Cartagena Declaration is a step back in a national practice that has been in effect for a quarter of a century. Therefore, it involves a violation of the constitutional principles of progressivity and no-regression consigned in Article 12 of the Constitution, articles that form part of the theoretical nucleus of human rights in Ecuador. This omission constitutes a serious regression in refugee and international rights (Universidad San Francisco de Quito). In regards to these and previously mentioned arguments, the Constitutional Court recognizes the importance and strength implied in the case of the protection of refugees and, applying Article 11 Number 3 of the Constitution, determines that the Cartagena Declaration constitutes an international human rights instrument, and that article 8 of Decree 1182 should take it into account and therefore modify the previously mentioned article and widen the definition to that contained in the Cartagena Declaration.

It is important to mention that this change requested by the Constitutional Court is a great advancement and recognizes the importance of the Cartagena Declaration as an international instrument in favor of refugees, but it does not consider it to be the norm of a customary law. Remember that Ecuador is the country with the largest number of refugees in Latin America more than 55,339 people since February 2012, which is why the support of the international community, especially economic support, is so important.

"The State commits itself to recognize the residential status of all the persons that need international protection, but must also require the commitment of the international community, primarily economic, so the State can recognize all the rights inherent to this vulnerable group of the population" (SENPLADES, 2009).

CHAPTER 3

"MODALITY OF RECEPTION AND ADMISSIBILITY OF DECREE 1182 BASED ON SURVEYS AND REPORTS BY REFUGEE APPLICANTS"

After what was put forth in the previous chapter and thinking that Ecuador has been changing its public policies on the determination of refugee status during the last several years, it is important in this chapter to make an evaluation based on the experiences of those involved, referring, of course, to the refugees.

Undoubtedly, they are those who can finally permit us to see the differences between the modality of Extended Registration and the policy of Decree 1182, which, as previously mentioned, are considered to be polar opposite policies.

It is true that, at least with statistics, we can notice a brisk change between these two legislations the inflow of Colombian citizens has been reduced enormously, but beyond that, accepted applications and the recognition of refugees have lowered significantly.

It is easy to find refugees that have been admitted under Extended Registration. Many of them remember a very easy process and consider themselves lucky. Despite the terrible reasons that made them flee Colombia, they are happy that the laws beforehand were not so strict.

The process was very flexible and did not require many documents or tests. For the good or ill of the country, it was a generous process to the population in need of protection. Applications were almost completely approved without taking into consideration the length of permanency in the country, which benefited persons already settled in the country in "legal limbo" or, as previously mentioned, "invisible" status, as well as those recently arrived.

This modality of Extended Registration was done as a display of solidarity with a humanistic vision of protection, a key initiative that was driven by a survey that the UN High Commissioner for Refugees pushed forward in 2007 to find out their basic life conditions. Its results indicated that there were 135,000 people in the country in this condition.

The first step was to select the implementation mechanism of sending mobile brigades of officials from the Refugee Office to the border, making it possible to apply for and obtain a visa

on the same day, especially for those who found it difficult to reach the existing offices in Quito, Lago Agrio and Cuenca.

The procedure basically included specific criteria for the selection and approval of refugee status: individual recognition by filling out a form with personal and family information, a personal interview in which, of course, the reasons for displacement to Ecuador would be described, with a view towards generating a credible analysis by the Eligibility Committee to verify if the applicant could be admitted to the protection system. All of this was supported by organism to legitimize transparency and normalcy throughout the process. Ultimately, 28,000 refugees were recognized of the almost 1,000 persons that were hoping to be registered by March 2010.

"One day during the week I had heard a car that announced that they were going to give us Colombian refugee documents at the coliseum in Muisine. The next day I went to the coliseum to see what was going on, some people told us that it was a lie and that when everyone was inside the police were going to take us. I saw the cars of the UNHCR and that made me feel confident enough to go see what was all this about Extended Registration," explains Carmen, a Colombian refugee who had lived undocumented in Ecuador for 6 months.

"I could only come with two of my sons and my nephew. I didn't have money to pay for tickets for everyone, my wife and the rest of my children had to wait three weeks to get the money together to come to Lago Agrio, the city where Extended Registration was," comments Alcivar, an Afro-Colombian who had been living in Ecuador for 6 months.

There are many stories like this, and with the arrival of Extended Registration, the hope for a new beginning was born again. When a refugee arrives in Ecuador, and to Quito in the case of this research, he or she becomes even more vulnerable. To briefly take up the argument of the rest of the chapter, the vulnerability of refugees stays at extreme levels for the following reasons:

In many cases, the displaced person loses his or her documents. Without documents, there is little possibility of getting refugee status approved in Ecuador. If he or she brings documents, the possibilities improve, but two thirds of applicants are not approved or continue waiting a definite response. Therefore, there is a good possibility that the refugee with Colombian

documents remains without legal refugee status. People in this situation have every aspect of their lives made more difficult and are put in migratory limbo called "the gray zone". Those that do receive official status do not come out much better. Recognized refugees are still vulnerable, but unrecognized refugees are more vulnerable still and no one can go back to Colombia because their lives are in danger there. So, the majority of those who are documented as well as those who are not remain vulnerable (Schussler). They are refugees that have not managed to be refuged.

