

Recognising the Feminisation of Displacement: The Gendered Impact of Ecuador's New Refugee Decree

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Abstract

Recent shifts in Ecuador's refugee policy, in particular its newest Refugee Decree 1182, are making South America's once most generous haven for asylum seekers considerably more restrictive. These changes have significant consequences for Ecuador's refugee population, the overwhelming majority of which is comprised of women and children. This article discusses the gendered impact of these policy changes in light of the feminisation of displacement, the growing phenomenon in which women represent a disproportionate percentage of displaced populations worldwide. By eliminating the 1984 Cartagena definition of 'refugee' and imposing barriers to asylum, the Decree exposes women and girls seeking protection to increased risk of sexual and gender-based violence. It will be argued that unless Ecuador recognises these acute consequences of its refugee policy, the rates of sexual and gender-based violence against those seeking protection in Ecuador will increase.

Introduction

The feminisation of displacement refers to the phenomenon in which women constitute a disproportionate percentage of displaced persons worldwide (Hadjukowski-Ahmed 2008).³⁷ South America's displacement crisis serves as an especially pronounced example of this growing problem. Currently, Ecuador is home to the largest number of refugees in South America; of that population, 88% are women and their dependents³⁸ (UNHCR 2011a). Despite these compelling demographics, gender issues and recognition of the overwhelming number of women and children asylum seekers are rarely discussed in policy formation or law reform. Recent shifts in Ecuador's refugee policy, in particular its newest Refugee Decree 1182 (hereinafter Decree), are jeopardising the country's favourable protection environment by decreasing access to asylum procedures and lifting protections against *refoulement*.³⁹ This in turn increases the risk of exposure to sexual and gender-based violence

³⁷ Awareness of the strikingly high percentage of women in the refugee population first began with the United Nations High Commissioner for Refugees (UNHCR) report at the World Conference for the Decade on Women in Copenhagen (UNHCR 1980) when, to the surprise of many, the report revealed that 80% of the refugees under the protection of UNHCR were women and their dependents. While this figure will vary according to particular refugee flow situations, it is still quoted to this day (see Haidukowski-Ahmed 2008).

³⁸ The figure of 88% is comprised of 48% refugee women and 40% refugee children.

³⁹ The principle of *non-refoulement* is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy asylum from persecution in other countries, as set forth in Article 14 of the Universal Declaration of Human Rights, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other

(SGBV) in its already susceptible, largely female refugee population.⁴⁰ This article will discuss this link in detail and raise awareness about the precarious situation for Ecuador's refugee and asylum seeking populations. After providing the background of the displacement crisis in the region, it will discuss Ecuador's evolving refugee protection environment, including the political atmosphere that led to the adoption of the Decree. It will then elaborate on the often overlooked gendered impact of this law and argue for increased legal protections against SGBV for Ecuador's refugee and asylum seeking population.

Background

Decades of armed conflict related to the drug war in Colombia have displaced millions of people, both internally and externally. The situation in Colombia has become so severe that the country has been grouped with the Democratic Republic of Congo, Iraq, Somalia, and Sudan as having more than a million people identified as internally displaced at the end of 2010 (UNHCR 2011b). In fact, the conflict has been catalogued as the worst humanitarian crisis in the Western Hemisphere in recent times (Ministry of Foreign Affairs, Trade and Integration 2009). Illegal armed groups have increased violence in the region and the presence of illicit economies has created an environment of exploitation, the combination of which continues to drive high levels of displacement (International Crisis Group Report 2011).

The international consequences of Colombia's conflict have been extreme, particularly in relation to neighbouring Ecuador. According to the United Nations High Commissioner for Refugees (hereinafter UNHCR), there are between 135,000 to 160,000 individuals in need of international protection in Ecuador, with the number of displaced Colombians seeking refugee status climbing annually. As of 31 January 2012, there were 55,330 registered refugees in Ecuador, of whom 98.4% were Colombian nationals (UNHCR 2011a). In an

rights are threatened when a refugee is returned to persecution or danger, thus procedures or arrangements for identifying refugees provide protection against *refoulement* by ensuring that persons who are entitled to protection do in fact receive it. Ecuador's Constitution of 2008 establishes the right of asylum and refuge and introduces key principles in the protection of asylum seekers and refugees, such as: (1) the principle of *non-refoulement*; (2) the principle of non-punishment of irregular entry or stay in the country; (3) the provision of humanitarian assistance; and (4) the possibility of granting refugee status to an entire group under certain circumstances.

