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Preliminary Reflections on Irregular Migration and Assistance Policy in Ecuador

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Summary: The Ecuadorian Constitution identifies since 2008, migrants as a new category of need and vulnerability. But rights for refugees are often more rhetoric than reality, so a large number of applications for asylum are denied which causes an immense population of ´irregular` migrants, of which the great majority is from Colombia. These migrants face systematic discrimination in practically all aspects of Ecuadorian institutional life. The article outlines the criteria, procedures, and surrounding conditions of asylum registration, refugee-determination, and regularization of migrants' legal status in Ecuador, with a view to understanding the framework for partial and temporary membership in the nation-state. Furthermore it analyzes the reasons why migrants might decide to remain in a state of "irregularity". The article concludes by arguing that the extent to which the actions of Civil Social Organizations constitute politically progressive engagement with and assistance of forced migrants cannot be considered on socio-political criteria alone; it needs to begin by analyzing how these actions articulate with the constantly evolving legal framework determining migrant status (or lack thereof).

Keywords: Migration, irregular migrants, Ecuador, migrant status

Resumen: *La constitución ecuatoriana identifica desde el año 2008, a los migrantes como una nueva categoría de necesidad y vulnerabilidad. En la práctica los derechos para los refugiados son más retóricos que reales, así es que un alto número de aplicaciones de asilo es negado, causando una inmensa población de migrantes irregulares, la gran mayoría proveniente de Colombia. Estos migrantes enfrentan una discriminación sistemática en prácticamente todos los aspectos de la vida institucional ecuatoriana. Este artículo resume los procedimientos y las condiciones circundantes del registro de asilo, determinación del refugiado, y la regularización del estatus legal de migrantes en Ecuador, con miras a comprender el marco para la afiliación parcial y temporal al Estado-nación. Asimismo analiza las razones por las cuales los migrantes deciden permanecer en el estado de ''irregularidad''. El artículo concluye argumentando que la medida en que las acciones de las organizaciones sociales civiles constituyen un compromiso políticamente progresivo con y la asistencia a los migrantes forzados no puede considerarse sólo por criterios sociopolíticos; debe comenzar analizando cómo estas acciones se articulan con la constante evolución del marco legal que determina el estatus migratorio (o la falta de éste).*

Palabras clave: *Migración, migrantes irregulares, Ecuador, estatus migratorio*

The case of Ecuador stands out due to its liberal or progressive orientation regarding immigration law, especially following the new Ecuadorian Constitution of 2008, which explicitly identifies migrants as a new category of need and vulnerability. However, a large percentage of applications for asylum are denied, and there exists an immense undocumented population. Article 40 of the 2008 Constitution states that: "Se reconoce a las personas el derecho a migrar. No se identificará ni se considerará a ningún ser humano como ilegal por su condición migratoria"[1] (República del Ecuador, 2008). It advances a norm of universal citizenship, and it asserts equality of rights and duties between nationals and foreigners, freedom in terms of movement, right to judicial council, work, health care, and education, among others. The Ecuadorian Constitutional framework on human mobility represents the culmination of civil society groups' migration rights agenda in the years leading up to President Correa's election in 2006. However, the government supported this agenda primarily because large-scale emigration during deep economic crises in the country from 1995 to 2005 became an elec-

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[1] "People´s right to migrate is recognized. No human being will be identified or considered illegal due to their migratory status" (República del Ecuador, 2008, own translation).

tion issue (Margheritis, 2011). The Correa government cast itself as the 'migrant's government' and framed the issue as a national tragedy that was the outcome of the ravages of neoliberal policies of previous governments. It has actively promoted the human rights of migrants, who were portrayed as heroic agents of national reconstruction and development in President Correa's 'Citizenship Revolution' (Ramírez Gallegos, 2014). Non-nationals, by contrast, are often constructed through discourses of national security, and Colombians in particular are often criminalized (Margheritis, 210; also see ACNUR/UASB, 2014).

