

Washington International Law Journal

Volume 22
Number 2 *Special Issue: Indigenous Rights in
the Pacific Rim*

3-1-2013

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Recommended Citation

Johanna L. Gusman, Comment, *Recognizing the Feminization of Displacement: A Proposal for a Gender-Focused Approach to Local Integration in Ecuador*, 22 Pac. Rim L & Pol'y J. 429 (2013).

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RECOGNIZING THE FEMINIZATION OF DISPLACEMENT: A PROPOSAL FOR A GENDER- FOCUSED APPROACH TO LOCAL INTEGRATION IN ECUADOR

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Abstract: The feminization of displacement refers to the phenomenon in which women represent an increasingly disproportionate percentage of displaced populations worldwide. The objective of this comment is to raise awareness of this growing problem and recommend that policymakers craft legal responses to better address this reality, using Ecuador as an example. Specifically, this comment outlines how a gender-focused approach to local integration in Ecuador can rectify a refugee policy that never once mentions gender and is silent on the most pressing issues facing refugee women and girls in the area: sexual and gender-based violence. Through the proposal put forth in this comment, it is hoped that increased attention to the feminization of displacement and the plight of women in general can be recognized and as a result, properly incorporated into the refugee policies that affect them.

I. INTRODUCTION

This comment seeks to raise awareness about the feminization of displacement, the phenomenon in which women increasingly represent a disproportionate percentage of displaced populations worldwide.¹ Over the years, gendered patterns in social phenomenon have gained the attention of governments, policymakers, and stakeholders around the world. The “feminization of poverty”² and the “feminization of migration”³ are

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¹ 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 NOT BORN A REFUGEE WOMAN: CONTESTING IDENTITIES, RETHINKING PRACTICES 2-3 (Marous Hajdukowski-Ahmed et al. eds., 2008) [hereinafter NOT BORN A REFUGEE WOMAN].

² This term was coined in the 1970s and refers to the concentration of poverty among women, particularly female heads of households. See Diana Pearce, *The Feminization of Poverty: Women, Work and Welfare*, 11 URB. & SOC. CHANGE REV. 28, 28-36 (1978).

³ See Gloria Moreno Fontes Chammartin, *The Feminization of International Migration*, 129 LAB. EDUC. REV. 39, 39-47 (2002).

examples of trends in global statistics that demonstrate the disproportionate burden women bear in the social struggle for equality. The main objective of this comment is to highlight the issue of the feminization of displacement in a context where the norms and policies established to deal with displaced persons are “gender-blind”⁴ and urge policymakers to better address this reality.

The displacement crisis in South America serves as an especially pronounced example of this growing problem. The ongoing armed conflict in Colombia has displaced record numbers of people, both internally and internationally.⁵ The conflict has grown so severe that Colombia has joined the ranks of the Democratic Republic of Congo, Iraq, Somalia, and Sudan as having more than a million people identified as internally displaced at the end of 2010.⁶ In fact, the conflict has been catalogued as the worst humanitarian crisis in the Western Hemisphere in recent times.⁷ However, unlike the situations in Iraq or Sudan, the 4.3 million persons of concern⁸ in Colombia and Ecuador rarely grab newspaper headlines,⁹ due in part to Ecuador’s progressive refugee policies that have more or less created open-borders between the two countries.¹⁰

However, these otherwise praiseworthy refugee policies have one serious omission that may account for their failure to mitigate the crisis on the ground—there is no mention of gender. This is especially disconcerting considering that the overwhelming majority of the refugee population in Ecuador is comprised of women and children (88%),¹¹ with many women as

⁴ Pearce, *supra* note 2, at 3. The term “gender-blind” describes activities undertaken and services provided without regard to the gender of those who participate in those activities and receive those services.

⁵ 2013 UNHCR Country Operations Profile: Colombia—Working Environment, UNHCR, <http://www.unhcr.org/pages/49e492ad6.html> (last visited Nov. 27, 2012) [hereinafter *Country Operations Profile—Colombia*].

⁶ *Internally Displaced People Figures*, UNHCR, <http://www.unhcr.org/pages/49c3646c23.html> (last visited Dec. 27, 2012).

⁷ MINISTRY OF FOREIGN AFFAIRS, TRADE AND INTEGRATION, GENERAL OFFICE FOR REFUGEES, ECUADOR’S REFUGEE POLICY 23 (2009) [hereinafter ECUADOR’S REFUGEE POLICY].

⁸ UNHCR assists many people who do not fall under the strict legal definition of a refugee. “Persons of Concern” is a general term used to describe all people whose protection and assistance needs are of interest to UNHCR, which include refugees, asylum-seekers, stateless people, internally displaced people (“IDPs”), and returnees.

⁹ Michael Boyce, *Civil Society: The Solution to Latin America’s Neglected Refugee Crisis?*, REFUGEES INT’L BLOG Nov. 15, 2011, <http://www.refugeesinternational.org/blog/civil-society-solution-latin-america%E2%80%99s-neglected-refugee-crisis>.

¹⁰ See, e.g., LUISA FREIER, A GATEWAY TO THE AMERICAS: ECUADOR’S ‘POLICY OF OPEN DOORS’ AS A NATURAL EXPERIMENT, available at <http://www.ipsa.org/my-ipsa/events/madrid2012/paper/gateway-americas-ecuadors-policy-open-doors-natural-experiment> (part of the International Political Science Association Panel on Immigration and Integration in a Global World: Convergence and Divergence from the Sending Countries’ Perspective).

¹¹ UNHCR, SUBMISSION BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES FOR THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS’ COMPILATION REPORT—UNIVERSAL PERIODIC

heads-of-households.¹² Moreover, given the nature of the conflict, the United Nations High Commissioner on Refugees (“UNHCR”) has recognized that the prevention of sexual and gender-based violence (“SGBV”) is an urgent, core protection issue;¹³ an issue that is likewise absent in Ecuador’s refugee policy. These glaring omissions, compounded by recent backward shifts in Ecuador’s refugee policy, have severe consequences for the already vulnerable and displaced women in the region that require specifically tailored strategies in order to meet the gender needs of a feminized refugee population.

Accordingly, this comment will focus specifically on the displacement crisis at the Colombian-Ecuadorian border, advocating for the inclusion of gender-specific measures in refugee policy, particularly given the widespread existence of SGBV that disproportionately affects women.¹⁴ Part II describes the background of the displacement crisis at the border of Colombia from a feminist perspective. Part III reviews Ecuador’s refugee policies and the need to integrate SGBV strategies at the country level within refugee policy itself. Part IV presents the proposal of a gender-focused approach to local integration as a means of including gender in Ecuador’s refugee policies as well as providing a platform for combating SGBV. Part V concludes that recognizing the feminization of displacement, coupled with specific policies tailored to the gender needs of the refugee population, has the potential to actually improve the conditions surrounding this crisis.

II. GENDER DISCRIMINATION FUELS THE FEMINIZATION OF DISPLACEMENT

In order to understand the growing phenomenon of the feminization of displacement, it is important to understand that the factors that drive displacement are inherently tied to the consequences of gender discrimination.¹⁵ Therefore, this section presents a feminist critique¹⁶ of the

REVIEW ECUADOR 1 (Nov. 28, 2011), *available at* <http://www.unhcr.org/refworld/docid/4ed364432.html> [hereinafter UNHCR SUBMISSION UPR ECUADOR].

¹² UNHCR, REPORT OF THE JOINT MISSION UNHCR–WFP FOR THE REVISION AND RE-EVALUATION OF THE RELIEF AND RECOVERY OPERATION IN FAVOR OF COLOMBIAN REFUGEES IN ECUADOR 9 (Oct. 6, 2011), *available at* <http://www.unhcr.org/refworld/docid/4e92b3892.html>.

¹³ *See* U.N. HIGH COMM’R FOR REFUGEES–DIV. OF INT’L PROTECTION, ACTION AGAINST SEXUAL AND GENDER-BASED VIOLENCE: AN UPDATED STRATEGY (June 2011) [hereinafter UNHCR UPDATED STRATEGY].

¹⁴ UNHCR, STRATEGY TO STRENGTHEN THE PREVENTION AND RESPONSE OF SGBV IN REFUGEE SITUATIONS–ECUADOR, 2012-2016 (on file with author).

¹⁵ *See generally* ERIN K. BANES, VULNERABLE BODIES: GENDER, THE U.N., AND THE GLOBAL REFUGEE CRISIS (Ashgate 2004); *see also* ALICE EDWARDS, DISPLACEMENT, STATELESSNESS, AND QUESTIONS OF GENDER EQUALITY AND THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF

displacement crisis at the Colombian-Ecuadorian border. The description of and subsequent response to the displacement crisis are rarely informed by the realities of women and girls on the ground. Thus, in an effort to better demonstrate the gender dimensions of displacement as well as the crucial need to incorporate gender perspectives into refugee policies, this section will analyze the problem through a critical assessment of the conflict. It will first provide a traditional overview of the problem without reference to gender. Against this background, this section will then examine the Colombian-Ecuadorian displacement crisis through a gender lens, providing better context of the problem and promoting the argument that the protection of women and girls is a legitimate foreign policy concern. Within this context, this analysis identifies three interrelated factors that continue to drive high levels of displacement: increased levels of violence by illegal armed groups, the growth of illicit economies, and current negative trends in policy.¹⁷

A. *It Is Necessary to Understand the Significance of Gender Within the Context of Displacement*

From the onset, it is essential to first define and 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.¹⁸ In contrast, sex is purely the biological determination while gender acquires socially and culturally constructed meaning over time.¹⁹ The term “gender” refers to socially constructed identities, attributes, and roles for women and men and society’s social and cultural meaning for these biological differences, resulting in hierarchical relationships between women and men and in the distribution of power and rights, favoring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological, and

DISCRIMINATION AGAINST WOMEN (July 16, 2009) (background paper prepared for a Joint UNHCR and the United Nations Committee on the Elimination of Discrimination Against Women Seminar).

¹⁶ See generally Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT’L L. 613 (1991) (a useful bibliography is found on page 581); RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW (Dorinda Dallmeyer ed. 1993).

¹⁷ See INT’L CRISIS GROUP, MOVING BEYOND EASY WINS: COLOMBIA’S BORDERS (Oct. 2011) [hereinafter CRISIS GROUP REPORT].

¹⁸ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: GENDER-RELATED PERSECUTION WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, para. 3, UN DOC. HCR/GIP/02/01 (May 7, 2002) [hereinafter GUIDELINES ON INTERNATIONAL PROTECTION].

¹⁹ *Id.*

environmental factors and can be changed by culture, society, and community.

Within the context of displacement, men and women can make gender-related claims, although it is important to note that women more commonly make such claims.²⁰ Examples of gender-related claims include, but are not limited to, acts of sexual violence, family or domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.²¹ While acknowledging the fact that men and boys are also victims of SGBV, this paper points to the strategic importance and value of adopting a gender-focused approach to effectively combat the problem within feminized displacement. Therefore, it is important to clarify from the beginning that this comment does not call for the exclusion of men and boys from considerations regarding refugee policy; it merely calls for the heightened inclusion of the perspectives of women and girls.

B. *Illegal Armed Groups Drive Displacement, Resulting in Increased Violence*

Decades of armed conflict related to the drug war in Colombia have displaced millions of people, both internally and externally.²² In the past few years, the dynamics of the conflict have shifted the intensity towards the border of the country forcing many Colombians to seek refuge in neighboring countries, namely Ecuador.²³ UNHCR estimates that between 135,000 to 160,000 individuals are in need of international protection in Ecuador, with the number of displaced Colombians seeking refugee status climbing annually.²⁴ As a result, Ecuador is home to the largest number of refugees in South America,²⁵ the vast majority of whom are women and children.²⁶

²⁰ *Id.*

²¹ *Id.*

²² *Country Operations Profile: Colombia—Work Conditions*, *supra* note 5.