⁴⁰ Sexual and gender-based violence (SGBV) refers to any harmful act that is perpetrated against one person's will and that is based on socially ascribed gender differences. SGBV involves widespread violations of human rights and is often linked to unequal gender relations within communities as well as the abuse of power both by individuals and other systems. It can take the form of sexual violence or persecution, or it can be the result of discrimination embedded in legislation or prevailing social norms and practices. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or private life. Displacement, whether internal or international, weakens existing community and family protection mechanisms, and exposes refugee and internally displaced women and girls to a wide range of human rights violations, including SGBV, abuse and exploitation. During the displacement cycle, SGBV can occur during conflict, prior to flight, during flight, in the country of asylum, during repatriation, and during reintegration (see UNHCR-DIP 2011).

effort to control the Colombian conflict's spillover, the Ecuadorian government has sent thousands of troops to the border since 2008. This mobilisation has greatly complicated the humanitarian crisis in the region by creating a situation in which multiple armed actors vie for community resources and control, with women caught in the crossfire (International Crisis Group Report 2011). Xenophobia and discrimination against Colombian migrants has also caused the political support for refugees to deteriorate. It is against this background that Ecuador adopted a more restrictive refugee policy.

Ecuador's Evolving Refugee Protection Environment

On 30 May 2012, just over a week after receiving international praise regarding Ecuador's refugee policy at the country's Universal Period Review under the Human Rights Council, President Rafael Correa Delgado issued the Decree. The new law severely limits the country's previously favourable protection policies (Saavedra 2012). This strong-armed effort to deal with a growing refugee population, presumably in response to the increasing resentment of Ecuadorians towards displaced Colombians, comes at a high cost for those seeking asylum in Ecuador. The Decree includes two major reforms that have potentially serious consequences for asylum seekers in Ecuador, particularly the women seeking protection from the violence that abounds in Colombia's armed conflict.

First, the Decree eliminates the broad definition of refugee in the Cartagena Declaration on Refugees (hereinafter Cartagena Declaration), thus severely restricting the grounds for protection available for asylum seekers. The foundational definition of refugee was set out in the 1951 Convention Relating to the Status of Refugees (hereinafter 1951 Convention). A 'refugee' is defined in Article 1A(2) of the 1951 Convention as amended by its 1967 Protocol⁴¹ as any person:

with a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion who is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country.

However, this definition proved insufficient for providing protection in the Latin American experience of displacement in comparison to the Eurocentric context upon which the 1951 Convention's definition of refugee is based. Therefore, in response to the growing refugee crisis following, *inter alia*, Cuban displacement and various civil wars in Central America, a group of government representatives, academics, and lawyers met in Cartagena, Colombia in 1984 and adopted the Cartagena Declaration. The Cartagena Declaration is a non-binding agreement that is applicable to individual claims for refugee status determination as well as to situations of mass influx (Silva 2012). The Cartagena Declaration broadens the definition of a

⁴¹ The Protocol relating to the Status of Refugees 1967 606 U.N.T.S 267 (which entered into force 4 October 1967) lifted the geographical and chronological limitations of the 1951 Convention relating to the Status of Refugees to areas beyond Europe as well as to situations past the European displacement caused by World War II, respectively.

‘refugee’ outlined in the 1951 Convention to include those who flee their countries because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order. It is under this definition that many Colombians have been able to gain asylum in Ecuador due to their displacement by generalised violence in their home country—a provision that is not found in the 1951 definition.