Hannah Arendt's famous argument (1966) that the realization of human rights is dependent on membership in the political community and hence paradoxically inaccessible to refugees and stateless people for who they are most intended for, might easily be invoked in Ecuador. While emigrants' rights overseas are championed, and they are encouraged to return with incentives – including employment assistance and grants for starting certain kinds of businesses ventures[2] –immigrants' 'right to non-refoulement' is frequently disregarded (CMR, 2012). Moreover, rights for refugees are often more rhetoric than reality. First, like other Latin American countries (Cantor, 2015), Ecuador considers asylum different from refugee status, and although article 41 of the Constitution explicitly enshrines the right to both, in practice only recognizes a right to the former. Moreover, although the article 41 goes on to state that "No se aplicará a las personas solicitantes de asilo o refugio sanciones penales por el hecho de su ingreso o de su permanencia en situación

de irregularidad"[3] (República del Ecuador, 2008), in reality they have been subject arbitrary detentions, deprivations of liberties, stripping of rights, and deportation (ACNUR/UASB, 2014). Finally, there is marked discrepancy between higher level norms within the Constitutional framework on human mobility and more restrictive laws and policies that regulate the right to migrate at a lower level, particularly the Ley de Extranjería (Foreign Nationals Law) and the Ley de Migración (Migration Act), and the considerable powers of interpretation and enforcement afforded to immigration officials, police, and other authorities (Arcentales, 2013; ACNUR/UASB, 2014; CMR, 2012). In short, official 'universal citizenship' is universal only for some, and not others.

One of the consequences of such systemic discrimination is an immense population of 'irregular' migrants[4]. According to the UNHCR, by the end of 2016, there were 53,191 people who had obtained official refugee status, and 11,583 'asylum seekers (pending cases)'. Additionally, there were 68,344 'people in refugee-like situations', but as they are largely 'invisible' to the state and therefore to any reliable national data collecting agency, this number is speculative. These add up to a 'total population of concern' of 133,118 (ACNUR, 2015a), of which the great majority are from Colombia.[5]

The 'invisibility' of irregular migrants is due to their liminality vis-a-vis the structures of nation-states (see Malkki, 1995). Civil Society Organizations (CSOs) would thus seem to be essential to 'reach' irregular migrants where the state cannot, in order to provide them with humanitarian assistance. However, most CSOs thoroughly abide by state norms and thus deny migrants assistance unless they gain legal status. Most CSOs thus extend the work of government directly by leading migrants to asylum registration and refugee determination processes, and more indirectly through social integration programs that have the effect of making them more visible. There are few CSOs and migrant associations that challenge state norms, and shelter irregular migrants from exposure if need be, thus navigating the boundaries of legality.

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[2] These measures were part of Correa's 2008 *Plan Bienvenid@ A Casa: Por un regreso voluntario, digno y sostenible*.

[3] "Asylum-seekers or refugees shall not be subject of criminal sanctions for their entry or staying in irregular situation" (República del Ecuador, 2008, own translation).

[4] I use 'irregular' rather than 'undocumented' migrants, since they usually have documentation, whether from their country of origin, or counterfeit, expired, stolen, rented or borrowed documents, with which migrants can often get by given sparse controls (Cvajner & Sciortino, 2010, p.369; Anderson & Ruhs, 2010, p.176).

[5] Moreover, there is ambiguity in terms of whether to count migrants who are principally seeking to escape poverty rather than violence. In this article I use 'forced migrants' to refer to both, and I reserve the term 'refugee' to its formal usage as a category under Ecuadorian law.

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The article outlines the criteria, procedures, and surrounding conditions of asylum registration, refugee-determination, and regularization of migrants' legal status, with a view to understanding the framework for partial and temporary membership in the nation-state. On the basis of understanding the risks and consequences of regularization, we can begin to analyze why migrants might decide to remain in a state of 'irregularity'. The article concludes by arguing that the extent to which the actions of CSOs constitute politically progressive engagement with and assistance of forced migrants cannot be considered on socio-political criteria alone; it needs to begin by analyzing how these actions articulate with the constantly evolving legal framework determining migrant status (or lack thereof).

Irregular Migration

Irregular migration is a nebulous category: nobody knows how many irregular migrants there are, what range of conditions they live under, or even how to define them. Consider ACNUR's (2016) definition of 'people in refugee-like situations'

> *This category is descriptive in nature and includes groups of persons who are outside their country or territory of origin and who face protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained.*

ACNUR's table representing "Major locations and demographic composition of refugees and people in refugee-like situations, end-2015" (ACNUR, 2015b), Ecuador is listed as follows:

Type of Location: Various/Unknown
Type of accommodation: Undefined (unknown)
Name of location: Dispersed in the country/territory