Displacement is the first step on the painful path of a refugee. Painful because since Decree 1182 (before the decision of the Constitutional Court), after applying for asylum in Ecuador a person's status is unknown and in the majority of cases, refugee status is denied by the Ecuadorian state.

In view of the important number of the Colombian population in a refugee situation in Ecuador, which represents more than 98% of cases, the dynamic of the humanitarian crisis in the country becomes clearly understood, with the goal of understanding the dimension of forced displacement of Colombian citizens to Ecuador.

The current chapter is very experiential and will be founded on the second chapter and based on interviews about the experiences of people who have been victims of human rights violations, of their experiences in Colombia because of the armed conflict, and of their experiences with the application process for refugee status in the country, with both Extended Registration and Decree 1182.

In 2012, when Decree 1182 was already in place to determine refugee status, I had the opportunity to work as an intern in the Refugee Department of Cuenca, in the Ministry of Foreign Relations and Human Mobility, which motivated me to do this study and to take advantage of the knowledge I absorbed during my time in the field of refugees.

It was commonplace to see long lines of people waiting for the office to open. Always on my mind, and I imagine on many of yours, were paperwork, passports, renewals, permissions to exit the country, extended visas to stay in the country, and so on. In reality, it never occurs to one that half of the early risers waiting in line are fearful, scared, persecuted, that they were not going to apply for a passport or a change of nationality but were going to apply for protection.

The scope of the matter is unimaginable, not everything involved that brought those people to be sitting there waiting for a turn. In the department, interviews were done in the presence of an official. Such sad, difficult stories are told that it's sometimes impossible to keep back the tears; the fear of even the trained officials is notorious.

How can such a great responsibility fall on the perception of one person, based solely on an interview? An interview that, in my personal opinion, is predestined to confuse people to make them "mess up" to put it bluntly, reiterating that this is the author's personal opinion.

While it is true that in Quito there is a duly capacitated, specialized team in charge of recognition and deciding whose application is accepted and whose is not, the person who does the interview is who writes a report, will say whether or not the application is accepted. That is why, superficially, the responsibility falls on the shoulders of the official interviewing; we are human beings, which is why truthfulness of a report made by a person who, like all human beings, has his or her personal convictions and beliefs, to which we feel and act accordingly. There are personal preconceptions that are difficult to separate from such delicate matters that could either benefit or harm the applicants.

Since Decree 1182, the lines shortened, paperwork has become less complex, since many people who came after their 15 days expired were automatically denied. The elimination of the definition of refugee from the Cartagena Declaration also left many with refusals.

During the year 2012, of the 12,099 applicants for asylum received by the Ministry of Foreign Relations, only 1,577 were recognized by that entity, due in great part to the policy changes ordered by Decree 1182. That same year, until September 2013, only 513 people received refugee status in the country, evidencing a significant reduction in the number of refugee cases recognized by the Ecuadorian state (Ministry of Foreign Relations and Human Mobility).

The people that presented an application for asylum between January and September 2013 were citizens from 40 countries, but the majority, 97.54%, were Colombian. They were people who had fled Colombia because of the general violence that affects the country as well as the persecution suffered from the different armed groups active in Colombian territory. The majority of the recognized refugees reside in Pichincha province (administrative capitol: Quito, Quito

County) and in Sucumbíos (administrative capital: Nueva Loja, Lago Agrio County) (Cartagena Initiative +30).

While many have not personally been victims of mistreatment, there are those who come because their neighbor was killed, or a bomb exploded next to their house, even though nothing happened to them directly. "They flee from violence, from war," Virginia Valencia discloses, a lawyer with the Public Defense of Pueblo de San Lorenzo.

In Nariño, Juan comments, "the violence is an everyday thing. Right in front of the farm they killed my brother, they burned him alive. Even though I wanted to help, I couldn't because they would have shot me down right there."

With the new decree it is necessary to prove personal persecution, someone merely fleeing from violence cannot apply.

Recent studies show that the vast majority of refugees do not expect to return home to their country of origin (89% of the surveyed population on the northern border and 84% in Quito and Guayaquil (L.S. Benavides).

However, there are those who believe that if peace came to Colombia it would be wonderful. There are many people who want to return and cannot. It is very difficult to leave your home and land and not be able to return. If things became peaceful many people would want to go back to their homeland, their home and be with their family. Although there are many others that would decide to stay. Of course, it is important to mention that the process a person is involved in once being admitted as an applicant for asylum is lengthy and in many cases is too long.

There are people who have waited years for an answer, years in which a person irremediably has made a life in Ecuador; maybe one of the most difficult tasks for officials in the refugee department is having to communicate to those who have been living in the country for years, with work, children, business, peace and tranquility, that unfortunately they have not been accepted for refugee status in Ecuador, and that they have 15 days to return to Colombia.

The time frames to receive responses continue to be long. Not receiving a response within a certain time frame puts applicants in legal limbo while their cases are pending resolution, this

prevents them from being protected and secure in their migratory status and from continuing with their lives.

