

Action Points from Migration in the Framework of National Security and Defense

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Action Points from Migration in the Framework of National Security and Defense*

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Abstract

Migration anywhere in the world generates a risk for national security and defense. This situation should not be confused with xenophobic and malicious discourse; rather, it should be seen as an opportunity to identify problem areas that need to be addressed. The aim of this article is to argue why risk factors brought by immigration should be considered in the national agenda, with the intention of allowing a transformation towards safe mechanisms for the neutralization of such risks. For this purpose, a qualitative analysis of documentary sources is carried out. It is concluded that migrations should be addressed from a differential perspective of inclusion as an impulse for development, as a contributor to economic growth and as a leverage mechanism for the receiving country, contributing to both immigrants and hosts.

Keywords: migration, national defense, security, universal citizenship.

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Puntos de acción desde la migración en el marco de la seguridad y defensa nacional

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Resumen

La migración en cualquier parte del mundo genera un riesgo para la seguridad y defensa nacional. Esta situación no debe confundirse con el discurso xenófobo y malicioso; más bien, debe verse como una oportunidad para identificar áreas problemáticas que han de abordar. El objetivo de este artículo es argumentar por qué los factores de riesgo traídos por la inmigración deben ser considerados en la agenda nacional, con la intención de permitir una transformación hacia mecanismos seguros para la neutralización de tales riesgos. Para ello, se realiza un análisis cualitativo de las fuentes documentales. Se concluye que las migraciones deben abordarse desde una perspectiva diferencial de inclusión, como impulso para el desarrollo, como contribuyente al crecimiento económico y como mecanismo de apalancamiento para el país receptor, de modo que contribuya tanto a los inmigrantes como a los anfitriones.

Palabras clave: migración, defensa nacional, seguridad, ciudadanía universal.

Introduction

One of the biggest challenges facing democracies in Latin America in terms of human displacement as a result of failed governments is that of irregular migration and the massive migration flows from certain countries.¹ This has been taking place as consequence from constitutional changes,² like those of Ecuador in 2008, or from regimes that are entrenched in power, like Venezuela. Different problems related to the social economic and inequity, lack of access to justice, deficient health and education services³ have served, as a whole, into constituting a threat to national security and defense. The factors are twofold: on the one hand, the massive departures of citizens and, on the other hand, the reception they receive from authorities and nationals. To delimit the focus of action, we propose a study from the national perspective of Colombia, where complex phenomena are present due to its nature as a country of origin of migrants and transit; towards becoming a host and destination country. This article will highlight as relevant the following focus phenomena, i) smuggling of migrants, ii) increase in the migratory flow due to factors such as the constitutional change of Ecuador with the inclusion of Universal Citizenship as a principle and fundamental right of the neighboring country and iii) the geostrategic position of Colombia and the articulation of the Americas and national⁴ interests. Likewise, the incidence of migrations in the crime of Human Trafficking will be related.

One of the focuses that has marked Colombian sovereignty, as well as the increase in security and defense risks, is the fraudulent obtention of Colombian nationality. Through the normative components, the door has been left open for individuals related

¹ Gabriel Andrés Arévalo Robles, Fernanda Navas-Camargo and Lady Andrea Beltrán Cárdenas, “La suspensión excepcional de la dignidad humana: migración intrarregional sudamericana en clave de estigmatización,” *Derecho Penal y Criminología* 43, no. 115 (2022): 73-110, <https://doi.org/10.18601/01210483.v43n115.03>.

² Jaime Cubides-Cárdenas, Fernanda Navas-Camargo and Laura Milena González Montes, “El Nuevo Constitucionalismo Latinoamericano,” *Direitos Democráticos & Estado Moderno*, no. 2 (2021): 03-14, <https://revistas.pucsp.br/index.php/DDEM/article/view/54285>.

³ Fernanda Navas-Camargo, Jaime Cubides-Cárdenas and Jesús Enrique Caldera Ynfante, “Human Rights encouragement through peaceful resistance initiatives in rural Bogotá,” *Opción* 34, Special no. 18 (2018): 2102-2126, <https://www.produccioncientificaluz.org/index.php/opcion/article/view/24007>. Fernanda Navas-Camargo, “Justicia cognitiva y divergencia social. Resistencia pacífica a través del turismo comunitario,” *Revista Latinoamericana de Sociología Jurídica*, no. 1, (2020): 156-182, <https://usi.edu.ar/publicacion-archivos/numero-1-completo-revista-latinoamericana-de-sociologia-juridica/>. Germán Silva García and Bernardo Pérez Salazar, “El papel de la investigación en la educación jurídica: un problema de poder y colonialidad,” *Revista de Pedagogía Universitaria y Didáctica del Derecho* 8, no. 2 (2021): 61-80, <https://doi.org/10.5354/0719-5885.2021.61453>.