In September 2008, the Ministerio de Relaciones Exteriores, Comercio e Integración, Dirección General de Refugiados (Ministry of Foreign Affairs, Trade and Integration, General Directorate of Refugees) released a key document, "Política del Ecuador en Materia de Refugio" (Ecuador´s Refuge Policy), which announced a new asylum policy aimed at addressing forced migration within a human rights framework. It recognized the large numbers of

> *Refugiados llamados 'invisibles'; es decir, personas que por limitaciones económicas, por desconocimiento o por desconfianza, a causa de las experiencias vividas en su país de origen, nunca se han presentado ante las autoridades del Ecuador para regularizar su situación migratoria (Ministerio de Relaciones Exteriores, Comercio e Integración, Dirección General de Refugiados, 2008).*[6]

The document proposes to deal with 'invisible migrants' by expediting the asylum claims process.

From these definitions, we can already see a common basic assumption that the nation-state is the natural category organizing human membership, and that an officially authorized identity is necessary to being part of the political community. It follows that the state is the source of the remedy: it should assign an identity to 'refugees' – which is to say, aliens officially recognized as such. International agencies and civil society organizations, and many scholars, become complicit in this operation when they refer to irregular migrants as in essence a remainder population beyond the reach of the law, thus implicitly naturalizing the nation-state. It appears to follow that the rights of refugees ought to be recognized through a course of regularization. Indeed, for many migrants this may be strategically the best option, but as I shall suggest, not necessarily for all. As an exteriorized mass, irregular migrants then quickly become an 'it' in political and public discourses, a group to which is attached other attributes – most typically, a mass of victims and criminals – that reflect both fear and sympathy.

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[6] "Refugees, called ´invisibles`, meaning people who, because of financial limitations, lack of knowledge or trust, due to living experiences in their home countries, have never reported to the Ecuadorian authorities to regularize their migratory status" (Ministerio de Relaciones Exteriores, Comercio e Integración, Dirección General de Refugiados, 2008, own translation).

Questions of how many undocumented, and who and where they are, are of course not left completely unanswered. They are problematized, subject to knowledge-production processes –statistical and otherwise– and on this basis made targets of a series of interventions and practices of government. Indeed, the very issue of invisibility can be seen as a problem of data collection, a state of affairs that results from

la dispersión institucional en el ámbito de movilidad humana, lo que ocasiona que los diferentes sistemas informáticas de registro y recolección de datos no mantengan coordinación en la generación de estadísticas y, por el contrario, enfrentan limitaciones en la cuantificación de población que ingresa, permanece y sale del país[7] (CMR, 2012:19).

Social science then finds its pride of place in generating the kind of knowledge necessary for enlightened social policy. But from another angle, irregularity is to be 'found' in the world only to the extent that it is produced, and systemic difficulties relating to data collection are in a sense a component of this very process of production – they result from the tangle of categories by which the state differentially and partially incorporates non-citizens into its body politic. Irregular migration appears as the scarcely visible byproduct of this 'system'.

If an 'irregular migrant' is "a migrant who, at some point in his migration, has contravened the rules of entry or residence" (Trianfdafyllidou, 2016:3), analytically the term describes a particular kind of relationship of an individual to a state and its laws – nothing more. To advance understanding of irregularity beyond description, it is first necessary to understand shifting norms and criteria operative in different regularization processes, and the set of interventions by state

and non-state actors that are directly meant to implement the law. This is the infrastructure for the production of categories – a range of regular and irregular migration statuses – that later come to seem as things-in-themselves. Given this order of priority, wider socio-legal implications and social constructions of regularity and irregularity is a subject only touched on this paper.

Law and forced migration in Ecuador

Publications and theses on forced migration in Ecuador refer to a number of motivations for migrants failing to register, including fear of Colombian armed groups operating on Ecuadorian soil. In the first place, they fear being discovered and pursued by irregular armed groups from Colombia operating on Ecuadorian soil (especially in the northern provinces close to the border, but also farther down, in the south) (Espinosa, 2008). Also, while the migratory process is ongoing, refugees mostly obtain very little knowledge of Ecuadorian law and their rights, and even if they do, most refugees find it impossible to make the necessary preparations and pay to travel to urban centers where the Dirección de Refugio (Refugee Department) and ACNUR offices are located, in order to present their documents on time.