The persons who have gotten a negative response after many years decide to remain in the country illegally, because while it is true that while carrying the identification of an applicant for asylum provides certain rights that any Ecuadorian enjoys, and from morning to night all those rights are taken away, which undeniably creates a security problem since, no longer enjoying legal rights, many of the now "invisible" become involved in acts of delinquency due to lack of employment, money, etc., in addition to discrimination, above all towards the Colombian community, and the difficulty of accessing rights and services. "As a refugee here in this country, they give us an ID, after a year or two they give us the visa. Either way, the ID and the visa don't count for anything here, because if you go with a visa or an ID and you need a loan or a job, they don't give it to you. So for us, too, those documents should be, for example, as qualifying us for a citizen's ID" (L.S. Benavides).

3.1 Reports of rejection according to articles 24, 25 and 26 and time frames

With Decree 1182, Ecuador has three criteria to categorize denied applications, criteria laid out in Decree 1182 and its articles 24, 25 and 26 and what is later written in the report after the respective personal interview, a person's application can be rejected for being: unfounded, abusive, and illegitimate.

The admissibility report for failure to comply with the time limit

Citizen Laura Teviño, of Colombian nationality, with citizen ID number 52.808.085, and registration number 322-00138702 with the Refugee Department of the Ministry of Foreign Relations and Human Mobility, presents on this day, an application for asylum before this unit. Once the Registration is complete and the report is made, admissibility of the application will be examined.

The petitioner is 33 years old, single, with a high school education and was a housewife in her country. In Colombia she resided in Palmira, Valle del Cauca. According to her Andean Card, the citizen arrived in the country on 15 May 2013.

According to article 27 of Decree 1182, on 30 May 2012 "All applications for recognition of refugee status will be presented before 15 days have passed since arrival in Ecuadorian territory, directly by the interested party or by an authorized representative, before the following authorities (...) Applications not meeting these requirements will not be accepted" (Correa).

That was how the case of Colombian citizen TRIVIÑO SOLANO, Jessica Lorena, did not meet the time limit established by the law on its admissibility.

DENIED

The mere act of fleeing from the country constitutes in itself a survival strategy to save ones own life and those of loved ones when their security, liberty and tranquility are threatened. Take into account that the decision to abandon a country is an extreme one that thousands of people who choose to move to a foreign land, in this case Ecuador. While it is true that many people manifest that they have found greater tranquility in Ecuador, there is still a group that continues to suffer discrimination or that even continue to receive threats from those whom they fled.

In regards to those who some way or another have already settled in Ecuador, the new arrivals the first days can be the most difficult, especially since Decree 1182, which establishes a time limit as an important factor. The people who are forced to leave Colombia due to the internal conflict in the country, persons who have been victims of mistreatment and extortions, of all kinds of violent scenes, come to a point of desperation in which one day they decide to abandon their home, their family, their belongings, many times leaving with only the clothes on their backs; they do not have the time or liberty to sell their belongings, to gather proof or documents that certify the reason they are fleeing. They arrive to the country in that state, with the clothes on their back, with no money and no documents: how are they supposed to prove to authorities that their petition deserves to be accepted?

Report of Admissibility, Art. 24

Article 24'''.- The clearly unfounded application is that which in its drafting presents elements completely unrelated with the current definitions of refugee in Ecuador (Almeida).

The citizen, **Marco Vinicio**, of **Colombian** nationality with citizen ID number 1.097.397.763, registration number **322-00137845** with the Refugee Department of the Ministry of Foreign Relations and Human Mobility, presents on the date 3 July 2013 an application for refuge before this unit. Once the Registration is carried out and the report made, the admissibility of the application will be reviewed according to the declarations contained therein:

The citizen is 21 years old, single, with a technical vocational education level, and his last employment was as a construction worker on a tunnel. The last place he lived in Colombia was Calarcá, Quindío, in the Gaitán neighborhood, for approximately 6 years. He previously lived on the Alto de Oso path, in Calarcá, Quindío. He arrived in Ecuador on 22 June 2013.

The citizen explained how he left Colombia due to a very difficult economic situation; the citizen expressed that when he left the Alto de Oso path with his mother, grandparents and siblings, they did it due to being displaced by paramilitaries charging for "vaccinations" (extortions). After that their family situation was very difficult, since his father did not help his mother and she began a relation with a new man that did not help them, which caused the citizen and his grandparents to move to another house, disagreed with his mother's new relationship.

His grandfather was ill and had to undergo dialysis every other day and his grandmother had problems with her leg. The citizen also makes known that in last 6 months in his country he was without work, so he talked with a childhood friend who was in this country and he told him their family situation and the fact that everything in Colombia is very expensive, so his friend recommended he come to Ecuador.

It is important to note that after the displacement the citizen and his family underwent approximately 6 years ago, they did not have any more problems with paramilitaries. Although the citizen expressed that he served time in the military at the National Penitentiary Institute in Jamundí and that during that time of service he received threats after leaving his job approximately two years ago, he has not been inconvenienced by threats due to his work undertaken as part of the military.

This case meets the time frame established by Article 27 of Decree 1182, since the citizen applied for asylum 11 days after entering Ecuadorian territory.