The application of the refugee definition contained in the Cartagena Declaration is considered to be the most innovative protection tool in the region and a landmark contribution to the protection of refugees (UNHCR 2011a). However, the Decree’s elimination of this definition means that displaced persons can no longer invoke the Cartagena Declaration’s broad terms and can only apply using traditional justifications, such as the individual grounds of protection established by the 1951 Convention (Saavedra 2012). Most of the women seeking protection in Ecuador would satisfy the definition of a ‘refugee’ in the Cartagena Declaration because their lives, safety or freedom are threatened by the generalised violence in Columbia. However, many may not qualify as refugees pursuant to the 1951 Convention because they may not be able to satisfy the much higher threshold of a well-founded fear of persecution for reason of their race, religion, nationality, membership of a particular social group or political opinion. Not only does this policy shift signify a step backwards in Ecuador’s highly praised refugee policy, but the Decree is also a reversal of certain principles enshrined in the Ecuadorian Constitution.⁴²

Second, the Decree introduces accelerated procedures for asylum applications. Under this new law, asylum seekers will now have only 15 business days to apply for status in Ecuador after entering the country as compared to the 30 days they had under the previous law.⁴³ If asylum seekers are denied refugee status, they now have only five business days to appeal the decision as compared to the 30 business days they had prior to the Decree. Furthermore, applications for asylum are frequently arbitrarily rejected and the new Decree also has a

⁴² In 2008, Ecuador integrated a chapter on human mobility into its Constitution in response to intensive political lobbying by organisations working on immigration and refugee issues. Furthermore, it incorporated the principle of ‘universal citizenship’ where no one could be considered illegal due to an irregular migratory status. Based on this constitutional principle, the Government eliminated visa requirements for those entering Ecuador and began registering thousands of Colombians, especially at the northern border, who did not have a regularised immigration status. Article 11, subparagraph 8 of the Constitution reads, ‘Any regressive action or omission that unjustifiably diminishes, is detrimental to, or annuls the exercise of the rights will be unconstitutional’. As it stands, human rights activists as well as refugee organisations are preparing to challenge the constitutionality of the Decree (see Saavedra 2012).

⁴³ According to correspondence with UNHCR’s Field Protection Officer in Ecuador, Ernesto Avila, the time to seek refuge used to be 30 days after entering Ecuador, with some variations. However, the Refugee Directorate had considerable flexibility in this regard. For example, if a person could justify why he or she had not applied for asylum in the required time, for any reason, he or she could still be registered. Under the Decree, the new time restriction is what is ‘causing the biggest problem for people in need of international protection, as they cannot [sic] access the refugee status determination [RSD] procedure’.

provision for the exclusion of *ilegitimas*, or illegitimate applications, such as asylum seekers that have committed minor offenses in Ecuadorian territory (Appelbaum 2012).⁴⁴

This strict timeline is very unforgiving for the tens of thousands of asylum seekers within Ecuador's borders who already face serious challenges in accessing the asylum system without such time constraints.⁴⁵ Prior to the law in 2008, Ecuador was a leader in refugee policy, enacting progressive programs like the Enhanced Registration Project (ERP). The ERP registered, documented, and provided refugee status to about 27,740 refugees within one year, and has been dubbed one of the most generous contributions to the protection of refugees in Latin America (UNHCR 2011a: 2). However, following the ERP's implementation, UNHCR noticed a change within the Ecuadorian government that led to the addition of administrative barriers that complicated the already existing difficulties in accessing asylum. Such difficulties for refugees include, *inter alia*, their location in remote areas physically difficult to reach, a fear of coming forward leading to chronic under-registration, an ignorance of the right to make asylum claims, and a lack of money to reach registration offices, let alone pay for asylum procedures (Verney 2010).⁴⁶

Subsequently, the situation in Ecuador is reaching a critical point. While the violence spills through Colombia's porous borders into Ecuador, there has been a tightening in Ecuador's otherwise generous refugee policies. This is largely due to the fact that general security apprehensions have trumped human rights considerations as well as refugee protection concerns, as evidenced by Ecuador's change in rhetoric towards refugees. In early 2011, President Correa linked the tightening of eligibility requirements to the reduction of crime. In the past, Colombian refugees were portrayed as victims of a humanitarian crisis; now they are seen as a national security concern (Leutert 2011). Inevitably, this subordination of human rights to principles of national sovereignty has far reaching effects beyond simple shifts in legal definitions or administrative tweaks in timing. Each of these changes also has specific gendered consequences that often go unnoticed at the policy-level. The remainder of this article will discuss such consequences.