Irregularity more fundamentally results from the complexity and increasing restrictiveness of regularization processes, coupled with patterns of social discrimination and xenophobia (Benavidez & Chavez, 2009; CMR, 2015). There is a multi-step process to obtain legal recognition as a refugee. Once the displaced person has crossed the border, they have only fifteen days to register as an applicant and acquire their applicant's ID (carné de solicitante). This must be renewed after six months if no decision has been made regarding their request (the requests usually take six months to a year, sometimes more, to be resolved) (US Dept of State, 2013:17). Once they have completed the application process, asylum seekers do not yet receive a refugee visa, which can also be taken away at any time. The visa must be renewed every two years, at a cost that is often too high for refugees

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[7] "Institutional dispersion in the in the human mobility area, which causes that the different registry and data collection computer systems do not maintain coordination in the statistics creation and, on the contrary, face limitations in the quantification of population that enters, remains and Leave the country" (CMR, 2012:19, own translation).

with little means to pay to travel to La Dirección General de Refugiados del Ministerio de Relaciones Exteriores y Movilidad Humana (The Refugee Department of the Ministry of Foreign Affairs, Trade and Integration), where claims are to be processed. The Ministry has exclusive discretion over "granting the status of asylum or refugee and issuing the corresponding visas" (EL TELÉGRAFO, 2016, 19 June, own translation). It is then possible to become permanent residents and citizens after three years with official refugee status, although the process is exceedingly lengthy and costly, so that very few succeed.

Given that the refusal rate for applications continues to be high, many refugees do not apply for fear of being deported. Those whose applications have been rejected (the negados) generally remain in Ecuador, although "under the radar" of the state. And on the other hand, those asylum applicants who have been registered, holders of refugee visas, and even refugees who have obtained official status are "marked" and are thus exposed to the prejudices of Ecuadorians (Benavides & Chávez, 2009:74).

For this reason, significant numbers of people with refugee status let it expire or renounce it, complaining that they are stigmatized, and that employers and landlords reject them on the basis of their identification. Indigenous- and Afro-Colombians are most discriminated against, and thus may be more likely to avoid visibility to state institutions and particularly the police. They are also more likely to be impoverished and thus in need of basic assistance, and more often live in remote areas, lack the necessary documentation for registering, and do not have sufficient knowledge about seeking asylum and its possible benefits (McGrath, 2011:6).

More generally, it needs to be taken into account that asylum-seekers and recognized refugees are faced with many obstacles, not only to formally obtain legal recognition, but also to exercise the rights they are legally entitled to. Arcentales attributes this to a discrepancy between the highly progressive rights and principles set out in the Constitution and more restrictive norms that are operative at lower levels, beginning with the Aliens Act and the Migration Act, which date back to the 1970s (Arcentales, 2013). These reduce immigration to a security problem, and tend to criminalize refugees. Institutionally, migration control remains an exclusive jurisdiction of the Executive, while Immigration Officials and Police are empowered with extensive measures to carry out functions of control, including immigration detention, arbitrary deportation and exclusion (refusal of admission to national territory) (ACNUR/UASB,2014). More generally, the majority of Colombian forced migrants are faced with economic and social exclusion, together with the local of housing, employment and education, and widespread xenophobia in both the press and public opinion. Although UNHCR-Ecuador and associated CSOs have undertaken awareness-raising campaigns about who 'refugees' are and the difficulties they face, this has been dwarfed by a barrage of negative messages in the media about Colombians in particular as the source of violent crime (Salcedo, 1994:116, 124-126). Colombian women suffer sexual stereotyping, and all the more if they are darker in complexion (Camacho, 2005). In sum, the degree of social acceptance or discrimination of migrants at any point may also affect the extent to which migrants may be encouraged or dissuaded from pursuing legal status.

More fundamentally, the parameters of irregularity shift over time in accordance with criteria for various legal statuses available to migrants, and changing regularization procedures. The next section illustrates this with a brief overview of a dramatic restrictive turn in immigration policy that occurred after the passing of the Constitution.

Changing Parameters of irregularity

The expansion of legal rights through the Constitution of 2008 is in accord with the provisions of the Cartagena Declaration of 1984, which covers cases of generalized violence and persecution. In March 2009, the government committed to optimizing the registration process of possible asylum

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applicants along the northern border through its program Registro Ampliado, which consisted in sending 50 civil servants from the GDR (Rural Dialogue Group or Grupo Diálogo Rural) in the form of mobile teams. Primarily they were looking for undocumented migrants, but also asylum-seekers awaiting a decision on their claims, and those with rejected claims under the previous, more restricted criteria. These were then processed and registered without delay.