Meanwhile, according to Article 1 of the Geneva Convention of 1951 and its Protocol of 1967, there is no foundation in the story to confirm the fear the person claims to feel, considering that while in the past he and his family were victims of persecution, this occurred approximately 6 years ago, and so there is no real and current threat. Also, after having left the military there was no inconvenience whatsoever that derived from his participation that institution. His story does not relate any elements of real or potential persecution or the existence of any of the motives established by the Geneva Convention of 1951. Neither can be detected the existence of a lack of state protection that justifies the need to bestow international protection.

According to the information given by the citizen, it is clear that he left the country primarily for **economic motives**, dealing with reasons outside of those that merit recognition of refugee status in the country. Additionally, it should be indicated that said circumstances could be the resolved under the jurisdiction and protection of his own State.

The case put forth by the applicant does not present elements related in any way to the current definitions of refugee in Ecuador, even if it does indicate a bona fide hope to receive international protection that Ecuador could provide as a sheltering country at no point do the reasons for which he left his country fall under the provisions in Decree 1182 and the Geneva Convention of 1951, and so there is no evidence of a need for international protection, the application being clearly unfounded, according to Article 24 of Decree 1182, which leads to the denial of the application, according to Article 33 of the same legal instrument.

DENIED

Report of Admissibility, Article 25

Article 25.- Abusive applications are those that can present fraudulent elements that involve deceit or that show a manipulation of the process for personal, third party, or collective benefit, as well as those in which the applicant, without need of international protection, invokes the institution of asylum to avoid an action of justice or the fulfillment of the law (Almeida).

Citizen **Ronald Eugenio**, of **Colombian** nationality, with citizen ID number **1.094.908.026**, with registration number **322-00137657** with the Ministry of Foreign Relations and Human Mobility, presents on the 26th of June an application for refuge before the unit. Once the registration is

complete and the report made, the admissibility of the application will be examined, according to the declarations contained therein:

The applicant is 23 years old, in a common-law relationship, has technical vocational educational level or education, and the last time he was in Colombia he worked as a messenger. He claims to come from Armenia, Quindío, a place where he lived practically his whole life; however, he expresses that two years ago he lived in Yumbo, Valle del Cauca, for a short while. He arrived in Ecuador on 16 June 2013.

Upon explaining the reason he left the country, the citizen says he did for various circumstances that are detailed below:

- He claims that his problems began before living in Yumbo. It all began in Armenia, where he was installing fences. On one occasion while he was putting up a fence a man came out of a cafeteria and asked him how much they paid him for that and proposed that he work with him, to which the citizen refused. So the man began to smoke close by and the citizen began to get dizzy and feel bad, saying he thinks it was scopolamine.
- After the incident with that man, two hours later, the citizen received a call to leave Armenia, Quindío and in which they told him they knew what bike he rode, so that very day the citizen went to Yumbo with his family and changed his cellphone number.
- After arriving to Yumbo, the next day there was a family reunion on a farm in Yumbo, near the Pedregal neighborhood. That day the citizen was on the farm and went to the door and in front of the door there was a car with polarized windows. The assailant in the car made him get in and accused him of being an informant. Those people took him to a field near the Américas neighborhood, which is a dangerous neighborhood, and began to beat him and insisted on asking him where he was from. After that, the guys left him on the ground and beaten and the citizen made it to another park, the guys came back, they put him in a car, and left him again.
- After being in Yumbo for a week, the citizen obtained work in a shoe store and when he was on his way home from work there was an ELN office in the garage with that group's flag. The guys that were part of that office questioned him for his identity and on one occasion they left him at home and that was how they found out where he lived. After that, when he left work he met these guys until on one occasion they put him in a truck and asked him if he wanted to work with them. Since the citizen refused they gave him 15

days to think about it and they warned him that they knew where he lived, they threatened him, which is why he moved with this partner to the Yeras neighborhood.

- After moving houses, they called his wife's cellphone; the strange thing was that when they called it came up as a call from his own wife's number. They asked for the citizen and said that they knew where he was and that they don't let anyone escape.
- Once he saw what was happening the citizen decided to return to Armenia and his wife and daughter stayed in Cali with an aunt. He continued to live in Armenia for two years, while his wife was in Cali; however, his partner continued receiving calls, which is why he decided to leave Colombia.
- Finally the citizen said that he also left because he was witness to how a youth from the neighborhood, who was raised with him, killed a man, which caused that boy's family to threaten him.

Now, it is important to mention that the citizen claims that during the last two years, apart from the calls his wife received in Cali, he has not had any problems with the ELN group, he also claims that if he had problems with a hit man's family that is a problem of common delinquency.

It would be contradictory that if they were no longer calling him, his wife, who was receiving threatening calls, they would continue to live in the same place for two years. This further shows that the threat was not real.

According to Article 1 of the Geneva Convention of 1951 and the Protocol of 1967, there is no foundation in the story for the fear the person professes to feel, considering that during the last two years he had no problems with the people who followed him in Yumbo who apparently were ELN guerilleros. Moreover, there are no elements of real or potential persecution or the existence of any the motives established to that effect in the Geneva Convention of 1951. Neither is there detected an existence of a lack of state protection that justifies the need to confer international protection.

According to the information provided by the citizen, it is clear that he left his country due a **problem with common delinquency**, dealing with reasons outside of those meriting recognition of refugee status in the country. It should be indicated that said circumstances could be resolved under the jurisdiction and protection of his own State.