The Gendered Impact of Ecuador's Decree

⁴⁴ Although Article 1F of the 1951 Convention denies refugee status to those who have committed serious crimes, denying refugee status to those who have committed only minor offenses is in breach of both the 1951 Convention and the Cartagena Declaration.

⁴⁵ For example, UNHCR's efforts regarding the Enhanced Registration Project (ERP) for the determination of refugee status—a component of the refugee policy adopted in September 2008 that aimed at increasing the registration of the 'invisible population' of persons in need of international protection—has seen major setbacks. According to UNHCR's submission to Office of the High Commissioner for Human Rights for Ecuador's latest Universal Periodic Review, the situation is gaining increased resemblance to the situation Colombians faced before the ERP was carried out.

⁴⁶ The General Office for Refugees (DGR) of the Foreign Ministry as well as the Commission of Eligibility are located in Quito, far from the Northern Border where the displacement crisis is concentrated. With the exception of the registration brigades under the ERP in the provinces of the border region, all refugee applicants have to go to the DGR in Quito to obtain a refugee card.

In light of the two reforms introduced by the new Decree, the phenomenon of the feminisation of displacement reveals several gendered impacts for the refugee and asylum seeking populations in Ecuador that must be considered. The restriction of the refugee definition as well as the introduction of accelerated asylum procedures will prevent many women seeking protection in Ecuador from obtaining legal status. While all forcibly displaced persons face protection concerns (including men), women and girls are often exposed to particular protection problems related to their gender,⁴⁷ their cultural and socio-economic position, and – most significantly linked to the recent policy changes – their lack of regularised legal status (UNHCR 2006). Foremost among such protection concerns is the risk of SGBV, the prevention of which is an urgent, core protection issue for the refugee population in Ecuador as identified by UNHCR (DIP 2011). This section will elaborate on how the Decree's restriction of the provision of legal status to women is directly associated to increased risk of SGBV, paying special attention to the issues of gender discrimination and the inaccessibility of protection procedures.

The first gendered impact of the new law highlights the issue of gender discrimination as it relates to the restricted refugee definition and the elimination of the Cartagena Declaration's grounds for asylum. Restricting the refugee definition is significant because gender is not explicitly referenced as a ground of persecution in the 1951 Convention; rather, it must be argued that gender constitutes a 'particular social group'. Thus, the refugee definition must be interpreted to include gender-related claims by, for example, giving due consideration to how gender can impact the type of persecution suffered (Edwards 2009), which places many women at the mercy of the State to ensure this happens. Displaced Colombian women in Ecuador must then establish a well-founded fear of persecution as a particular social group instead of more simply claiming asylum under the Cartagena terms of generalised violence.

This is distressing considering that whether it is economic deprivation, displacement, poverty or gender-based violence, the costs of modern conflicts are often disproportionately borne by women and their children (Schirch and Sewak 2005). It is in response to the increased targeting of civilians and non-combatants in armed conflicts that the Cartagena Declaration broadened the definition of a refugee (CRR 2001) in the first place. This shift in the nature of conflict accounts in part for the megatrend of the feminisation of displacement that is certainly apparent in Ecuador, especially at the northern border with Colombia (Gusman 2013). In fact, there are four times as many refugee women as there are refugee men in Ecuador.

It is also important to note that gender discrimination is often the root cause of SGBV (DIP 2011). The combined effects of gender and displacement often heighten women's risk of human rights violations. They may be subjected to discrimination, not only *vis-à-vis* men, but

⁴⁷ It is important to distinguish between the terms 'gender' and 'sex'. Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, statuses, roles or responsibilities that are assigned to one sex or another. In contrast, sex is purely the biological determination while gender acquires socially and culturally constructed meaning overtime (see UNHCR 2002).

also in relation to local women in host communities due to being foreigners and/or their lack of legal status (Joint CEDAW and UNHCR Seminar 2009). Without regularised legal status, women are especially at risk of sexual exploitation and abuse. Lack of documentation restricts access to state services, which exposes women, girls, and boys with limited resources to higher risks of SGBV and other forms of abuse, as they must look for alternative ways to obtain accommodation and food (UNHCR 2006). By restricting the definition by which many women and children can receive regularised status, Ecuador's policy effectively increases their risk of and exposure to SGBV.