²³ Marie-Helene Verney, *Unmet Refugee Needs: Colombian Refugees in Ecuador*, 32 FORCED MIGRATION REV. 60, 60-61 (Apr. 2010), available at <http://unhcr.org/refworld/docid/4c6cefb02.html>.

²⁴ REFUGEE COUNCIL USA, LIVING ON THE EDGE: COLOMBIAN REFUGEES IN PANAMA AND ECUADOR 7 (2011) [hereinafter REFUGEE COUNCIL USA REPORT].

²⁵ UNHCR GLOBAL REPORT: ECUADOR 1 (2010). UNHCR has recognized Ecuador as the Latin American country that accepts the highest proportion of refugees; this is reflected in the figures. Ecuador has received over 151,000 applications for refugee status. As of January 31, 2012, there were 55,330 registered refugees, of whom 98.47% were Colombian nationals. *See also* HUMAN RIGHTS COUNCIL, NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 5 OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 16/21—ECUADOR, para. 113, U.N. DOC A/HRC/WG.6/13/ECU/1 (Mar. 8, 2012).

²⁶ *See* UNHCR SUBMISSION UPR ECUADOR, *supra* note 11, at 1.

The first major factor driving high levels of displacement is the increased exposure to a mixture of illegal armed groups at the border of the two countries. The 586 kilometer-long Colombian-Ecuadorian border has several distinct zones, whose communities often share more ties across the border than within their own countries.²⁷ The coastal zone is composed of the municipalities of Tumaco (Nariño, Colombia) and San Lorenzo (Esmeraldas, Ecuador).²⁸ Further east is the Andean foothill zone, which has an important indigenous component.²⁹ Finally, the Amazonian zone is comprised of the lower parts of Sucumbíos province in Ecuador. Each zone has its own socio-economic dynamics, but none have escaped the violent impact of the intensive armed conflict.³⁰

In particular, these border regions have been increasingly exposed to operations of illegal armed groups, including the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, or “FARC”) and the National Liberation Army (Ejército de Liberación, or “ELN”), triggering unprecedented spikes in violence.³¹ The conflict has become vastly more complicated—and deadly—since the 1990s when paramilitary forces appeared.³² The provinces neighboring Colombia are among Ecuador’s most violent, with over double the national murder rate.³³ Civilians are increasingly caught in the conflict’s crossfire, with alleged cases of what has been termed “false positives”—civilians are killed by the military, and then labeled as members of illegal armed groups killed during combat.³⁴

The Ecuadorian government has responded to the increase in violence by sending thousands of troops to the border since 2008 in an attempt to control the Colombian conflict’s spillover.³⁵ However, this response has had questionable success. Currently, counter-insurgency operations are more robust, only causing a dispersion and integration of FARC combatants into

²⁷ CRISIS GROUP REPORT, *supra* note 17, at 10.

²⁸ See Appendix A1, MAP OF THE COLOMBIA-ECUADOR BORDER, *from* CRISIS GROUP REPORT, *supra* note 17, at 36.

²⁹ CRISIS GROUP REPORT, *supra* note 17, at 10.

³⁰ *Id.*

³¹ *Id.* at 2.

³² *Id.*

³³ In 2009, Esmeralda’s murder rate was 62 per 100,000; Sucumbíos had a lower rate at 44 per 100,000. The national average is 18.7 per 100,000. Ecuador’s average murder rate has roughly doubled over the last twenty years. Official numbers may be understated given the lack of forensic capacity. See U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, PHILIP ALSTON: ADDENDUM, MISSION TO ECUADOR, para. 19, U.N. DOC. A/HRC/17/28/Add.2 (May 9, 2011) (delivered at the 17th Session of the Human Rights Council).

³⁴ GUIDELINES ON INTERNATIONAL PROTECTION, *supra* note 18, at 12.

³⁵ *Id.* at 8.

the civilian population, greatly complicating the humanitarian situation at the border provinces.³⁶ Instead of having to cope with a single, relatively predictable and unchallenged illegal actor, civilians now face a situation in which multiple armed actors, including the military, vie for community resources and control.³⁷

C. *The Increase in Violence Must Be Examined Through a Gender Lens*

One fact that policymakers often fail to consider is that armed conflicts are never gender-neutral.³⁸ Whether it is economic deprivation, displacement, poverty, or gender-based violence, the costs of conflict are disproportionately borne by women and their children.³⁹ Furthermore, armed conflict is one of the major causes of displacement.⁴⁰ Displacement arising from armed conflict can intensify the discrimination and inequality that is embedded within society that women already face before the displacement occurred.⁴¹ Thus, although all forcibly displaced persons face protection concerns, including men, women and girls are often exposed to particular protection problems related to their gender, their cultural and socio-economic position, and their legal status.⁴² These particular protection problems require specific policy measures in order to address them. Thus, in a situation in which multiple armed actors compete for community resources and control,⁴³ protection policies must address these particular gender needs of women and their children caught in the crossfire.

This is especially important considering that the shift in the nature of conflicts today is such that the militarization of economies⁴⁴ and the technologicalization of war⁴⁵ have made civilians targets, and those civilians

³⁶ *Id.* at 13.

³⁷ *Id.*

³⁸ Lisa Schirch & Manjrika Sewak, *Women: Using the Gender Lens*, in PEOPLE BUILDING PEACE II: SUCCESSFUL STORIES OF CIVIL SOCIETY 98-107 (Paul van Tongeren ed., 2005).

³⁹ *Id.* at 98.

⁴⁰ EDWARDS, *supra* note 15, at 16.

⁴¹ *Id.*

⁴² UNHCR, CONCLUSION ON WOMEN AND GIRLS AT RISK, No. 105 (LVII) (Oct. 6, 2006), available at <http://www.unhcr.org/refworld/docid/45339d922.html>.

⁴³ *Id.*

⁴⁴ Militarization is a process comparable to industrialization, which becomes part of every aspect of civil order, adapting itself to existing institutions and practices. Military values are expressed throughout the culture, with an emphasis on authority and obedience, on aggression and violence, and on the acceptance of hardship and sacrifice. See, e.g., Audrey Macklin, *Like Oil and Water, With a Match: Militarized Commerce, Armed Conflict and Human Security in Sudan*, in SITES OF VIOLENCE: GENDER AND CONFLICT ZONES 75-107 (Wenona Giles & Jennifer Hyndman eds., 2004).

⁴⁵ *Id.*

are mostly women and their children.⁴⁶ In Colombia, irregular armed groups favor action against the civilian population over direct military confrontation and have targeted indigenous communities.⁴⁷ This has in part resulted in the feminization of displacement in the region. First and foremost, 48% of this displaced population in Ecuador are women, as compared to only 12% men, while the remainder are children.⁴⁸ In other words, the number of refugee women is four times the number of refugee men in Ecuador and these demographics are indicative of the fact that the armed conflict in Colombia is not gender-neutral.⁴⁹

Unfortunately, the feminization of displacement is also often coupled with an increase in SGBV.⁵⁰ From a policy standpoint, SGBV refers to any harmful act that is perpetrated against one person's will and that is based on socially ascribed gender differences.⁵¹ 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.⁵² 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.⁵³ 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.⁵⁴

At the border areas, armed actors, including the military, regularly sexually abuse women.⁵⁵ 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,⁵⁶ which augments a recent UNHCR study that revealed 94.5% of the 700 refugee

⁴⁶ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 15. See also Anne Fetherston & Carolyn Nordstrom, *Overcoming Conceptual Habitus in Conflict Management: UN Peacekeeping and Warzone Ethnography*, in THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 251 (Manchester Univ. Press 2000) (explaining that today, more than ever, it is women and children who bear the greatest burden of violence, through brutality, rape, torture, and murder, and who suffer the greatest percentage of death due to war).

⁴⁷ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 15.

⁴⁸ UNHCR SUBMISSION UPR ECUADOR, *supra* note 11, at 1. The figure of 88% is comprised of 48% refugee women and 40% refugee children.

⁴⁹ This percentage only covers the number of registered refugees in Ecuador. This number is likely much higher if the numbers of displaced women or women living in refugee-like conditions were known. Thus, it is important to keep in mind that this is a conservative estimate.

⁵⁰ UNHCR UPDATED STRATEGY, *supra* note 13, at 11.

⁵¹ *Id.* at 6.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 6.

⁵⁵ CRISIS GROUP REPORT, *supra* note 17, at 13.

⁵⁶ IAN MCGRATH, ENHANCED REFUGEE REGISTRATION AND HUMAN SECURITY IN NORTHERN ECUADOR 8 (Jan. 2011).

women surveyed in the Lago Agrio, a town within Sucumbíos, have experienced SGBV in their lifetime.⁵⁷ It is no coincidence that the Amazon province of Sucumbios, which has the largest concentration of Colombians requesting international protection, also has astoundingly high rates of SGBV.⁵⁸

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.⁵⁹ UNHCR advocates for the prevention of SGBV as an urgent, core protection issue that should be carefully considered when devising responses.⁶⁰ The risk of SGBV is reduced when policy responses are improved. Despite this, there have been minimal efforts made, especially on behalf of the Ecuadorian government, to address SGBV prevention in the feminized refugee population. As will be discussed in the following section, Ecuador's refugee policy does not recognize the connection between the gender-related protection concerns of its majority female refugee population nor does it distinguish between the extraordinarily high rates of SGBV and the increase of violence in the region.

D. Illicit Economies Drive Displacement and Create an Environment of Exploitation

The second major factor driving high levels of displacement is the fact that the border regions have become hotbeds for illicit economies, in particular the production and trafficking of drugs and weapons. In Colombia, as government efforts to curb drug production via aggressive fumigation and eradication campaigns has expanded, overall coca growing has been on a near constant downward trend since 2000, thus reducing the country's coca cultivation.⁶¹ However, this downward trend has increased the strategic importance of border regions for illegal actors using drug income to finance their operations.⁶² Border zones have proved crucial to these groups, not only for the exportation of drugs, but also for facilitating the entrance of chemical precursors needed for cocaine production.⁶³ This has been

⁵⁷ *El 70% de los refugiados colombianos está en Ecuador, según la ONU*, EL TIEMPO, Oct. 20, 2010, http://www.eltiempo.com/mundo/latinoamerica/ARTICULO-WEB-NEW_NOTA_INTERIOR-8159360.html (translated by author).

⁵⁸ Ecuador's refugee policy does note that this region "deserves special attention," although it does not make a link to the astonishingly high rates of SGBV. See ECUADOR'S REFUGEE POLICY, *supra* note 7.

⁵⁹ UNHCR UPDATED STRATEGY, *supra* note 13, at 9.

⁶⁰ *Id.* at 7.

⁶¹ CRISIS GROUP REPORT, *supra* .