Additionally, it should be stated that the citizen's story is implausible since it is very strange that an ELN guerrilla has an office in Yumbo that open to the public. This contradicts publicly known facts, considering there is no information to prove the presence of said guerrilla in Yumbo, Valle del Cauca.

It is also noteworthy that a man smoked scopolamine without affects and that who called him to say what bicycle he rode.

The case presented by the applicant does not present any elements related to any of the current definitions of refugee in Ecuador. While it does show a desire to be sheltered under the international protection that Ecuador could provide as a sheltering country, at no point are the reasons for leaving his country fall under the provisions of Decree 1182 and the Geneva Convention of 1951. Therefore there is no evidence of a need for international protection being a clearly unfounded application, according to Article 24 of Decree 1182. Moreover, by narrating untrue facts it is also considered an abusive application according to Article 25 of the same decree which, as will an unfounded application, leads to the denial of the application, as established in Article 33 of the same legal instrument.

DENIED

Article 26.- Illegitimate applications

Are those presented by persons of whom there are well-founded reasons to believe as having committed crimes, in Ecuadorian territory, of the nature that merit the exclusion established in Article 10, will not be accepted due to being considered threatening to security and public order (Almeida).

The unfounded application refers to the application that does not have elements pertaining to the definition of refugee or are completely unrelated to the definition of refugee. That is to say, that the reason for leaving the country have been economic, due to illness, or having been a victim of oppression by paramilitaries, for example, no longer is at the present moment. It is worth emphasizing that the decree focuses on the definition given in the Convention of 1951 and the Protocol of 1967, explained in previous chapters, in which if the fear of persecution is not considered well founded it is grounds for denial of the application.

The armed conflict in Colombia has affected many people, even those who are not direct victims themselves, was made it impossible to live in an environment where violence is an everyday occurrence, where neighbors kill family, where you always have to keep your eyes open and seek a better environment, an environment of peace and tranquility that is a right the state of Colombia unfortunately cannot guarantee.

It is important to mention the criteria that, if the official's report qualifies as an unfounded application, will be denied without a resolution from the commission being necessary. In other words, the person who does the report, under his or her criteria, gives the last word.

Abusive applications are those that in which the declaration proves to be untrue or implausible, or put another way, those declarations that the official considers incoherent or in coincidental, too contradictory, etc.

Once the report is composed, the application passes into the hands of the refugee commission in charge of the study and respective paperwork. The refugee commission will make a decision to approve or deny refugee status based on the interview and the official's report. In the meantime an ID will be given to the applicant so he or she is free to move around Ecuadorian territory and has access to all rights.

Illegitimate applications are those that are presented by persons who have committed some act of delinquency with or outside Ecuadorian territory for being considered a threat to security and public order.

Luis Xavier Solis, whose job is to protect and defend some of the most vulnerable and forgotten people in the world, refugees that have fled from civil war in Colombia in search of asylum, especially in the Ecuadorian Amazon, collaborated with an interview with "Chekhov's Kalashnikov/Citizen Journalism Strikes Back."

Chekhov: Can you explain your work, the organization you work for and your specialty?

Luis Xavier Solis: I work in two areas of a project with UNHCR. The first is counseling and defense of persons in need of international protection, in these case especially Colombian

refugees which are the majority of persons that need international protection due to Colombia's internal conflict, and second in counseling and defense of cases of human rights violations. The last cases we've had against human rights violations by police.

Chekhov: What are the statistics, the number of Colombian refugees that are living in Ecuador, especially in the provinces of Sucumbíos and Orellana?

Luis Xavier Solis: Well, in Ecuador there are around 56,000 refugees of which 90% are of Colombian nationality! The other nationalities, there are Palestinians, Haitians, Spaniards, Cubans, etc.

Chekhov: And how does the Ecuadorian government treat Colombian refugees in comparison with refugees of other nationalities?

Luis Xavier Solis: Well, you have to remember that most of the Colombian refugees were recognized in Ecuador with the Extended Registration in 2009-2010, after the bombing of Angostura. Until 2012, Ecuadorian legislation was less rigorous since the issue of Decree 1182 on 30 May 2012 which restricted access to asylum.

I have heard in different government spaces that refugees are an expense for the country, primarily the Colombians who are the majority. However, it have not been taken into account the contribution they have made to Ecuador's economy with the workforce and small businesses. In general, the government really restricted access to the right of refuge with the issue of the decree, so much so that of 100% of refugee applications only 4% are accepted when before the decree close to 60% were accepted.

Chekhov: And legitimate refugees are being refused now?

Luis Xavier Solis: For the majority, yes, people have elements of refugee and, furthermore, with such low percentages almost all of them are left out.

Chekhov: And what happens if one's asylum is rejected, do they have to go back to Colombia?

Luis Xavier Solis: That is the problem, in many cases when there are elements of refugee, they need international protection and can't go back.

Supposedly a refuged person is one whose country of origin doesn't protect them or doesn't want them to be protected, so they seek refuge in another country because of the need for protection, whether it be a regularly armed group or an irregular one, persecution, threats, they fear for their life because of their political, social, racial expressions, etc.