The intensification of regularization processes in the borderlands between Ecuador and Colombia followed upon the cross-border raid by the Colombian military that killed Raúl Reyes of the FARC on 1 March 2008, which caused a crisis in Ecuador-Colombia relations and led to increased military funding by the Ecuadorian government to establish control of the border region (Jaramillo, 2009). The border region is where the greatest proportion of irregular migrants is, and where they often live in the most acute conditions of precarity.

The program was heavily supported by the UNHCR, which covered most of the cost and provided much logistical and material support (McGrath, 2011, p.1). In the year the project was carried out in each place, registration numbers increased dramatically from 4,435 asylum claims recognized in 2008 to 27,740 in the year that the program ran between 2009 and 2010. However, after the program was discontinued, rates fell dramatically to 2,624 in 2011 (Feinstein, 2012, p.9). Whereas these and other measures have "creado un 'punto de entrada' a un sistema de garantías de los derechos humanos y protecciones legales para una población de alta vulnerabilidad y marginalizada" (McGrath, 2011, p.1), the conditions of many refugees did not improve, given the continuity effect on the confluence of social prejudice, economic exclusion and systematic discrimination in practically all aspects of Ecuadorian institutional life.

But it was followed by an acute decrease through Presidential Decree 1182, adopted on May 30, 2012. This decree treats asylum processes, and takes up the orientation of the Genoa Convention which requires individual persecution evidence and establishes the fulfillment of a series of exigencies to obtain the refugee status. Articles 24 and 25 thus establish a preliminary "admissibility process" where asylum applications can be screened before any interview with the applicant even takes place for being "manifestly unfounded", that is, for being extraneous to current definitions of refugee, or "abusive" in the sense of having some fraudulent aspect. These procedures have the effect of limiting "the admission of asylum claimants to substantive status determination measures" (Cantor, 2015:201), and have resulted in a high number of exclusions of claims. The Decree also establishes that with evidence of having committed serious crimes in Ecuador, the asylum-seeker can be immediately deported, but further that even in the absence of such evidence, claims can be dismissed on suspicion of having committed crimes in Ecuador. Finally, the article 3 of the Decree allows for only three days to appeal a decision on the inadmissibility of a claim.

Thus, the decree largely restricts access to asylum, resulting in the denial of 30% to 40% of the admissibility of asylum applications by Colombians. According to ACNUR, following the implementation of the new decree's measures, the rejection rate for refugee applications reached as high as 94% - when previously it had been as low as 10 to 20% (UNHCR cited in US Dept. of State, 2013). CODHES estimates that in 2014, only 4,06 % of claims for refugee status were recognized (CODHES, 2016). Arcentales (2013, p.280) documents significant increase in deportations between 2010 and 2012, mainly applying to Colombians.

The progressiveness of a politics based on regularization are to be judged according to how open or restrictive the terms are for obtaining legal standing as an asylum-seeker or refugee, and by the extent of rights a migrant might be expected to realize as an outcome of the process. Policies of ACNUR, or CSOs like its partner, Hebrew Immigrant Aid Society (HIAS), to extend access to refuge, services and rights-defense only on condition that migrants become regularized, appears less regressive during the period of wide registration under Cartagena guidelines than subsequently after Decree 1182.

Politics of intervention

The first line of state intervention is to bring people into the legal sphere, and the last is coercion via the police and military forces, directed primarily at people who do not enter the asylum process, and who are subject to detainment, exclusion, and deportation, if not elimination by forces acting beyond the law. Humanitarian agencies working under an apolitical guise operate in between these poles, abetting registration and status determination efforts, on the one hand, and providing assistance in conditions of extreme precarity, and a measure of protection from violent threat, on the other.