⁶² *Id.*

⁶³ *Id.*

especially valuable to illicit armed groups since stringent controls in Colombia have made it increasingly difficult to divert cocaine precursors from legal channels.⁶⁴

Insecure border areas are known for armed groups clashing over the drug trade, but trafficking in the area is not limited to drug and arms smuggling—human trafficking is rampant.⁶⁵ It is especially important to consider a gender perspective within this context because the conflict has helped to create a lawless environment ripe for the exploitation of women and children.⁶⁶ While exact numbers are difficult to ascertain given the scope of this problem, it is estimated that between 45,000 to 50,000 Colombians are trafficked each year, the vast majority of which are women and children.⁶⁷

In the context of forced displacement, human trafficking is a common form of SGBV that disproportionately affects refugee women and girls.⁶⁸ Their vulnerability often exposes them to human trafficking rings and sexual exploitation as well as other forms of gender-based violence.⁶⁹ Ecuador is no exception to this. Several border towns are important transit points for the trafficking of women to Ecuador, where they are often forced to work in legal and illegal brothels,⁷⁰ a booming business.⁷¹ According to an International Crisis Group report, there are about 280 legal brothels in the Ecuadorian border zone and many more illegal brothels.⁷² To better illustrate the superabundance of this business, there are a total of 85 brothels in Lago Agrio, a town of just 50,000 people.⁷³ Experts believe that at least 15% of trafficked Colombians were first internally displaced in Colombia.⁷⁴ However, this seems a conservative estimate especially considering the fact that traffickers at the border regularly take advantage of women who are

⁶⁴ Interview by International Crisis Group with National Narcotics Direction (“DNE”), Bogotá, Colombia (July 28, 2011).

⁶⁵ *Id.*

⁶⁶ WOMEN’S COMM’N FOR REFUGEE WOMEN AND CHILDREN, CAUGHT IN THE CROSSFIRE: DISPLACED COLOMBIANS AT RISK OF TRAFFICKING 1 (Mar. 2006).

⁶⁷ *Id.*

⁶⁸ UNHCR UPDATED STRATEGY, *supra* note 13, at 6.

⁶⁹ *See generally* UNHCR, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNEES AND INTERNALLY DISPLACED PERSONS: GUIDELINES FOR PREVENTION AND RESPONSE 115 (May 2003) [hereinafter GUIDELINES FOR PREVENTION AND RESPONSE].

⁷⁰ *Id.*

⁷¹ It is important to point out that although “business is booming,” women and girls within this industry receive little or no compensation as the money is concentrated within the hands of the business owners.

⁷² CRISIS GROUP REPORT, *supra* note 17, at 13

⁷³ MCGRATH, *supra* note 56.

⁷⁴ WOMEN’S COMM’N FOR REFUGEE WOMEN AND CHILDREN, *supra* note 66, at 1.

compelled to migrate due to lack of safety and stability arising from the Colombian conflict.⁷⁵

Furthermore, “survival sex” is a real problem among refugee women. Even if displaced women were not trafficked for the purposes of prostitution, they may have to resort to survival sex 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.⁷⁶ In general, women often have fewer employment opportunities available to them, particularly if they are responsible for young children.⁷⁷ Survival sex is frequently a direct consequence of gaps in assistance as well as failures of the registration systems or family separations.⁷⁸ As a result, UNHCR has identified survival sex as a coping mechanism in situations of displacement.⁷⁹

In fact, Colombian women often report being forced into prostitution in order to survive once they have been displaced to Ecuador.⁸⁰ Prostitution is a major industry in many of the border towns in Ecuador and it is legal, with many refugee women taking part in that industry.⁸¹ Indeed, the majority of sex workers in Ecuador are Colombian women.⁸² Moreover, studies conducted by several United Nations agencies, non-governmental organizations (“NGOs”) and the Ecuadorean Ministry of Health indicate that nearly half of the Colombian refugee women who are sex workers at the northern border were not in the business back in their homeland.⁸³

Naturally these numbers are cause for concern, yet current refugee policy is silent on the issue. Policymakers have failed to make any link between the growth of illicit economies and the overwhelming presence of SGBV in the region, whether it is the human trafficking of women and girls or the disturbingly high concentration of prostitution within Ecuador’s borders. Governments must recognize that SGBV is both a cause of forced displacement and an intolerable part of the displacement experience.⁸⁴ Inequality between women and men, and discrimination on the basis of sex

⁷⁵ *Id.*

⁷⁶ Amy Brown, *Refugees Turn to Sex Work in Ecuador, Survival Sex, Bodies for Sale Series*, GLOBAL VOICES, May 2009, <http://globalvoicesonline.org/2012/04/24/ecuador-refugee-women-and-girls-turning-to-sex-work/>.

⁷⁷ UNHCR UPDATED STRATEGY, *supra* note 13, at 16.

⁷⁸ *Id.*

⁷⁹ *Id.* at 5.

⁸⁰ REFUGEE COUNCIL USA REPORT, *supra* note 24, at 9.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Andrea Durango, *Small Loans for Vulnerable Groups in Ecuador*, UNHCR ECUADOR NEWSLETTER, Apr. 11, 2011, at 1, available at <http://www.unhcr.org/4da2f7ac6.html>.

⁸⁴ See Appendix A2, SEXUAL AND GENDER-BASED VIOLENCE DURING THE DISPLACEMENT CYCLE.

was evident in all three stages of the displacement cycle: prior to displacement in the country of origin, during displacement (including during refugee status determination procedures), and while in search of durable solutions.⁸⁵ Thus, refugee women are in an especially vulnerable position that requires the development of innovative strategies to meet their specific needs.⁸⁶ However, no such strategies exist in Ecuador's formal refugee policy. Instead, refugee women are forced to flee Colombia, often due to SGBV, only to become victims of gender-based violence once again in their country of asylum. This cycle must end.

E. Displacement and Sexual and Gender-Based Violence Are Inextricably Linked

Altogether, the factors that drive high levels of displacement are the very same factors that contribute to high rates of SGBV. The presence of illegal armed groups expose a vulnerable refugee population—the majority of whom are women and children—to higher risks of SGBV while the growth of illicit economies preys on displaced and refugee women, particularly with regards to human trafficking.⁸⁷ This amalgam of problems has vastly different consequences for women and girls. Thus, the current dynamics of displacement, especially within the context of Colombia and Ecuador, ought to compel governments, humanitarian actors, and other stakeholders to reconsider and broaden the conceptualization of what a refugee is and its gender-specificity.⁸⁸ Displacement affects men and women differently; therefore protection responses and strategies must recognize these differences.⁸⁹ The nature of the displacement crisis between Colombia and Ecuador serves as a predominant example of this problem. However, with the proper recognition of SGBV and its ties to the displacement and conflict, the situation also has the potential to be the model for the implementation of policies that successfully address the gender-specific protection needs of

⁸⁵ EXAMINING THE PARTICULAR RELEVANCE OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN TO THE PROTECTION OF WOMEN OF CONCERN TO UNHCR (July 16-17, 2009), available at <http://www.unhcr.org/refworld/pdfid/4bac8e872.pdf> (a summary of the proceedings at the Joint Seminar of CEDAW Committee and UNHCR) [hereinafter Joint Seminar of CEDAW Committee and UNHCR].

⁸⁶ Pearce, *supra* note 2, at 6.

⁸⁷ Altogether, this situation reflects the legacy of enduring state absence, the corruption and criminal infiltration of local politics, an ideal environment for the exploitation of vulnerable populations, and a decrease in the chance of the border zones' ability to escape their poverty trap. See CRISIS GROUP REPORT, *supra* note 17, at 4.

⁸⁸ See NOT BORN A REFUGEE WOMAN, *supra* note 1, at 15.

⁸⁹ EDWARDS, *supra* note 15, at 6.

refugee populations, not solely for South America, but for communities across the world.

III. A DEEPER LOOK INTO ECUADOR'S REFUGEE POLICY REVEALS THE LACK OF A GENDER PERSPECTIVE

The fact that Ecuador's current refugee policy never mentions gender or recognizes the statistics regarding the feminization of displacement in the region is troubling. Most importantly, it is completely silent on the issue of SGBV.⁹⁰ The displacement crisis and its close association with SGBV should cause policymakers to take note, especially considering that the borders of Ecuador have long been taking on the characteristics of the Colombian humanitarian crisis: violence, human trafficking, sexual exploitation of women and children, and more.⁹¹ This section provides a general overview of Ecuador's refugee policy and describes how it is well suited for the incorporation of a gender perspective. It also warns against new shifts in Ecuador's policies that will have serious consequences for the already vulnerable refugee women on the ground. Finally, drawing from the background of the conflict discussed in the previous section, it concludes that in order to truly meet the needs of Ecuador's refugee population, policies should be focused on the protection of women, especially from SGBV.

A. *General Overview of Ecuador's Refugee Policy*

In March 2007, the Government of Ecuador publicly launched "Plan Ecuador" as a State policy for the northern border that considers human security and solidarity as the result of peace building and development; of an equitable and supportive foreign policy; and of a defense policy based on the protection of its own population, resources, and wealth, with an effective control of the national territory.⁹² Plan Ecuador acknowledges the impacts of the Colombian internal conflict on Ecuadorian society and guides its efforts on the basis of a preventative, multi-dimensional, and multi-sectoral approach, aimed at solving the serious economic and social problems caused

⁹⁰ See ECUADOR'S REFUGEE POLICY, *supra* note 7.

⁹¹ Shaina Aber, *On Assignment in Ecuador, Part 2*, VOICES, Nov. 12, 2010, at 1, available at http://jrsusa.org/Voices_Detail.cfm?TN=DTN-20101112090348 (Shaina Aber is Associate Advocacy Director for Jesuit Refugee Service/USA and was on a fact-finding visit to Panama and Ecuador with a delegation from the Refugee Council USA).

⁹² ECUADOR'S REFUGEE POLICY, *supra* note 7, at 23.

by poverty, exclusion, and violence.⁹³ The policy is essentially broken down into three major categories: 1) fundamental principles; 2) state commitments; and 3) strategies to accomplish its ambitious objectives. This section will describe each in turn.

First, the fundamental principles of Plan Ecuador are:

- (a) Peace and cooperation as a system of cohabitation among States;
- (b) Rejection of external aggression, non-intervention in the internal affairs of other countries and sovereign equality in the relations among States, particularly neighboring States; and
- (c) Cooperation and shared responsibility in the achievement of the objectives of development among the various institutions of the State of Ecuador and the organizations of civil society.⁹⁴

Second, in addition to these principles, the government of Ecuador has assumed the commitments regarding asylum and/or refuge arising from International Humanitarian Law. Executive Order 3301/92 regulates the application of the norms of both the 1951 Convention relating to the Status of Refugees and the Declaration of Cartagena of 1984.⁹⁵ This order, which contains Ecuadorian legislation regarding this matter, has served as a model for other countries in the region.⁹⁶ Plan Ecuador explicitly includes the axis of human rights and humanitarian assistance and refuge, guaranteeing the exercise of human rights and protection against all forms of discrimination of the population settled in the area, as well as compliance with international commitments regarding humanitarian assistance for displaced persons.⁹⁷

Furthermore, Ecuador is committed to providing comprehensive protection to all refugees based on civil, economic, social, and cultural rights, which it has interpreted to mean the implementation of a national policy of

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ The 1951 Convention Relating to the Status of Refugees [hereinafter 1951 Convention] defines a refugee as a person outside his/her country of nationality or habitual residence, [who] has a well-founded fear of persecution because of race, religion, nationality, membership of a particular social group or political opinion, is unable or unwilling to avail himself or herself of the protection of that country or to return there for fear of persecution. The Cartagena Declaration broadens the definition of a "refugee" envisaged in the 1951 Convention to include those persons who flee their countries because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.

⁹⁶ ECUADOR'S REFUGEE POLICY, *supra* note 7, at 25.