In many cases we have seen that people stay in Ecuador without documents, which puts them in a vulnerable situation, they can be exploited.

This is due to that the current government decree (1182) left out of its paragraphs on the right to recognize victims of generalized violence that was in the previous law and was a declaration of Cartagena, but that is no longer included in the Ecuadorian legislation that was part of the law and therefore should be applied.

The interview provided by Luis Xavier is quite precise, and concludes with a total disagreement with Decree 1182, he and the majority of defenders of human rights agree on this.

Meanwhile, John Friedrich, a representative in Ecuador of the office of the UN High Commissioner for Refugees (UNHCR) states that the Ecuadorian Constitution is one that most guarantees human rights, but he regrets that Decree 1182 prevents these rights from being fully respected.

Pablo Zapata of Acnur Ecuador, believes it is absurd to think that a person fleeing from war in Colombia and arrives in Ecuador can carry out the process of asking for asylum within 15 days; thinking about the fact that many of the applicants do not have a cent and are first looking where to stay. It is also important to mention that the majority of people are from poor cities and neighborhoods with little information and the ignorance of many applicants of the new provision and the time limits, which is why they go to the offices once the time has already passed for them to apply for asylum.

With these comments and many opinions, requests and finally a lawsuit of unconstitutionality that was mentioned in the previous chapter that fortunately ended with a sentence in favor of

human rights, which managed to change some of the provisions in the decree, among the issue of time limits and not considering the Cartagena Declaration as fundamental.

3.2 Peace Accord in Colombia and its impact on the refugee population

Since 2012, the Colombian government has participated in peace conversations with the country's largest guerrilla group, the Fuerzas Armadas Revolucionarias de Colombia (FARC), amongst a conflict that lasted 50 years, primarily thanks to the mobilization of thousands of Colombians to Ecuador.

While it is true that signing the peace accord is a great joy for all of Latin America and the rest of the world in general, should it have a favorable response, it might affect the refugee population. This Peace Accord signed on September 28, 2016 promises a solution to those who are displaced with the openness and the petition of the Colombian government towards the displaced to repatriate. However, through a referendum, the Colombian population has manifested NO to the peace accord this past October 2, 2016. Colombian authorities informed that, "with 99.98% of the voting booths manned in the referendum convened by the government to reference the agreement with FARC, the authorities indicate that 50.2% of votes counted so far opted for No, while 49.7% opted for Yes."

The question is, how much will this response affect refugees. According to the United Nations Agency for Refugees (UNHCR) in Ecuador, there are approximately 54,000 Colombians registered as refuged and the majority of them come from Nariño, Putumayo, Valle del Cauca. Of this population only 36% name FARC as their persecutor, 22% name ELN, and only small number name public forces. The rest of the reasons for mobilization are groups that are not part of the peace process but are groups isolated from it.

Which leads us to conclude that many refugees have been persecuted by independent paramilitary groups, due to this the peace accord will not affect them much, since independent military groups will continue to operate. Therefore the peace accord with FARC is not a guarantee of peace and zero violence, which indicates that there will still be people with a well-founded reason for fear of persecution and therefore application for asylum.

One of the objectives of the peace accord is that the displaced population can reintegrate into Colombian society. However, taking into account that there are many decisive factors that exist for refugees when considering the possibility of reintegrating, among them, people who have already settled in Ecuadorian territory with work, families, housing and other benefits that the Ecuadorian government has granted them.

There are those who arrived in the country at the beginning of the conflict as refugees and that are now Ecuadorian citizens that managed to establish themselves in Ecuador and would be unlikely to decide to go back.

Susana comments in an interview with BBC Mundo, "I am very sad because I hoped for peace. My family is there, my people. I can't vote but I would have voted Yes. But I wouldn't go back to Colombia even if there were peace," after finding out about the No voted by the referendum this Sunday on the peace accords.

The reason argued by those who would not return if the peace accord were successful is basically the memory the pain they lived through, the scars and trauma that expelled them from their land years ago, and of course the lack of a reintegration project that guarantees the rights of those who once had their rights violated in the country.

Many Colombian refugees have similarly stated that they feel pressured by the Ecuadorian population who ask them if they are going to return to Colombia. They answer that they would have voted NO because they are afraid that if the situation is already difficult in Ecuador, the doors will close even further on the pretext that there is no longer a reason to be in Ecuador if there is no longer war in Colombia.

"To me it's been very hard for three reasons: black, Colombian, and unemployed. They see you and they shut the door." And those doors, with the possibility of peace, will close even faster, said Carmen, who has been in the country for 14 years and who has been denied refugee status.

However, there will be those who decide to return, if the guarantees and possibilities of reinsertion in society promise a better way of living, a life without fear, of true tranquility, of this work by the Colombian government to count on thousands of Colombians that can support

Colombia's development. But according to a survey done in 2015 by the UNHCR office in Ecuador, almost 90% of Colombians in the country said they do not want to go back to their country of origin. Only four families formally asked to return that year and only two have requested it during 2016.

Conclusions

Despite Ecuador having the widest normative framework in the region on the subject of refugees, being one of the countries with the most refugees, we cannot deny that it is a fragile system, that public policies on the subject of refuge change frequently and that they can be modified or abolished at any moment.