Unfortunately, this predicted rise in SGBV is evidenced in the statistics. There has been a downward trend in recognition rates seen in practice, particularly as the conflict worsens. For example, the recognition rate for asylum seekers in Ecuador decreased from 74% in 2009 to 53% in 2010, and to an average of 24% in September 2011 (UNHCR 2011). Issuance of the Decree will likely continue to decrease these already dismal recognition rates. An even more distressing trend is the increase in SGBV rates among the Northern Border provinces. At the border areas, armed actors, including the military, regularly sexually abuse women (International Crisis Group Report 2011). A recent study from the Women's Federation of Sucumbíos, a border region in Ecuador, found that an overwhelming majority of the female population report experiencing SGBV (McGrath 2011). This supports a recent UNHCR study that revealed 94.5% of the 700 refugee women surveyed in the Lago Agrio, a town within Sucumbíos, have experienced SGBV in their lifetime (McGrath 2011). Additionally, according to UNHCR, over 50% of women refugees in Ecuador are between 18 and 35 years of age, a population that is particularly susceptible to SGBV (DIP 2011). On account that the Decree significantly restricts the definition of 'refugee', thus eliminating the ability to gain legal status for many women in Ecuador, there has been corresponding increase in rates of SGBV that must be addressed at the policy level.

Another gendered impact of the new law relates to the lack of legal status arising from the inaccessibility of asylum due to the implementation of accelerated procedures. Without the ability to access asylum and receive a legal status many women find themselves in situations where they must resort to informal routes of economic support. 'Survival sex' is commonplace among refugee and displaced women in Ecuador due to a lack of economic resources in their country of asylum. With no other options to escape their poverty, one of the most accessible sources of income for Colombian refugees in Ecuador is sex work (Brown 2009). As a matter of fact, survival sex is frequently a direct consequence of family separations, gaps in assistance or failures of registration systems (DIP 2011). Considering that access to registration is significantly limited under the new Decree and that documentation is required for formal work in Ecuador, it is likely that survival sex will continue to be the main source of income for displaced and refugee women unable to gain access to registration systems.

Again, this prediction is reinforced by statistics. Colombian women often report being forced into survival sex and prostitution in order to survive their forced displacement to Ecuador. In fact, the majority of sex workers in Ecuador are Colombian women, many of whom were not

in that business in their home country (Refugee Council USA 2011). Indeed, studies conducted by several United Nations agencies, non-governmental organisations and the Ecuadorean Ministry of Health indicate that nearly half of the Colombian refugee women who are part of the industry at the northern border were not in the business back in their homeland (Durango 2011). As a result, UNHCR's Global Appeal 2012-2013 states that the organisation will step up its efforts to prevent women from becoming involved in survival sex in Ecuador as well as strengthen local support networks and organisations related to this effort (UNHCR 2012). Considering that Ecuador's new Decree will likely increase the involvement of marginalized women in survival sex due its accelerated procedures that decrease access for those women to register, policymakers should work closely with UNHCR to not only make sure local support networks are strengthened, but also that prevention of this phenomenon exists within the relevant laws.

Conclusion

This article has outlined why it is crucial for Ecuador to recognise the feminisation of displacement taking place within its borders when it is developing law and policy. This article has also demonstrated how Ecuador's restriction of the refugee definition and access to asylum via accelerated procedures, as promulgated by the new Decree, has a gendered dimension, namely the rise in rates of SGBV. The displacement crisis and its close association to SGBV highlights the need for policymakers to respond, especially considering that the borders of Ecuador have increasingly assumed the characteristics of the Colombian humanitarian crisis. In order to prevent a bad situation from getting worse, policy must be directed towards curbing these outcomes and increasing the protection and support of displaced women in Ecuador.

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