⁹⁷ *Id.*

inclusion.⁹⁸ Ecuador's policy states that inclusion of persons in need of protection requires a territorial approach specifically directed towards the communities that welcome applicants for international protection as a whole, including refugees and resident populations in similar conditions, striving to contribute to the development of the community in general.⁹⁹ This Development Plan provides, *inter alia*, the following actions:

- 1) Promoting the legalization of persons eligible for international protection with refugee status;
- 2) Executing a policy to guarantee the rights of refugees;
- 3) Strengthening the institutional capacity of the Ministry of Foreign Affairs, Trade and Integration in refugee issues;
- 4) Fostering the social insertion of refugees in conditions of dignity and solidarity;
- 5) Harmonizing the national refugee legislation with international law and formulating a public policy on this issue.¹⁰⁰

Finally, Plan Ecuador has developed the following strategies in order to reach these goals: promoting the understanding of the fundamental rights of persons, as well as the dissemination of the different mechanisms of protection and defense of human rights from governmental actors, local governments, and civil society organizations; strengthening human rights training programs for members of the Armed Forces, National Police, and civilian society, among others; promoting transparency and equality in the analysis of specific cases related with human rights violations; strengthening contingency plans to face greater flows of displaced persons in the area; and coordinating tasks and experiences and sharing information with international agencies and NGOs to work jointly on the issue of displaced persons.¹⁰¹

Therefore, before critiquing Ecuador's approach to the displacement crisis, it is important to give the country its due deference. Ecuador has been praised for its efforts to integrate the refugee population despite its difficulties in providing for its own citizens.¹⁰² Indeed, a refugee policy

⁹⁸ *Id.* at 27.

⁹⁹ *Id.*

¹⁰⁰ *Id.* Stipulations from the National Development Plan, Foreign Policy Chapter, as part of Policy 2 ("supporting the validity of international law, particularly in human rights and environmental issues") (Ecuador).

¹⁰¹ *Id.*

¹⁰² COMM. ON THE ELIMINATION ON RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS ON THE COMBINED 20TH TO 22ND PERIODIC REPORTS OF ECUADOR, para. 10, U.N. DOC. CERD/C/ECU/CO/20-22 (Oct. 24, 2012), available at http://www.un.org/ga/search/view_doc.asp?symbol=CERD%2FC%2FECU%2

aimed at the local integration and inclusion of its refugee population is uncommon. Moreover, Ecuador is exemplary in the legal rights it affords its refugees as well as its ongoing cooperation with key organizations like UNHCR in working towards finding a lasting solution to the displacement crisis at its borders.¹⁰³ At the same time, implementing such a visionary refugee policy without mention of gender or gender-specific issues like SGBV is not acceptable and may be the reason why such a progressive policy has not seen corresponding successful results.

B. Ecuador Developed Its Refugee Policy Without Regard to Gender

The lack of gender recognition within Ecuador's policy has not gone unnoticed. For example, the Committee on the Elimination of Discrimination Against Women ("CEDAW Committee") criticized the National Secretariat for Migrants ("SENAMI"), the highest body charged with the elaboration of migration policy in Ecuador, for its failure to incorporate a gender perspective in its policies stating:

Despite the completeness of the Plan and the active participation of stakeholders involved in and connected to the issue of migration, the Plan *was not elaborated with a gender perspective in mind*.¹⁰⁴

This section seeks to elaborate upon the fundamental principles, state commitments, and strategies with that missing gender perspective and demonstrate that the inclusion of gender-specific language will strengthen Ecuador's current refugee policy.

First, each of the fundamental principles of Ecuador's policy—items (a) through (c)—have a uniquely feminist quality that would be reinforced via the inclusion of a gender perspective. For example, "peace, cooperation, and

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22&Lang=E&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+LatestUnDocuments-AllUnDocuments+%28Latest+UN+documents+-+All+UN+Documents%29 ("The Committee notes with interest the efforts made by the State party to integrate refugees—mostly of Colombian origin—into Ecuadorian society and welcomes the recognition of these efforts by the Office of the United Nations High Commissioner for Refugees . . .").

¹⁰³ Provisions that define the legal status of refugees and their rights and duties in their country of refuge are an integral part of maintaining a State's obligations under the 1951 Convention as well as its 1967 Protocol. While these provisions have no influence on the refugee status determination process, the authority entrusted with this process should be aware of them, for its decision may indeed have far-reaching effects for the individuals or family concerned. UNHCR, HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS 6 (Dec. 2011).

¹⁰⁴ COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, RESPONSES TO THE LIST OF ISSUES AND QUESTIONS WITH REGARD TO THE CONSIDERATION OF THE COMBINED SIXTH AND SEVENTH PERIODIC REPORTS—ECUADOR, para. 30, U.N. DOC CEDAW/C/ECU/Q/7/ADD.1 (Apr. 25, 2008) (emphasis added), available at <http://www.unhcr.org/refworld/docid/4885cf980.html>.

rejection of aggression”¹⁰⁵ can be fully realized through the incorporation of women’s and girls’ perspectives of their own experiences. Within the context of gender and displacement, refugee women are rarely involved in peace negotiation processes as well as local integration possibilities.¹⁰⁶ Incorporation of these perspectives within the refugee policy itself will acknowledge the importance of these viewpoints and help ensure that results are aimed toward the well-being of the affected population and not solely those holding power.

Second, based on Ecuador’s principles and commitments, the government has decided to adopt a “mixed model” for the procedures and mechanisms of refugee status determination (“RSD”), which include:

- 1) Enhancing registration of persons in need of international protection that have not yet been acknowledged;
- 2) Strengthening the current system, based on individual interviews; and
- 3) Allowing group registration for possible massive influxes of refugees.¹⁰⁷

However, while a mixed model is a preferable model for RSD, without a gender perspective, the model fails. For example, if RSD interviews do not take into account gender-sensitive aspects of the process—such as trauma related to SGBV—or, if RSD interviewers do not have gender-sensitive training, then the status determination process becomes compromised. The interview process and those who participate in it must be educated by the actual perspectives of those who rely on its proper functioning.

Third, many of the strategies outlined in Ecuador’s refugee policy will not be successful without the full inclusion of a gender perspective. Specifically, the promotion of the understanding of the fundamental rights of persons, as well as the dissemination of the different mechanisms of protection and defense of human rights from governmental actors, local governments and civil society organizations; the strengthening of human rights training programs for members of the Armed Forces, National Police and civilian society, among others; and promotion of transparency and

¹⁰⁵ ECUADOR’S REFUGEE POLICY, *supra* note 7, at 37 (fundamental principles (a) and (b)).

¹⁰⁶ EDWARDS, *supra* note 15, at 33-34; *see also* UNHCR, HANDBOOK FOR THE PROTECTION OF WOMEN AND GIRLS 15 (2006) (emphasizing the importance of women’s equal participation in peace and security discussions) [hereinafter HANDBOOK FOR THE PROTECTION OF WOMEN AND GIRLS]; *see also* REPORT OF THE PEACEBUILDING COMMISSION ON ITS FIRST SESSION, para. 11, UN DOC. A/62/137-S/2007/458 (2007); NGO WORKING GROUP ON WOMEN, PEACE AND SECURITY, ENHANCING SECURITY AND THE RULE OF LAW: HOW CAN GENDER BE BETTER INCORPORATED INTO THE PRIORITIES OF THE UN PEACEBUILDING COMMISSION? (2007).

¹⁰⁷ ECUADOR’S REFUGEE POLICY, *supra* note 7, at 37.

equality in the analysis of specific cases related with human rights violations require a feminist viewpoint. Without a gender perspective—particularly the perspectives highlighted in the background section of this comment—these strategies fall flat in actually achieving the very goals that Ecuador’s policies promote. For example, as discussed in Section II, many of the perpetrators of SGBV in the region are themselves members of the Armed Forces, National Police, and other governmental actors. Therefore strategies should include accountability procedures for this group and at the very least, include training on gender issues for all of those involved in displacement policymaking.

C. Recent Shifts in Ecuador’s Refugee Policy Threaten to Make a Bad Situation Worse—Especially for Women and Girls

Despite Ecuador’s exemplary approach (except, of course, its lack of a gender perspective) to the integration of its refugee populations, recent changes to refugee policies are fast making South America’s once most generous haven vastly more restrictive.¹⁰⁸ In particular, there have been two major policy shifts that threaten the protection of the rights of displaced persons in Ecuador, and consequently the women and children that comprise that population. Since January 2011, the Refugee Directorate of the Foreign Ministry, in accordance with the Ministerial Accord 000003, severely restricted refugee procedure in two key ways. First, it applied new rules to the RSD procedure, which is used to determine the eligibility of a refugee claimant based on a more substantial examination of his or her case.¹⁰⁹ The aim was to identify “manifestly unfounded or abusive” claims. While Ecuador is within its rights to filter out such applications, many are concerned that these new procedures will prevent the provision of international protection to those who truly need it.

Additionally, the Ministerial Accord 000003 granted the Refugee Directorate, the governmental body that assumes the responsibility of refugee registration in Ecuador, with additional powers to declare asylum requests inadmissible without any basic safeguards to asylum-seekers.¹¹⁰ This newly introduced measure negates the right to appeal administrative decisions, directly affecting the right of legal recourse of asylum-seekers to challenge the legality of a negative decision on asylum applications.¹¹¹ Not

¹⁰⁸ CRISIS GROUP REPORT, *supra* note 17, at 10.

¹⁰⁹ *Id.*

¹¹⁰ ECUADOR’S REFUGEE POLICY, *supra* note 7, at 1.

¹¹¹ *Id.*

only is this unaligned with international humanitarian law, it may also run afoul of certain protections under Ecuador's Constitution.¹¹²

The second major policy shift occurred in May 2012, when the president issued Decree 1182.¹¹³ This decree further restricts the application of refugee status in Ecuador in an effort to deal with the growing refugee population. What most affects the rights of persons in need of international protection, which in the case of Ecuador is mostly women, is the decree's elimination of the broad terms of the Cartagena Declaration, which severely restricts the grounds for protection. Not only is this a step backwards in the principles, commitments, and strategies outlined in Ecuador's refugee policy, the decree is a reversal of the Ecuadorian Constitution.¹¹⁴

These policy shifts are cause for concern as they demonstrate that general security apprehensions are dominating over human rights considerations as well as refugee protection concerns and principles.¹¹⁵ In fact, a downward trend in recognition rates has been the practice, particularly as the conflict worsens. The recognition rate for asylum-seekers decreased from 74% in 2009 to 53% in 2010 and to an average of 24% in September 2011.¹¹⁶ Furthermore, the Refugee Directorate has recently suspended the registration brigades to the northern border areas adding to the difficulties of persons in need of international protection in reaching asylum

¹¹² The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in other countries asylum from persecution, 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 rights are threatened when a refugee is returned to persecution or danger, thus procedures or arrangements for identifying refugees provide against refoulement by ensuring that persons who are entitled to protection do in fact receive it. See U.N. HIGH COMM'R FOR REFUGEES, UNHCR NOTE ON THE PRINCIPLE OF NON-REFOULEMENT (1997), available at <http://www.unhcr.org/refworld/docid/438c6d972.html>. Ecuador's 2008 Constitution 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. See also HUMAN RIGHTS COUNCIL, NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 5 OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 16/21-ECUADOR para. 112, U.N. DOC. A/HRC/WG.6/13/ECU/1 (Mar. 8, 2012), available at <http://www.unhcr.org/refworld/pdfid/5004133e2.pdf>.

¹¹³ Luis Angel Saavedra, *Ecuadorian President Rafael Correa pulls Back Welcome Mat for Refugees*, SOUTH AM. POL. & ECON. AFFAIRS, July 20, 2012.

¹¹⁴ Article 11, para. 8 reads, "Any regressive action or omission that unjustifiably diminishes, is detrimental to, or annuls the exercise of the rights will be unconstitutional." Human rights activists as well as refugee organizations are preparing to challenge the constitutionality of this decree. *Id.*

¹¹⁵ See UNHCR'S DRAFT SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS 1 (on file with author).