The issue of refugees is perhaps one of the most delicate in the topic of human rights, and one of the least static in regards to its legislatures. Ecuador has gone through several changes, decrees, plans, and strategies; the last change that has been in effect since 2012 (Decree 1182) cannot be sustained and was modified several times after lawsuits of unconstitutionality were presented to the Constitutional Court.

The decree has been highly criticized and has been the root of significant reductions in applications for refugees in the country because of its limitations on applicants, limitations that were proposed with the justification that the uncontrolled entrance of immigrants causes economic and social instability, an increase in crime, that it generates an expense that could be destined towards legal Ecuadorian citizens. Supposing that granting asylum is an act of solidarity, the contradiction is evident if we expect something in exchange.

The entrance of Colombians as refugees is a contribution to the country's economy because the many or few of the perceived benefits from the Ecuadorian government are considered by the state to be a public expense can be seen as compensated, since, according to a study done by Jaquez Ramirez with indicators from 2000-2009, the number of Ecuadorians leaving the country is higher than the number of migrants entering Ecuador. Therefore, the workforce leaving the country is compensated by the Colombians who arrive, due to fact the refugees that carry an ID have rights as well as the same obligations as an Ecuadorian citizen.

Despite Ecuador having always been a country that has provided asylum and shelter, there are ever more clauses and decrees that deny it. Lawyers specialized in human rights, as well as representatives of the UNHCR, have denounced the fallacies they perceive in regards to refugee statutes.

Ecuador has been furthering itself from receiving persons that feel a well-founded fear in their country of origin and, with it, from being a country that guarantees the wellbeing of persons from neighboring countries that have been attacked, intimidated, or have had to abandon their countries due to war and internal conflicts.

However, it is salvageable, despite all the instability of public policies in regards to refuge, after the fights, opinions and finally lawsuits of unconstitutionality towards the latest policy (Decree 1182). This topic was garnering interest, until a decision by the constitutional court determined to modify some of the terms provided for in the law due to rights violations. The Constitutional Court Sentence marks a milestone in the protection and enforceability of the rights of refugees in Ecuador. The presentation of lawsuits of unconstitutionality is a demonstration of the success of a structured force undertaken by both Asylum Access and Universidad San Francisco de Quito, and involved the support of other national and international institutions.

Recommendations

For several decades Ecuador has been part of several international instruments on the protection of refugees, humanitarian rights and human rights. In virtue of international commitments taken on, with support from international cooperation, a new internal policy framework for the protection of refugees has been created. However, permanent changes in our public policies have uncovered a series of fallacies and limitations in the system of refugee protection in Ecuador, both in legislation and practice within the system.

In regards to the policy framework, in the first place, the fact that the primary national instrument for refugee protection is a decree shows the weakness of the protection system, since the decree is political will of the executive and rights cannot be subject to such a susceptible legislation. The regimen of refugees should be guarantees/minimal principles taken from the Constitution developed in secondary legislations - organic law.

Considering these deficiencies of the policy framework of protection, the creation of a new legal instrument in the nature of an Organic Law is transcendental, one in which all aspects related to refuge are integrated.

In second place, the system is fragmented. It is formed of a series of laws and norms on migration, immigration, among others, that in many cases are contradictory to international commitments assumed by the country on the subject of protection of refugees. 2005 was the first attempt at presenting a project of law but it was the National Congress was in recess at the time. It is important to create this legislation to avoid policies being treated according to the vision and interests of the governments in power.

Thirdly, to recognize refugee status there are a series of factors in each phase of the process that limits its operability, among them the lack of offices where refugees can go to present their applications. This limits the newly arrived to do their paperwork and inform themselves on what they need.

The lack of knowledge and information on the procedures and institutions that work on the issue of refugees in Ecuador makes it so that persons interested in seeking refuge who they should go to, what documents to present and what institution grants them asylum. That is why it is

recommended to manage the issue with a campaign that provides explicit information for the benefit of applicants so that both the refugee population and the receiving population enter a relationship in where stigmas and discriminatory practices are set aside and a culture of solidarity takes its place. These processes should be met by political authorities, armed forces, national police, private institutions, the media, and society in general.

The peace accord recently presented does open a door of hope for refugees. However, independently of whether Colombia assumes its responsibility, Ecuador should maintain its open-door policy to the refugee population, treating the issue from a humanitarian perspective and a respect for human rights above the visions of state sovereignty and national security.

Finally, it must be mentioned that the population should be tolerant and accept different cultures. Above all it is relevant to remember the ruling of the Constitutional Court in favor of refugees over Decree 1182, as an example that the fight and perseverance makes the difference. When it comes to the defense of rights and above all human rights, there is no surplus fight, we cannot be neutral in unjust situations if we do we are choosing the side of the oppressor.