⁴ Saul Bernard Cohen, *Geopolitics: the geography of international relations*. (New York: Rowman & Littlefield, 2009), 163.

to criminal acts⁵ to obtain Colombian nationality expeditiously. This conjunctural gap of the country with respect to remote areas and to people without national registration has become a feature for exploitation, through which people of various nationalities have obtained Colombian documents without fulfilling the requirements established by the Colombian Political Constitution (1991) in its article 96.⁶ However, it is important to specify that the organization of criminal groups,⁷ which in some cases can be inferred to be transnational organizations, have permeated institutions such as the Registrars and Notaries, who, as interveners in the process of registration of natural persons, have been targeted, generating a serious impact on the integrity of their Human Rights.⁸ According to what was stated by one of the directors of the National Registry of the Civil Service⁹ they have managed to detect over 42,000 records obtained irregularly between 2010 and 2022. These irregularities from the formal, as stated in the Statute of the Registry of the Civil Status of Persons,¹⁰ occur because these records do not contain truthful information and are not properly identified. This is due, among other reasons, to the inadequate protocol of support currently in place

⁵ Germán Silva García and Bernardo Pérez Salazar, “El papel de la investigación,” 61-80.

⁶ “The following are Colombian nationals: 1. By birth, Children of a Colombian father or mother who were born in a foreign land and later domiciled in Colombian territory or registered with a consular office of the Republic. 2. By adoption: (a) Foreigners who apply for and obtain a naturalization letter. (b) Latin American and Caribbean nationals by birth domiciled in Colombia, who, with the authorization of the Government and in accordance with the law and the principle of reciprocity, request to be registered as Colombians with the municipality where they are established; (c) Members of indigenous peoples who share border territories, applying the principle of reciprocity according to public treaties.” Colombia, *Constitución Política* (Bogotá: Gaceta Constitucional n.º 114, July 4, 1991), art. 96.

⁷ Germán Silva García and Johana Barreto Montoya, “Avatares de la criminalidad de cuellos blanco transnacional,” *Revista Científica General José María Córdova* 20, no. 39 (2022): 609-629, <https://doi.org/10.21830/19006586.1042>.

⁸ Fernanda Navas-Camargo and Myriam Sepúlveda López, “The great distance between the written and the living constitution for migrants and refugees in the Mediterranean territory,” *Journal of Mediterranean Knowledge - JMK* 3, no. 2 (2018): 123-139, <https://doi.org/10.26409/2018JMK3.2.02>. Cesar Castillo Dussán, Fernanda Navas-Camargo and Jaime Cubides-Cárdenas. “Reflexiones en torno a la cotidianidad e integralidad de los Derechos Humanos.” *Novum Jus* 16, no. 1 (2022): 23-50, <https://doi.org/10.14718/NovumJus.2022.16.1.2>. Cesar Castillo Dussán, Fernanda Navas-Camargo and Jaime Cubides-Cárdenas. “Reflexiones en torno a la cotidianidad e integralidad de los Derechos Humanos.” *Novum Jus* 16, no. 1 (2022): 23-50, <https://doi.org/10.14718/NovumJus.2022.16.1.2>. Fernanda Navas-Camargo, Jaime Cubides-Cárdenas and Jesús Enrique Caldera Ynfante, “Human Rights encouragement,” 2102-2126.

⁹ Rodrigo Pérez Monroy (national director of the Civil Registry of the National Registry of Civil Status since 2021), Information expressed in a meeting between this official and a Migration official of the Judicial Police.