¹¹⁶ See UNHCR SUBMISSION UPR ECUADOR, *supra* note 11, at 1.

procedures,¹¹⁷ *i.e.*, decreasing women's ability to register themselves and their children. As a consequence, most of the refugee population in Ecuador lives in conditions of invisibility, which completely restricts their access to basic services, such as education and health, and makes it very difficult for them to find work.¹¹⁸ Within the context of gender, this simply reinforces refugee women's, as well as their children's, vulnerability and increases their exposure to SGBV.

D. Sexual and Gender-Based Violence Can Be Addressed Through the Incorporation of Specific Strategies within Ecuador's Refugee Policy

In June 2011, UNHCR published its report, "Action against Sexual and Gender-Based Violence: An Updated Strategy," in order to provide a structure to assist UNHCR operations in dealing with SGBV on the basis of a multi-sectoral and interagency approach.¹¹⁹ This strategy reaffirms that SGBV is an urgent, core protection issue and emphasizes gender equality as the cornerstone principle in addressing SGBV.¹²⁰ While it aims to assist UNHCR operations as they build their own operation-specific strategies to prevent, identify, and respond to SGBV,¹²¹ the principles and strategies promoted in this document should be adopted at the country level within Ecuador's refugee policy in order to create a comprehensive protection strategy.

Through the use of comprehensive programming to develop and implement SGBV strategies at the country level, UNHCR's "Action against SGBV" promotes a multi-sectoral approach to tackling SGBV that compliments Ecuador's already existing praiseworthy refugee policy. Furthermore, by identifying gender equality as the principal approach to combatting SGBV, UNHCR operations have initiated and developed multi-sectoral programs that better address SGBV as the main protection concern.¹²² This strategy provides for training on SGBV, aimed at government counterparts, persons of concern as well as UNHCR and partner

¹¹⁷ *Id.*

¹¹⁸ ECUADOR'S REFUGEE POLICY, *supra* note 7, at 28.

¹¹⁹ UNHCR UPDATED STRATEGY, *supra* note 13, at 5. In the creation of this document, UNHCR held a range of consultations with field operations, various technical services at its headquarters, regional bureaus, and partner organizations, to formulate the "Action against SGBV." In particular, UNHCR and partners from selected operations, representing all regions, participated in a week-long workshop to further comment on the document and begin formulating country-level strategies. *Id.* at 7.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 9.

staff in order to raise awareness of the root causes of SGBV and better inform programs.¹²³

An independent assessment by the Women's Commission for Refugee Women and Children entitled "UNHCR Policy on Refugee Women and Guidelines on their Protection: An Assessment of Ten Years of Implementation" noted the difficulty in translating policy guidelines into practical measures for the protection of women in the field.¹²⁴ While the report acknowledges that the protection of refugees is a daunting task since UNHCR operates in very difficult environments compounded with the fact that states fail to fulfill their obligations under international law, a number of organizational barriers continue to prevail that must be addressed, including:

- [a lack of] organizational commitment . . . such as standards of operating procedures, lack of female staff in the field, no mandatory gender training for staff, and lack of resources to implement guidelines;
- insufficient participation of refugee women in decision making leading to their ability to improve their living conditions, including a deprivation of basic services, such as food, shelter, and healthcare;
- [and most significantly for the purposes of this paper], while many women and girls are found to suffer from sexual and gender-based violence throughout the refugee experience, such experiences go unreported as "there is little awareness about the problem, and few coordinated efforts to prevent abuses and respond when abuses occur."¹²⁵

Furthermore, these organizational barriers also mirror the systemic obstacles present within the larger social structure. Despite the fact that SGBV remains the most widespread and serious protection problem facing displaced women and girls,¹²⁶ there remains a complete dearth of legal services as well as complicity on the part of local authorities regarding the culture of violence that plagues such a vulnerable population.¹²⁷ For example, local authorities appear to have no interest in prosecuting cases of domestic violence and sexual assault in border towns.¹²⁸ Some local

¹²³ *Id.* at 11.

¹²⁴ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 11.

¹²⁵ *Id.* (emphasis added)

¹²⁶ HANDBOOK FOR THE PROTECTION OF WOMEN AND GIRLS, *supra* note 106, at 15. Within the context of Ecuador, a full 80% of the female population in Sucumbios report experiencing gender-based violence. REFUGEE COUNCIL USA REPORT, *supra* note 24, at 9.

¹²⁷ REFUGEE COUNCIL USA REPORT, *supra* note 24, at 9.

¹²⁸ *Id.*

authorities, including the police and members of the military, have even been implicated in gross cases of sexual and gender-based violence.¹²⁹ The legal system fails to protect women who cannot present forensic evidence to substantiate a claim of sexual assault. As a matter of fact, the prosecutor's office in Quito will not pursue cases where DNA evidence is not present.¹³⁰

This demonstrates how refugee women face enormous barriers in accessing the criminal justice system.¹³¹ Furthermore, even if they could access the system, the issue is of gender discrimination as a larger system of violence against women, much of which remains trivialized by the law.¹³² This is not accidental; neglect often correlates to a low political profile.¹³³ Despite the high prevalence of gender inequality as well as the persistence of violence against women the world over,¹³⁴ laws have continuously failed to protect women, particularly the most vulnerable of this group, like refugee women.

For example, the term "gender-related persecution" has no legal meaning *per se*.¹³⁵ Rather, it is used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status.¹³⁶ This also applies to trafficking for the purposes of forced prostitution or sexual exploitation as a form of persecution.¹³⁷ Specifically

¹²⁹ *Id.*

¹³⁰ REFUGEE COUNCIL USA REPORT, *supra* note 24, at 9.

¹³¹ Unfortunately, discussion of the widespread reform needed within criminal justice systems in meeting this need (of course, this problem is not solely confined within Ecuador's borders) is beyond the scope of this analysis. However, credence to this issue needed to be included in this comment. For more on this topic please consult U.N. OFFICE ON DRUGS AND CRIME, CROSS-CUTTING ISSUES: GENDER IN CRIMINAL JUSTICE SYSTEM ASSESSMENT TOOL (2010).

¹³² U.N. ECON. & SOC. COUNCIL, FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION, para. 57, U.N. DOC. E/CN.4/1995/42 (Nov. 22, 1994), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/75ccfd797b0712d08025670b005c9a7d>.

¹³³ *See generally* U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: MISSION TO COLOMBIA, U.N. DOC. E/CN.4/2002/83/Add.3 (Mar. 11, 2002) (Radhika Coomaraswamy) (delivered at the 58th Session of the Commission on Human Rights, now formally known as the Human Rights Council).

¹³⁴ *See, e.g.*, UNITED NATIONS SYSTEM TASK TEAM ON THE POST-2015 U.N. DEVELOPMENT AGENDA, REALIZING THE FUTURE WE WANT FOR ALL (June 2012).

¹³⁵ Thus, in order to ensure that proper consideration is given to women claimants in RSD procedures, a range of gender-related claims must be recognized as such. Furthermore, it is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to accurately determine refugee status. UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: GENDER-RELATED PERSECUTION WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, paras. 1-2, U.N. DOC. HCR/GIP/02/01 (May 7, 2002).

¹³⁶ *Id.* para. 1.

¹³⁷ "Trafficking" is defined as per Article 2 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, to mean:

within the context of the Colombian refugee crisis in Ecuador, the forcible recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and abuse from which women should be protected.¹³⁸ In some cases, refugee women and children have no access to proper and appropriate identification, registration, documentation, or legal advice.¹³⁹

Altogether, because Ecuador's refugee policies do not recognize that women comprise the majority of refugees, these policies do not address gender-related needs, resulting in a complete failure to protect refugee women. As demonstrated in previous sections, the overwhelming majority of the refugee population in Ecuador is comprised of women and children, with many women as heads-of-households.¹⁴⁰ This requires policies to focus on the needs of those women, prioritizing protection from SGBV. Moreover, this does not simply mean implementing a gender-sensitive strategy. SGBV should no longer be a tangential concern of policymakers when designing a strategy to ameliorate a refugee crisis; it must form the basis of the strategy itself.

E. A Policy Response to Sexual and Gender-Based Violence in the Displaced Refugee Population is Necessary

Women's experience of displacement, asylum, statelessness, return, local integration, and settlement is predominantly shaped by their unequal position of power *vis-à-vis* men because gender inequality frames much of the context of this cycle.¹⁴¹ 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.¹⁴² During the displacement cycle, SGBV can occur during conflict, prior to

"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a persons having control over another person, for the purpose of exploitation."

¹³⁸ GUIDELINES FOR PREVENTION AND RESPONSE, *supra* note 69, at 115.

¹³⁹ See generally COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 6: TREATMENT OF UNACCOMPANIED AND SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN, U.N. DOC. CRC/GC/2005/6 (Sept. 1, 2005).

¹⁴⁰ REPORT OF THE JOINT MISSION UNHCR-WFP FOR THE REVISION AND RE-EVALUATION OF THE RELIEF AND RECOVERY OPERATION IN FAVOR OF COLOMBIAN REFUGEES IN ECUADOR 9 (2011), available at <http://www.unhcr.org/refworld/docid/4e92b3892.html>.

¹⁴¹ EDWARDS, *supra* note 15, at 56.

¹⁴² *Id.* at 24-25.

flight, during flight, in the country of asylum, during repatriation, and during reintegration.¹⁴³ Despite the horrific consequences of conflict for many refugee women, it would be wrong to see women only as “victims” of conflict while also ignoring their role in displacement resolution. It can be argued that it is women’s marginalization from power and distance from the perpetrators of violence that may place them in a unique position to challenge the status quo.¹⁴⁴

In order to do this, it is clear that a shift in values is necessary. There is a significant need to consider ways in which the law and policy can embrace gender concerns when solving a displacement crisis. However, efforts to increase the protection of women refugees from SGBV cannot come from UNHCR alone and the legal basis for their protection must extend beyond international human rights instruments so that protections exist and are enforceable in practice.¹⁴⁵ In order to effectively address these concerns, the Ecuadorian government, along with the aid of key inter-governmental organizations like UNHCR and partner NGOs, must address gender inequality as well as gender discrimination and implement gender-focused strategies that best meet the needs of a feminized refugee population.

IV. A GENDER-FOCUSED APPROACH TO LOCAL INTEGRATION COULD SOLVE PROBLEMS ASSOCIATED WITH THE FEMINIZATION OF DISPLACEMENT

As easy as it is to criticize any state policy towards refugees, particularly women and girls, changing policy is only one piece of the puzzle. Even the very best policies encounter problems in their implementation and that is why this comment focuses on local integration as a means to begin solving the displacement crisis in Ecuador. This Section takes a hands-on approach towards implementing a response to the issues that arise out of SGBV during the refugee cycle.¹⁴⁶ It will discuss what local integration is as

¹⁴³ See GUIDELINES FOR PREVENTION AND RESPONSE, *supra* note 69, at 20 (“Table on Sexual and Gender-Based Violence During the Refugee Cycle” in the Overview of Sexual and Gender-Based Violence).

¹⁴⁴ See UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO), CONFERENCE REPORT, GENDER AND POST-CONFLICT: PROMOTING THE PARTICIPATION OF WOMEN IN POST-CONFLICT RECONSTRUCTION, (June 22, 2011), *available at* http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/gender_confreport_22062011.pdf (opening speech by Pilar Alvarez-Lazo).

¹⁴⁵ The legal basis for the protection of refugee women must extend beyond the traditional international protections in order to have “teeth” on the ground so that refugee women can make claims against their perpetrators. Ecuador has also ratified a number of major international human rights instruments including, most notably for the purposes of this comment, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol as well as the Convention on the relating to the Status of Refugees and its Optional Protocol.