We consider ACNUR, the main agency responsible for applying human rights with regards to the "refugees". Although organizations that work with refugees and migrants provide essential services in often desperate situation, it should also be noted that from the perspective of the state, it acts in the majority of cases to extend the functions of legal domination when it assumes an uncritical role in the expanding of legal legibility. Accelerated procedures such as that brought into effect by the Presidential Decree, are endorsed by the UNHCR, as they bear out the 1983 UNHCR Executive Committee Conclusion no. 30, which promotes such procedures to deal with scores of 'manifestly unfounded or abusive' applications for asylum (Cantor, 2015:199-200). ACNUR's approach in Ecuador, which currently closely reflects the objectives of the *Plan Nacional del Buen Vivir, 2013-1017*, seeks to promote the rule of law by assisting in processes of registration and refugee-determination, and "strengthen[ing] the right to asylum through advocacy for public policy, legislation and administrative practices in order to improve access to fair and efficient procedures, guarantee documentation and legal status, and ensuring that the specific needs of particularly vulnerable groups are mainstreamed into strategies and policies" (ACNUR, 2016:11). But from another angle, this can be seen to actively deny rights to irregular migrants by entrenching state criteria for incorporation, and thereby exclusion.

Certainly, it is important to recognize the vital role that ACNUR has played over three decades in extending rights and protections to refugees in Latin American states, and in encouraging these to increasingly move beyond policy towards formalization in law (Cantor, 2015:196). Nonetheless, however strong the argument appears that asylum-seeker and refugee status is necessary for obtaining basic rights and social services, this generalization fails to consider the risks associated with becoming visible to an increasingly securitized state and frequently hostile society, particularly for marginalized groups (women, indigenous people, and Afro-descendent people). After the retrogression of Decree 1182 to the Geneva Convention, the possibility of obtaining refuge becomes tightly linked to the provable persecution in a migrant's country of origin. Moreover, it is important to recognize that registration amounts to an extension of rights that remain partial, selective, and temporary.

Like ACNUR, the organizations it works with only deal with asylum seekers, or migrants that have some other kind of legal status, at least in principle. It is taken for granted that the only rational route to accessing rights is regularization of legal status. The order of priority is thus established: first one must get official documentation, and then one can integrate socially. Recognizing the limitations of the official regularization process, ACNUR and other CSOs have encouraged migrants whose claims had been rejected to opt for another type of visa (ACNUR, 2016b). The most common are the Visa de Amparo, for foreigners who have immediate family members (children, parents, siblings, grandparents, grandchildren), a spouse, partner in de facto union, or in-laws who are Ecuadorian nationals, and the Visa de Mercosur, the common visa for those whose country of origin is Argentina, Brazil, Uruguay, Paraguay, Bolivia, Chile, Colombia or Peru, and allows for a stay of two years after which one is able to apply for permanent residence. However, many migrants cannot demonstrate the necessary level of economic self-sufficiency to renew their visa or to qualify for permanent residence. More generally, finding alternatives to asylum-seeker or refugee status has the effect of minimizing the extent of the crisis in forced migration, thus playing into the government's current denialist tendencies.

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What, then, are the alternatives? I will mention two. First, some advocacy organizations have very effectively worked towards reform of the system of regularization itself. Particularly notable is Asylum Access (AAE), a US-based CSO that provides legal assistance to individual refugees. As a legal clinic, it encourages some form of regularization, but takes a sympathetic stance toward irregular migrants by strategically employing existing positive law towards the realization of human rights-based outcomes. It also engages in strategic litigation, as in a successful challenge to the constitutionality of Decree 1182. The resulting September 2014 ruling forced a number of crucial changes to the terms of the Decree's application, among other modifications, even extended the asylum application period from 15 days to three months (AAE, 2014). The Decree did include some improvements for recognized refugees, who now only had to renew documents biannually rather than annually, and whose right to obtain employment was affirmed – although in practice this was not upheld due to the documentary requirements for establishing work contracts (Arcentales, 2013, p.279). Typically employers and service providers demand the Ecuadorian national identity card (ACNUR, 2015c, p.10). In this way, governmental, private, and citizens' actions actively restrict basic rights at the local level.

A second alternative to ACNUR's statist approach is exemplified by Misión Scalabriniana (MS), a Catholic organization linked with the Congregation of Scalabrinian Missionary Sisters, which assists people in conditions of extreme vulnerability, inspired by the charism, "to be a migrant with the migrants". In Ecuador it focuses on 'refugees', which it defines as including irregular migrants. Its livelihoods program consists of providing funds, credit, and training to migrants in various subjects, including self-saving, social economy, and gender. In addition to basic material and psychological support, MS facilitates the formation and strengthening of associations and organizations among migrants (MS, 2015). It also provides legal assistance to those who need to be defended in light of irregularities in the law's application', and facilitates irregular migrants' entry into the education system and their access to health care. Crucially, irregular migrants are not required to register or become visible to the state to obtain assistance; MS will shelter irregular migrants from exposure if need be. Thus MS workers to a certain extent accompany migrants in navigating the line between the legal and the non-legal in their work (Koser, 2010, p.191). It is because the organization is religious that they are able to enter neighborhoods and areas where there are a high percentage of irregular migrants –sometimes at considerable personal risk– and that this work is tolerated by the state.