References

- Alarcón, M. B. (2012). *Movilidad humana e integración social en Ecuador de acuerdo al "Plan Nacional para el Buen Vivir 2009-2013"*. INSTITUTO UNIVERSITARIO DE ESTUDIOS SOBRE MIGRACIONES.
- Almeida, A. D. *Tesis Pontificia Universidad Catolica*. informativo, Guayaquil.
- Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), Comisión Nacional de los Derechos Humanos (CNDH) y Universidad Iberoamericana. (1992). *Principios y criterios relativos a refugiados y derechos humanos*. San Jose: Universidad Iberoamericana.
- Arcentales, J. (2012). *PRONUNCIAMIENTO FRENTE A NUEVO DECRETO QUE REGULA EL DERECHO AL RECONOCIMIENTO DEL ESTATUTO DE REFUGIADO EN EL ECUADOR*. Retrieved from coalicion por las migraciones y el refugio: <https://movilidadhumana.files.wordpress.com/2012/06/pronunciamiento-decreto1182-copia.pdf>
- Benavides, L. S. (2013). *Expectativas de futuro de la poblacion colombiana refugiada*. informativo, Quito.
- Benavides, P. L. (2011). *Refugio, nacionalidad y lastrabas ocultas en el sistema humanitario*. Quito, Ecuador: Flacso.
- Constitucion de la Republica del Ecuador. (2008). *Constitucion de la Republica del Ecuador*. In A. N. Ecuador. Montecristi.
- Correa, R. (2012). *Decreto 1182*. informativo, Quito.
- D'Estefano, M. Á. (1985). *Fundamentos del Derecho Internacional Público Contemporáneo*. In M. Á. D'Estefano, *Fundamentos del Derecho Internacional Público Contemporáneo* (p. 877). La Habana: Universidad de La Habana, Facultad de Derecho.
- El fin del paraíso del Refugio*. (2013, 04 25). Retrieved 07 03, 2016, from Ecuador en Vivo: <http://www.ecuadorenvivo.com/reportajes/27-/981-el-fin-del-paraíso-del-refugio.html#.WBAr6uF97m0>
- HUMANITARIO, S. D. (2004). *International Committee of the Red Cross*. Retrieved 04 04, 2016, from International Committee of the Red Cross: <https://www.icrc.org/spa/assets/files/other/dih.es.pdf>
- Iniciativa Cartagena + 30. (2014). *La protección internacional y la efectiva integración: recomendaciones de la sociedad civil frente a las dimensiones actuales del asilo y apatridia en América latina y el Caribe*. informativo.
- Lasimba, R. (2013). *La política de inmigración en el gobierno de Rafael Correa entre el deber ser y el ser*. In R. L. Loachamin, *La política de inmigración en el gobierno de Rafael Correa entre el deber ser y el ser* (p. 17). Quito: Corporación Editora Nacional.
- Ministerio de Relaciones Exteriores y Movilidad Humana. (2008). Retrieved 04 06, 2016, from <http://www.cancilleria.gob.ec/>

Mirabet, N. C. (2005). El Derecho Internacional ante las Migraciones Forzadas . In N. C. Mirabet, *El Derecho Internacional ante las Migraciones Forzadas* (p. 20). Lleida: Universidad de Lleida.

Oña, H. (2013). *ANÁLISIS DE LA SITUACIÓN DE LOS REFUGIADOS DENTRO DE LOS OBJETIVOS DE LA POLÍTICA EXTERIOR DEL ECUADOR*. Guayquil: Instituto Superior de Postgrado en Ciencias Internacionales.

Rivera, F. (2007). Migración Forzada de Colombianos - Colombia, Ecuador, Canada. In F. Rivera, *Migración Forzada de Colombianos - Colombia, Ecuador, Cana* (p. 26). Medellín, Colombia: CORPORACIÓN REGIÓN.

Sánchez, M. G. (2013). *ANÁLISIS DE LA SITUACIÓN DE LOS REFUGIADOS COLOMBIANOS EN EL ECUADOR, SUS IMPLICACIONES EN EL PERIODO DEL 2007 HASTA EL 2011*. Quito: PONTIFICIA UNIVERSIDAD CATOLICA DEL ECUADOR FACULTAD DE COMUNICACIÓN, LINGÜÍSTICA Y LITERATURA ESCUELA MULTILINGUE DE NEGOCIOS Y RELACIONES INTERNACIONALES.

Schussler, S. (2008). *Entre sospecha y ciudadanía: Refugiados colombianos en Quito*. Flacso - Maestría en Relaciones Internacionales Convocatoria 2006-2008. Quito: Flacso.

Sciencespo. (n.d.). *Sciencespo*. Retrieved 03 08, 2016, from <http://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/Derecho%20humanitario.pdf>

Triadade, A. A. (1997). *Derecho Internacional de los Refugiados y Derecho Internacional de los Derechos Humanos: aproximaciones y convergencias*. Retrieved 02 2016, from *Revistaei.uchile*: <http://www.revistaei.uchile.cl/index.php/REI/article/viewFile/15126/29127>

UNHCR. (1979). *Manual de Procedimientos y Criterios para Determinar La Condición de Refugiado en virtud de la Convención de 1951 y el Protocolo de 1967 sobre el Estatuto de los Refugiados* . Geneva: UNHCR.

Universidad San Francisco de Quito. (2013). *Acción de inconstitucionalidad del decreto 1182*. informativo.

Urbidia, D. (2012). *La inconstitucionalidad parcial del Decreto 1182 sobre el derecho a solicitar refugio en el Ecuador: Análisis y efectos*. Universidad San Francisco de Quito. Quito: usfq.