¹⁴⁶ See Appendix A2, SEXUAL AND GENDER-BASED VIOLENCE DURING THE DISPLACEMENT CYCLE.

well as the prospects of local integration in Ecuador, the necessity of a gender-focused approach to local integration, how to use each of the three dimensions of local integration to combat SGBV as well as give examples of projects that have been successful using this approach, and finally conclude that recognizing the growing phenomenon of the feminization of displacement will ultimately provide policymakers with the perspective needed to aid in the prevention of such crises in the first place.

A. *Local Integration and Prospects of Its Success in Ecuador*

Local integration is one of the three durable solutions developed by UNHCR in which refugees gradually become integrated members of society legally, economically, and socially.¹⁴⁷ It is a dynamic and multifaceted two-way process between refugees and their host communities to create a lasting solution to a displacement crisis. In many aspects, Ecuador is a model country for local integration. Most notably, Colombian refugees do not live in camps; they live among the Ecuadorian population and are generally allowed access to health care, education, and employment.¹⁴⁸ The country provides significant resources for the refugee population and UNHCR has publicly recognized Ecuador multiple times for its support and assistance to the refugee population.¹⁴⁹ Furthermore, several countries have commended Ecuador on its advancements and achievements in promoting progressive refugee policies.¹⁵⁰

As can be anticipated, Colombia's ongoing internal armed conflict and continued displacement of tens of thousands of individuals on a yearly basis makes prospects of return for Colombian refugees abysmal.¹⁵¹ UNHCR has determined that voluntary repatriation¹⁵² of Colombian refugees as a durable

¹⁴⁷ UNHCR, *THE BENEFITS OF BELONGING: LOCAL INTEGRATION OPTIONS AND OPPORTUNITIES FOR HOST COUNTRIES, COMMUNITIES AND REFUGEES* 7 (July 2011) [hereinafter *THE BENEFITS OF BELONGING*].

¹⁴⁸ Marie-Helene Verney, *supra* note 23, at 60.

¹⁴⁹ See, e.g., HUMAN RIGHTS COUNCIL, *COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN ACCORDANCE WITH PARAGRAPH 5 OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 16/21*, paras. 92-3, U.N. DOC A/HRC/WG.6/13/ECU/2 (Mar. 12, 2012); see also HUMAN RIGHTS COUNCIL, *REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW—ECUADOR*, para. 58, U.N. DOC A/HRC/21/4 (July 5, 2012).

¹⁵⁰ *Id.* (“Australia commended Ecuador on advancements under its new Constitution . . . and on refugee policies.”).

¹⁵¹ According to UNHCR's submission to the Office of the High Commissioner for Human Rights, Ecuador has on average a 2,253 person per month influx rate of individuals seeking protection. This average multiplied by a twelve-month period equals 27,036 displaced persons per year for Ecuador alone. UNHCR SUBMISSION UPR ECUADOR, *supra* note 11, at 1; see also Babar Baloch, *Violence in Colombia Displacing More People into Ecuador*, UNHCR NEWS STORIES Apr. 12, 2012, at 1, available at <http://www.unhcr.org/4f86ecfc9.html>.

¹⁵² Refugees themselves usually view voluntary repatriation as the most desirable long-term solution. Thus, UNHCR's humanitarian action in pursuit of lasting solutions to refugee problems is oriented, first

solution is not appropriate due to the unsafe situation in their country of origin and has called for local integration and resettlement of the refugee population as the most suitable alternative.¹⁵³ In fact, a survey of Colombian refugees in Ecuador conducted in December 2011 indicated that 84% did not want to return home.¹⁵⁴ In addition, local integration actually complements Ecuador's current policy choice for dealing with its refugee population.¹⁵⁵ In this regard, the process of local integration is well suited to address the SGBV concerns of Ecuador's majority female population, as the legal, economic, and social dimensions of its implementation provide a comprehensive basis for building a successful SGBV intervention model.

B. A Gender-Focused Approach to Local Integration is Necessary

It is important to deflect certain criticisms¹⁵⁶ of a gender-focused approach to local integration from the onset by clearly laying out several broad-based reasons for its necessity: equality, inclusion, and corporeality. While preventing SGBV is a complex challenge that is difficult to quantify, its complexity does not justify the fact that it has been largely excluded from local integration strategies.¹⁵⁷ The scope of this analysis does not address the causes and consequences of the SGBV crisis in its entirety, nor does it outline every possible solution for alleviating the effects of SGBV within the refugee population. Rather, the intention of this comment is to merely lay the foundation for the creation of a gender-focused local integration strategy

and foremost, in favor of enabling a refugee to exercise the right to return home in safety and with dignity. See UNHCR, HANDBOOK—VOLUNTARY REPATRIATION: INTERNATIONAL PROTECTION (1996) (preface by Dennis McNamara), available at <http://www.unhcr.org/4164f6404.html>.

¹⁵³ *Country Operations Profile: Colombia—Working Conditions*, supra note 5. Furthermore, of the 10.5 million refugees of concern to UNHCR around the world, only about 1% are submitted by the agency for resettlement, making it a highly unlikely solution to Ecuador's daily growing refugee population. See UNHCR, RESETTLEMENT, available at <http://www.unhcr.org/pages/4a16b1676.html> (last visited Feb. 8, 2013).

¹⁵⁴ EXECUTIVE COMM. OF THE HIGH COMM'R PROGRAMME, UPDATE ON UNHCR'S OPERATIONS IN THE AMERICAS 3 (2012), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/50600ff09.pdf>.

¹⁵⁵ See generally ECUADOR'S REFUGEE POLICY, supra note 7 (discussion on a national policy of inclusion and fostering the social insertion of refugees).

¹⁵⁶ A gender-focused approach does not call for the exclusion of men or boys from the issue, it calls for the heightened inclusion of the perspectives of women and girls and refugees in general.

¹⁵⁷ Women are too often excluded from formal structures of decision and policymaking in post-conflict situations. In 2000, the United Nations Security Council adopted Resolution 1325 on women, peace and security, which engaged the United Nations and its Member States to include women in all negotiations and agreements concerning conflict resolution and peace building. Since then, only 21 of the 192 Member States have so far elaborated a National Action Plan for the implementation of this resolution. On the ground, in countries of post-conflict, women are still excluded from decision-making and public participation, whilst sexual and gender-based violence remain important problems. See UNESCO, GENDER AND POST-CONFLICT: PROMOTING THE PARTICIPATION OF WOMEN IN POST-CONFLICT RECONSTRUCTION, CONFERENCE REPORT (2011).

as one aspect of a coordinated, multi-sectoral approach that is necessary to truly engage in resolving such an issue.¹⁵⁸

First of all, by no means does merely implementing a gender-focused approach to local integration solve the broader social issue of gender-based violence or mitigate the intricate series of events that led to the uprooting of tens of thousands of women and children from Colombia. No such singular, simple solution exists. However, the implementation of a gender-focused approach to local integration, whether tailored to the specifics of this proposal or not, is important because it helps to change the normative discourse surrounding the issue of displacement.¹⁵⁹ Recognizing the feminization of displacement in the region will allow policymakers, stakeholders, and the international community to take one tiny step towards advancing gender equality and prioritizing women's needs on the international agenda.

Furthermore, while many recommendations have been made to the Ecuadorian government on local integration strategies, few have focused on solving the SGBV and displacement problems jointly with a comprehensive legal, economic, and social strategy.¹⁶⁰ Male-dominated and male-centered strategies have historically neglected to consider women as a resource to aid in integration and peacekeeping activities in areas of conflict,¹⁶¹ which has a direct effect on a majority female displaced population.¹⁶² Introducing a

¹⁵⁸ UNHCR promotes a multi-sectoral approach to tackling SGBV with the relevant sectors including health care, protection (including safety, security, and legal support), and psychosocial support, all of which are closely linked and entail specific activities. UNHCR UPDATED STRATEGY, *supra* note 13, at 8.

¹⁵⁹ Despite the growing awareness of the roles women play in conflict prevention and peaceful integration in post-conflict situations—particularly within the context of displacement as seen here—resistance to the intentional inclusion of women is still widespread. Many activists on behalf of women's inclusion spend a great deal of time simply explaining to others why it is important for women to be involved in the process. See Schirch & Sewak *supra* note 38, at 99.

¹⁶⁰ Approaches to local integration by Ecuador can best be described as piecemeal, with limited coordinated effort from the Government to create the structural change necessary to tackle this. See ANA CRISTINA ANDRETTI VÉLEZ, GENDER-BASED VIOLENCE TOWARDS COLOMBIAN UPROOTED WOMEN IN THE NORTHERN BORDERLAND OF ECUADOR: A CASE OF HUMAN SECURITY AND SECURITIZATION 53 (2009), available at http://graduateinstitute.ch/webdav/site/genre/shared/Genre_docs/2342_TRavauxEtRecherches/Memoire_AndreettiVelez.pdf.

¹⁶¹ *E.g.*, SECRETARIAT OF THE U.N. INTER-AGENCY TASK FORCE ON THE INT'L CONFERENCE ON POP. AND DEV. PROGRAMME OF ACTION, U.N. POP. INFO. NETWORK ("POPIN"), DEP'T OF ECON. & SOC. AFFAIRS, GUIDELINES ON WOMEN'S EMPOWERMENT para. 29 (1995) (clarifying that at least 80% of the total current number of the refugee population worldwide are women and their dependent children and that a high proportion of refugee women are heads-of-household, requiring that any negative impacts of development and reconstruction policies and projects on women pose a serious threat to the overall success of such policies) [hereinafter GUIDELINES ON WOMEN'S EMPOWERMENT].

¹⁶² See, *e.g.*, NOT BORN A REFUGEE WOMAN, *supra* note 1, at 16:

[T]he number of refugees, and refugee women in particular, contained within the borders of nations, neighboring nations and within the walls of refugee camps has increased in an inversely proportional manner. Within the female population of IDPs, displaced girls are more vulnerable

gender-focused approach to local integration would ensure women's participation in the process as well as the inclusion and incorporation of the otherwise ignored gender perspectives of the women and girls most affected. As previously discussed, this is necessary because women and girls are affected differently by armed conflict and its aftermath than their male counterparts.¹⁶³ Furthermore, this approach views gender as a crosscutting issue¹⁶⁴ with relevance for and influence on all economic and social processes, thus complimenting the modus operandi of local integration.¹⁶⁵

Finally, this approach is all-inclusive despite its gendered nature. Whether or not governments wish to acknowledge gender equality needs around displacement, they cannot ignore that the demographics of the situation necessitate such an approach. Ultimately, innovative strategies for self-reliance that provide women with the means required to protect themselves from SGBV—including gender-focused programming—must be emphasized and implemented immediately. Broad-based social interventions are needed to combat the gender discrimination and attitudes of complacency that allow for the existence of SGBV. Implementing a finely balanced set of measures leading to the formal integration of displaced persons, while at the same time mitigating the risks of SGBV, will have positive consequences for Ecuadorian society as a whole. Widespread prevalence of SGBV does not solely affect Colombian refugee women; it affects all women in the region, including the Ecuadorian women with whom refugees are integrated. Therefore, policies of integration that focus on combating the common problem of SGBV within local communities will create a net benefit for all.

to sexual exploitation and pregnancy than their teenage counterparts. The dramatic increase in the number of protracted refugee situations also increases the vulnerability of women. Women are isolated in insecure designated refugee camps, typically in border regions in which suboptimal living conditions, domestic violence, alcoholism, and trafficking of women have increased. Furthermore, high fertility rates among refugee women who are part of the 7.5 million persons of concern is 1 in 5, requiring the special attention to be paid to their reproductive health. Additionally, the organization and division of labor in camps are constructed along gender lines. In camps or in flight, issues of physical security, documentation, access to food and services, access to education, representation and participation, are still very much gender-formed.