The common charge by scholars drawing on critical theory that humanitarian agencies 'depoliticize' the issue of forced migration would be rather misplaced for MS. Although its work consists of social support in the first instance, the political significance of this should not be underestimated. Because forced migrants marginally benefit from state mechanisms of social support, if at all, they need to rely on informal social networks to the extent that they are able to, in order to survive. This is especially significant for irregular migrants. Remaining 'invisible' is facilitated by the large informal economy in Ecuador, which provides space for gaining a livelihood outside of formal employment, and establishing associational ties not mediated by state institutions. Supporting social networks, both among forced migrants and between them and citizens, is thus vitally important work for CSOs, in part because these are not political in any obvious sense, and therefore offer a measure of protection from the state and police. At the same time, MS does support the formation of migrant associations that actively mobilize for rights regardless of status. By contrast, CSOs that need to have support of the state to operate, and major funding agencies – especially ACNUR – actively exclude the most vulnerable category of migrants – those who decide to remain irregular.

Of course the work of an organization such as MS has a limited reach and scope. But it points to the key question of forced migrants' associational life, and in particular the extent to which irregular migrants have recourse to mechanisms of informal social support and

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partake in indirect forms of political agency. What are the particular local conditions for such associational activity, and how might it be supported by organizations, lawyers, and activists seeking not merely to provide assistance, but more fundamentally to support and participate in mobilizations for migrants human rights? A crucial further question is how future research on this question might be undertaken without compromising forced migrants' security and capacity for agency – particularly those who remain in an irregular state?

Conclusion

While some formal rights of asylum-seekers and recognized refugees have been promoted in the last few years in Ecuador, the criteria for obtaining and maintaining legal status have been tightened – even as the flow of immigration continues apace. Both asylum-seeker and refugee statuses can be easily revoked, while full naturalization often seems out of reach. Nonetheless, thus far migrants have shown little interest in returning to Colombia, despite the recent negotiations of peace accords and the ongoing process of FARC demobilization (ACNUR, 2016a). The prospect of voluntary return might be seen to have been promoted by the low rate of acceptance of claims for refugee status, the recent downturn in the Ecuadorian economy, and the national government's prioritization of humanitarian aid and reconstruction in the wake of the earthquake (CODHES, 2016). However, thus far there has been negligible voluntary repatriation, leading the UNHCR (ACNUR 2014, 2016) to acknowledge the limitations of a strictly humanitarian approach and instead work towards developing a comprehensive local integration program (Gottwald, 2016). However, the UNHCR's budget is minimal by comparison to the scale of need, not to mention being dwarfed by military budgets at the source of the conflict (Korovkin, 2008), and given widespread and pervasive discrimination and xenophobia, these initiatives still appear palliative.

As necessary as regularization appears to be to address the rightlessness of migrants, in and of itself, it is inadequate because 'the problem' of irregularity is itself produced in the first instance by government and law. As long as social assistance and humanitarianism are conceived of as supplementing state intervention, and as long as it is made conditional on migrants' obtaining legal status, it risks ultimately undermining human rights – particularly during times when immigration policies and laws are more restrictive. Migrants' often dire situation of need and precarity is a function of their definition as exceptional populations, and providing services and support on the basis of formalizing this definition as a legal status is to impose a condition of continued marginality and exclusion. Coming up with effective strategies for supporting and assisting forced migrants needs to begin by recognizing their agency, and by considering how to foster social and political conditions for expanded their possibilities of agency. This involves rights-based advocacy to transform the immigration system in a progressive direction, but also requires supporting irregular migrants' abilities to establish forms of local social membership that protects them from the vagaries of non-legal status. However, this is difficult to achieve given that CSO's 'license' to operate ultimately comes from government. Particularly where regressive laws, policies and practices apply, genuine rights-based intervention requires working on the margins of existing positive laws and policies, if not beyond them.

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Problemas Contemporáneos