¹⁶³ U.N. Secretary-General, Gender mainstreaming in peacekeeping activities, para. 20, U.N. Doc A/57/731 (Feb. 13, 2003).

¹⁶⁴ At its tenth session in 1991, the CEDAW Committee decided to adopt the practice of issuing general recommendations on specific provisions of the Convention and on the relationship between the Convention articles and what the Committee described as "cross-cutting" themes. Among these themes is violence against women framed as a form of gender discrimination, which has helped to put the issue in a broader social context by attacking the root causes of such violence as discriminatory, cultural norms that must be stopped.

¹⁶⁵ THE BENEFITS OF BELONGING, *supra* note 147, at 7.

C. *The Legal Dimension of Local Integration Can Be Used to Combat SGBV*

The legal dimension of local integration involves establishing a legal framework in which refugees gradually attain a wider range of rights in the host state.¹⁶⁶ Over the past few years, Ecuador's policy toward refugee protection has been focused on individual status determination, reinforcing its legal framework and developing its eligibility procedures.¹⁶⁷ In Ecuador, most refugees lack a sustained legal status, not only in the Northern Border region, but also throughout national territory.¹⁶⁸ However, the current refugee status determination system, which determines status on an individual basis, cannot cope with the large number of persons in need of international protection in Ecuador.¹⁶⁹ Historically the presence of the state at the Northern Border, including the institutions of the asylum system, has been weak.¹⁷⁰ The General Office for Refugees ("DGR") of the Foreign Ministry, as well as the Commission of Eligibility,¹⁷¹ are concentrated in Quito, far from the Northern Border. With the exception of registration brigades in the provinces of the border region, all refugee applicants have to go to the DGR Office in Quito to obtain a refugee card. This procedure creates too many barriers and expenses for many persons in need of international protection.

According to UNHCR's Global Needs Assessment ("GNA")¹⁷² launched in early 2009, the top refugee concern is lack of documentation.¹⁷³ Without legal papers, there is limited access to material assistance, education, employment, and even protection.¹⁷⁴ In UNHCR's 2008 survey, there were 130,000 unregistered people living in a "refugee-like situation" in Ecuador, almost six times the number of recognized refugees.¹⁷⁵ Hence there is a

¹⁶⁶ *Id.*

¹⁶⁷ UNHCR HIGH COMM'R FORUM, STATEMENT OF GOOD PRACTICES ON TARGETING DEVELOPMENT ASSISTANCE FOR DURABLE SOLUTIONS TO FORCED DISPLACEMENT, FORUM/2005/3 10 (May 2, 2005).

¹⁶⁸ ECUADOR'S REFUGEE POLICY, *supra* note 7, at 28.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ The Eligibility Commission consists of two officials from the Foreign Ministry and one official from the Ministry of Government. *Id.*

¹⁷² Ecuador was one of eight pilot countries in UNHCR's Global Needs Assessment project ("GNA"). Piloted in 2008 and launched in 2009, this initiative assessed the unmet needs of refugees, internally displaced persons, returnees, asylum-seekers, and stateless people. The project aimed to outline the total needs, the costs of meeting them and the consequences of any gaps in order to assist governments, partners, refugees, and people of concern in creating a plan of action to address those needs.

¹⁷³ UNHCR, REFUGEE REALITIES: MEETING THE NEEDS OF REFUGEES AND OTHER PEOPLE OF CONCERN GLOBALLY (2008), available at <http://www.unhcr.org/refworld/docid/48ef42532.html>.

¹⁷⁴ *Id.*

¹⁷⁵ Verney, *supra* note 23, at 60.

need for a legal framework that focuses on the increased refugee recognition and enhanced registration. In the context of the Colombian refugee population in Ecuador, this means enhanced refugee recognition for women specifically. Thus, the legal dimension to local integration in Ecuador involves the establishment of laws and administrative policies aimed at providing legal documentation to Colombian refugee women and their children.

Legal intervention to increase access to documentation acts as a method for the protection from SGBV because single women and girls without documentation are especially at risk of sexual exploitation and abuse.¹⁷⁶ Lack of registration and documentation means no support from state services and thus extreme vulnerability, which exposes women, girls, and boys with limited resources to higher risks of SGBV and other forms of abuses, as they must look for alternative ways to obtain accommodation and food.¹⁷⁷ Additionally, legal regulations that call for the right to family reunification and set forth provisions aimed at facilitating the reunification process help to combat the issue of SGBV among unaccompanied minors, especially girls.¹⁷⁸

Local integration is restricted when asylum-seekers and refugees, as non-nationals, face administrative obstacles in accessing the benefits available to nationals in similar situations of social vulnerability.¹⁷⁹ Such restrictions include unreasonable requirements of long periods of legal residence within the territory, which effectively exclude refugees and asylum-seekers from benefiting from social welfare programs.¹⁸⁰ Moreover, the Ecuadorian asylum system is not fully developed in order to respond to the increasing number of persons in need of international protection, particularly women.¹⁸¹ Cumbersome asylum procedures coupled with the decentralization of the General Directorate for Refugees, which is tasked

¹⁷⁶ ACTION FOR THE RIGHTS OF CHILDREN, CRITICAL ISSUES: ABUSE AND EXPLOITATION 14 (Apr. 2001), available at <http://www.unhcr.org/3bb81aea4.pdf>.

¹⁷⁷ UNHCR, CONCLUSIONS ON WOMEN AND GIRLS AT RISK, No. 105 (LVII) (2006), available at <http://www.unhcr.org/refworld/docid/45339d922.html>.

¹⁷⁸ GUY S. GOODWIN-GILL & JANE MCADAM, THE REFUGEE IN INTERNATIONAL LAW: ANNEX 4, 48, available at <http://www.oup.com/uk/booksites/content/9780199207633/resources/annexe4>.

¹⁷⁹ See, e.g., UNHCR, SUBMISSION BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES FOR THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS' COMPILATION REPORT—UNIVERSAL PERIODIC REVIEW ARGENTINA 4 (2012), available at <http://www.unhcr.org/refworld/pdfid/4f7868d42.pdf>.

¹⁸⁰ ROSA DA COSTA, RIGHTS OF REFUGEES IN THE CONTEXT OF INTEGRATION: LEGAL STANDARDS AND RECOMMENDATIONS (2006), available at <http://www.unhcr.org/refworld/pdfid/44bb9b684.pdf> (part of the Legal & Protection Policy Research Series for the Division of International Protection).

¹⁸¹ Aber, *supra* note 91, at 1.

with processing asylum applications, have created a backlog of close to 20,000 asylum-seekers registered throughout the territory.¹⁸²

Ideally, local integration should coincide with the documentation process. If the RSD process is coupled with the identification of women who are victims of SGBV, or at risk of becoming victims, prevention and response to the gender-based violence can be properly maintained. As the first point of contact, officials in charge of RSD are specially situated to provide a line of defense for these women. Since the legal dimension of local integration involves the establishment of a legal framework in which refugees gradually attain a wider range of rights in the host state (possibly, but not necessarily, leading to full citizenship and naturalization),¹⁸³ it is essential that gender-related issues be met from the start of a claim.

Taking into account all of the legal vulnerabilities of refugee women and their dependents, the legal dimension of the local integration strategy should focus on the recognition of a proper legal status for this population in order to reduce their vulnerability as well as identify survivors of SGBV. Additionally, legal support activities should contribute to redressing a culture of impunity, and include training and capacity building to strengthen law enforcement and the judicial system, as well as the provision of legal advice and representation for survivors.¹⁸⁴ However, as is often the case, legal intervention is never enough. The creation of a visionary legal framework and strategy for durable solutions is meaningless without access to economic and social benefits for refugee women.

D. The Economic Dimension of Local Integration Can Be Used to Combat SGBV

The economic dimension to local integration requires enabling refugees to establish sustainable livelihoods and a standard of living comparable to their host community.¹⁸⁵ However, if local integration policies do not account for the gender-specific needs of the refugee population, particularly within the context of feminized displacement, efforts related to the economic dimension of integration will be in vain. Often, refugee women have fewer employment opportunities, particularly if they are responsible for young children, and may be compelled to exchange sex

¹⁸² Ken Gavin, *Invisible and Forgotten: Colombian Refugees Seek Recognition and Renewed Dignity in Ecuador*, VOICES, Sept. 2008, at 1, available at <http://www.jrsusa.org/Assets/Publications/File/JRSUSA-RefVoice-Sept08.pdf>.

¹⁸³ BENEFITS OF BELONGING, *supra* note 147, at 7.

¹⁸⁴ UNHCR UPDATED STRATEGY, *supra* note 13, at 8.

¹⁸⁵ BENEFITS OF BELONGING, *supra* note 147, at 7.

for material goods or protection, or sell sex in order to survive.¹⁸⁶ Since UNHCR has identified SGBV as a main protection concern and survival sex is a form of SGBV,¹⁸⁷ the economic dimension of a local integration strategy must recognize and provide for economic escape as a method of protection for vulnerable refugee women. This section provides a framework for a number of economic solutions that can be used to address both the gender-based violence and displacement problems through local integration policies.

The conditions of displacement usually increase economic hardship for women (and men) and raise levels of vulnerability, particularly related to sexual assault against women.¹⁸⁸ Refugees often struggle to secure employment in their countries of asylum, even as skilled professionals, as many find themselves without professional documentation and facing language limitations.¹⁸⁹ For women, this problem is compounded by cultural and gender-based constraints, thus extra attention is needed to support income-generating skills and activities for this vulnerable group.¹⁹⁰ Furthermore, this aids in local integration because having a job enables refugees to become part of and add to the society in which they live, while at the same time changing the perceptions of host communities as they can recognize that refugees are valuable members of society.¹⁹¹

The largest obstacle for the integration of Colombian refugees is the perception that Colombians are competing for limited job opportunities with Ecuadorians. This limits refugees from exercising their right to work.¹⁹² Discrimination against Colombian nationals affects refugee women disproportionately as there are many single mother heads of households unable to find work.¹⁹³ However, policies can be made to address employment concerns and some strategies have seen success.

Studies show that there is a great need to provide support to persons of concern in productive projects and to generate income through employment and micro-credit schemes to enhance self-reliance.¹⁹⁴ UNHCR's microfinance initiative aims to remedy this because having a job enables

¹⁸⁶ UNHCR UPDATED STRATEGY, *supra* note 13, at 16.

¹⁸⁷ *Id.* at 9.

¹⁸⁸ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 85.

¹⁸⁹ BENEFITS OF BELONGING, *supra* note 147, at 20.

¹⁹⁰ JEANNE WARD, IF NOT NOW, WHEN?: ADDRESSING GENDER-BASED VIOLENCE IN REFUGEE, INTERNALLY DISPLACED, AND POST-CONFLICT SETTINGS 11 (Women's Comm'n for Refugee Women and Children and the Int'l Rescue Committee, 2002), *available at* <http://www.rhrc.org/resources/ifnotnow.pdf>.

¹⁹¹ BENEFITS OF BELONGING, *supra* note 147, at 39.

¹⁹² REFUGEE COUNCIL USA REPORT, *supra* note 24, at 4.

¹⁹³ CARITAS INTERNATIONALIS, THE FEMALE FACE OF MIGRATION: BACKGROUND PAPER 13, *available at* <http://www.caritas.org/includes/pdf/backgroundmigration.pdf>.

¹⁹⁴ UNHCR HIGH COMM'R FORUM, *supra* note 167.

women to become part of the social fabric of the community in which they live.¹⁹⁵ UNHCR has also signed agreements with the corporate social responsibility departments of a number of significant food-related and fast food related companies in an effort to increase economic opportunities for refugees.¹⁹⁶ Additionally, community microcredit schemes supporting small businesses enable refugees to become active participants in their new societies and self-reliant members of their new communities.¹⁹⁷

Entrepreneurship coincides with a core objective of local integration: to empower refugee communities to help themselves via successful projects.¹⁹⁸ Revenue-generating community-based organizations (“CBOs”) for refugees serve as social support groups for refugees and provide a mechanism to lobby city, regional, and national authorities on refugee issues and concerns.¹⁹⁹ To help the sustainability of CBOs, Ecuador (with the assistance of UNHCR) can launch a national competition to generate community business ideas that provide employment opportunities for both refugees and Ecuadorians alike. Successful business models would be self-sustaining and profit generating, covering the costs of running the community and refugee support functions of the organizations.²⁰⁰ These innovative economic interventions should be encouraged, supported, and multiplied.

Accounting for these economic vulnerabilities of refugee women and their dependents, the economic dimension of the local integration strategy should focus on the creation of job opportunities for refugee women as a means to protect women refugees from SGBV. However, the outcomes underline the value of the approach, thus equal access to and control of material resources and assistance benefits, as well as women’s equal participation in the decision-making process regarding them, must be reflected in all programs, whether explicitly targeting SGBV or responding to the emergency, recovery or development needs of the population.²⁰¹

¹⁹⁵ HANDBOOK FOR THE PROTECTION OF WOMEN AND GIRLS, *supra* note 106, at 101.

¹⁹⁶ BENEFITS OF BELONGING, *supra* note 147, at 39.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 7.

¹⁹⁹ *Id.* at 21.

²⁰⁰ *Id.* at 20.

²⁰¹ BENEFITS OF BELONGING, *supra* note 147, at 21.

E. *The Social Dimension of Local Integration Can Be Used to Combat SGBV*

The social dimension of local integration utilizes social and cultural frameworks to enable refugees to access educational and social services as well as to be active participants in society.²⁰² However, if local integration policies do not account for the specific gender needs of the refugee population, especially considering the feminized refugee population, policies regarding the social dimension of integration will miss the mark. Accessing services helps develop a sense of social and cultural belonging, which is vital for women subjected to SGBV.²⁰³ Furthermore, developing a sense of social and cultural belonging leads to better social cohesion in the long term.²⁰⁴ Since UNHCR has identified SGBV as a main protection concern, the social dimension of a local integration strategy must recognize and respond to the vulnerabilities refugee women who may have been affected by SGBV.²⁰⁵ This section provides a scheme for several social solutions that can be used to address both the gender-based violence and displacement problems through a gender-focused local integration strategy.

There are only five women's shelters in all of Ecuador that house women whose physical security is in peril.²⁰⁶ In December of 2010, the Ecuadorian government launched a campaign to prevent SGBV on the domestic front, but without a justice system to support it or local government cooperation to enforce it, the campaign will likely fail to improve conditions faced by refugee women.²⁰⁷ While many women and girls suffer from SGBV throughout the refugee experience, such experiences go unreported as there is little awareness about the problem, and few coordinated efforts to prevent abuses and respond when abuses occur.²⁰⁸ Despite the fact that refugee women have been removed from their usual social support systems and regular economic resource bases, and are often emotionally devastated by fear and grief, refugee women are still required to care for the sick, old, disabled, and young.²⁰⁹ Given that the health of migrant populations,

²⁰² *Id.* at 7.

²⁰³ See generally FOOD AND AGRIC. ORG. OF THE U.N., GUIDANCE NOTE: GENDER BASED VIOLENCE AND LIVELIHOOD INTERVENTIONS, available at http://www.fao.org/fileadmin/templates/dimitra/pdf/guidance_note_gbv_livelihoods.pdf.

²⁰⁴ BENEFITS OF BELONGING, *supra* note 147, at 7.

²⁰⁵ Joint Seminar of CEDAW Committee & UNHCR, *supra* note 85.

²⁰⁶ REFUGEE COUNCIL USA REPORT, *supra* note 24, at 9.

²⁰⁷ *Id.*

²⁰⁸ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 11.

²⁰⁹ GUIDELINES ON WOMEN'S EMPOWERMENT, *supra* note 161, para. 30.

including that of care-taking women themselves, is generally poor, this burden is worsened.

Despite these hardships (as well as many others that are beyond the limited scope of this comment), there are projects on the ground that are working. Given that SGBV rates in border areas are higher than the national average and considering that refugee women and girls are at higher risk due to their marginalized status, UNHCR created a radiobroadcasting network to address the situation of refugees living in isolated border areas.²¹⁰ In an effort to raise awareness among Ecuadorians about the thousands of refugees living in their country, UNHCR supported the creation of “El Rio Habla,” a radio slot dedicated to and run by refugees.²¹¹ Refugees broadcast their stories, experiences, and situations in Ecuador in order to sensitize the broader Ecuadorian community on what it means to be a refugee.²¹² Considering that the majority of the refugee population is female, many of the casts discuss SGBV.²¹³ Through this project, it was discovered that host communities and refugees are exposed to similar protection risks, allowing for joint efforts between the populations to demand state action, which may be more effective in capturing authorities’ attention.²¹⁴ This is an example of how social integration and the combatting of SGBV can be implemented hand-in-hand.

Social intervention to increase participation in community development acts as a mode to combat SGBV because it perpetuates inclusion and provides necessary social services for women in need. For example, a strategy that increases the number of women’s shelters at the border region will not only improve the situation for refugee women, it will provide protection for Ecuadorian women suffering from gender-based violence also.²¹⁵ Furthermore, of the shelters in existence in Ecuador, none have adequate facilities to protect and assist unaccompanied refugee youth and as a result, those children were often placed in centers reserved for juveniles who had committed crimes, which furthers their vulnerability.²¹⁶

²¹⁰ UNHCR GENDER EQUAL. UNIT-FIELD PRACTICE SERIES, REFUGEES’ RADIO BROADCAST “EL RIO HABLA”: PUBLIC ATTITUDES TOWARDS REFUGEES-SECURITY-LOCAL INTEGRATION 1 (Aug. 2012), available at <http://www.unhcr.org/refworld/pdfid/504d94f82.pdf>.

²¹¹ *Id.*

²¹² *Id.* at 2.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ UNHCR GENDER EQUAL. UNIT-FIELD PRACTICE SERIES, PROTECTION NETWORK OF WOMEN’S ORGANIZATIONS AND SAFE HOUSES FOR SGBV SURVIVORS: SGBV, SHELTER, ACCESS TO JUSTICE 2 (Aug. 2012), available at <http://www.unhcr.org/refworld/pdfid/504d946d2.pdf>.

²¹⁶ REFUGEE COUNCIL USA REPORT, *supra* note 24, at 10.

A collective response to increase shelters for women, indiscriminate of country of origin would benefit both the refugees and the host community.

Considering all of the social vulnerabilities discussed, the social dimension of the local integration strategy should focus on the creation of leadership opportunities for refugee women. Ecuador has a model system compared to most countries, but like every social system, there are improvements to be made. In order for the smooth integration of Colombian refugees in Ecuadorian society, the social dimension of integration must take the overall positive laws Ecuador possesses and improve upon them with a gender-focused approach. Therefore, if Colombian women refugees were the main beneficiaries of these laws, the social integration of the Colombian refugee population in general would collectively benefit. Ecuador can, working together with UNHCR and other agencies, design and implement community projects with a gender perspective to promote tolerance and create social networks between Colombian refugees and Ecuadorians.

F. Recognizing the Feminization of Displacement is a Vital Step Toward Ensuring the Safety of Refugee Women

Recognizing the feminization of displacement is one important step towards correcting the laws and policies that led to the creation of this phenomenon in the first place. In all, refugee situations have changed, affecting women in specific ways and numbers, requiring that conceptualizations, methodologies, and practices must be reflective of those changes as well as respond to them effectively and justly.²¹⁷ The response that flowed from the recognition of feminized poverty serves as a powerful illustration of the potential for social change that could be gained through similar recognition of feminized forced migration. Through the increased awareness of the feminization of poverty, major policymakers from the World Bank to the heads of the U.S. military's Joint Chiefs of Staff have realized that the most effective way to fight global poverty is focusing policies on women and girls.²¹⁸ In other words, the world began to awaken to a powerful truth: women and girls are not the problem; they are the solution.²¹⁹ Applying this idea to context of forced migration, it is likewise plausible that focusing policies on women and girls can be the most effective way to fight displacement crises.

²¹⁷ NOT BORN A REFUGEE WOMAN, *supra* note 1, at 17.

²¹⁸ Nicholas D. Kristof, *Saving the World's Women: The Women's Crusade*, N.Y. TIMES, Aug. 17, 2009, <http://nytimes.com/2009/08/23/Women-t.html?pagewanted=all>.

²¹⁹ *Id.*

V. CONCLUSION

The displacement crisis at the borders of Colombia and Ecuador presents international policymakers, local governments, the humanitarian community, and the refugee population itself, with a unique opportunity to not only create durable solutions for the displacement crisis, but also to also create durable solutions for the women caught in the horrific cycle of SGBV. Ultimately, the Government of Ecuador determines how its local integration strategy is designed and implemented, but a successful strategy will focus on ending SGBV towards Colombian refugee women in the legal, economic, and social dimensions of integration, bringing clear collective benefits to both the local communities and to the country as a whole. With a commitment to international law and an understanding for the importance of combating SGBV towards women and children, the outcomes of a gender-focused local integration policy for Colombian refugees can be positive. Working together with its partners, Ecuador has the potential to be a model country for the implementation of a local integration strategy that effectively addresses the needs of its feminized displacement population.

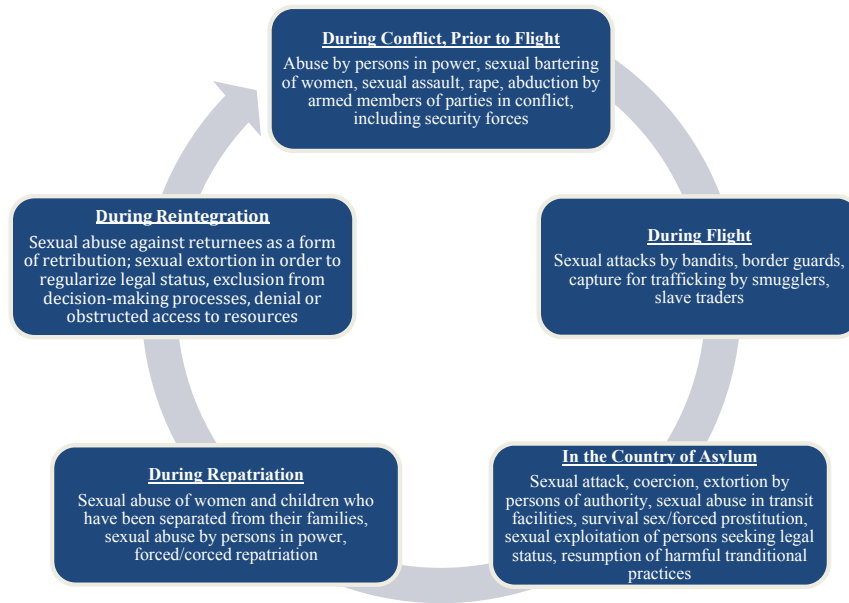
VI. APPENDIX A

1. MAP OF COLOMBIA-ECUADOR BORDER²²⁰



²²⁰ CRISIS GROUP REPORT, *supra* note 17, at 36.

2. SEXUAL AND GENDER-BASED VIOLENCE DURING THE REFUGEE CYCLE²²¹



²²¹ GUIDELINES FOR PREVENTION AND RESPONSE, *supra* note 69, at 20.