¹⁰ “Invalid registrations: From the formal point of view, registrations are null and void: 1. When the official acts outside the territorial limits of his competence. 2. When the participants have not approved the text of the registration. 3. Where the date and place of approval or the legal name of the official do not appear. 4. When the identification of the grantors or witnesses, or the signature of those or these, is not duly established. 5. When there are no necessary documents such as budgets for registration or alteration or cancellation thereof.” Colombia, Presidency of the Republic, *Decreto 1260 de 1970*, “Por el cual se expide el estatuto del estado civil de las personas,” (Bogotá: *Diario Oficial* n.º 33.118, August 5, 1970), art. 104.

and to the fact that the officials who must authorize the registrations do not subscribe formal causes. It should be noted that these records have multiplied because the acquisition of one enables the holder to expedite the registration of multiple others: for example, if the grandfather of a family manages to obtain Colombian registration (nationality), his children, grandchildren and future offspring will have the right to obtain registration and the entailed “right” to obtain Colombian nationality, derived from the irregularity of the first registration. There is information from Colombian intelligence groups, published in the national press,¹¹ reporting that terrorist groups such as Hezbollah walk in Colombia with irregularly obtained IDs. Situations like this have led to increase the feeling on the general population that every immigrant person has a hidden negative agenda against the national security of the country.¹² There are also serious indications of citizens of other nationalities who have managed to obtain Colombian nationality fraudulently for the purpose of espionage and activities to disturb public order, even considering the use of private security enterprises as a means of power.¹³

Another topic of interest is that of the transformation of the migratory administrative activity in Colombia, which transited from being an intelligence agency towards the creation of a totally new delegation created under pillars of security, service and innovation: “the function of migration control will also be strengthened through the creation of a specialized body, for the sake of *better management, coverage and results*, including the prevention of transnational crimes and the search for mechanisms for international cooperation. This is considering that *immigration control is the first line of defense of a country*.”¹⁴ The creation of a migratory entity with a specialized character (also with a technological, safe and serving approach) that tends to the protection of human rights from constitutionality was promoted¹⁵ and allowed a transformation where the first line of defense has gone to the background, leaving aside effectiveness and immediacy as pillars in favor of defense and national security.

¹¹ El Heraldo, “Fichas de Hezbolá ‘pasean’ por Colombia con cédulas falsas,” *El Heraldo*, May 24, 2021, <https://www.elheraldo.co/colombia/fichas-de-hezbola-pasean-por-colombia-con-cedulas-falsas-819708>.

¹² Gabriel Andrés Arévalo Robles, Fernanda Navas-Camargo, and Lady Andrea Beltrán Cárdenas. “La suspensión excepcional,” 73-110.

¹³ Mario Uruña Sánchez, “La percepción de las élites políticas y la predilección por las formas privadas de violencia: de los mercenarios a las compañías militares de seguridad privada,” *Revista de Relaciones Internacionales, Estrategia y Seguridad*, 12, no. 2 (2017): 67-89, <https://revistas.unimilitar.edu.co/index.php/ries/article/view/2742/>.

¹⁴ Colombia, National Planning Department, *Bases del Plan Nacional de Desarrollo 2010-2014: Prosperidad para todos* (Bogotá, Departamento Nacional de Planeación, 2011), 397. <https://www.dnp.gov.co/plan-nacional-desarrollo/Paginas/prosperidad-para-todos-2010-2014-juan-manuel-santos.aspx>.

¹⁵ Germán Silva García and Laura Gamarra. “The Protection of Human Rights from a Constitutional Approach,” *Novum Jus* 13, no. 2 (2019): 11–13, <https://doi.org/10.14718/NovumJus.2019.13.2.1>.

The above understanding that institutions are the history objectified in things and provisions of high degree of stability.¹⁶

After overcoming the complex decade of the 90s, the stigmatization of Colombians abroad for issues of violence and drug trafficking has been mitigated. This was partly thanks to the fulfillment of the commitments acquired in the fight against drugs,¹⁷ which has allowed certain procedures that allow nationals to access more territories without the need for the issuance of a visa.

Starting from the premise “migration generates a risk for national security and defense,” this article intends to generate an academic debate on the possible that result from irregular migratory movements in the national territory. Its findings allow the inference of some recommendations that can help in complying with the agenda of the Sustainable Development Goals and, especially, with the Global Compact for Safe, Orderly and Regular Migration.¹⁸

Migrant Smuggling and its Impact on Regulatory Changes in the Region for Security and Defense in Colombia

There is a big difference between the transnational organized crimes of Migrant Smuggling and Human Trafficking.¹⁹ Even though they are framed in the same context, their purposes and impact are always different.

The clear identification of the particularities of each has an impact among the authorities themselves, who often fail to establish a strategic plan that allows them to make the best decisions in order to prevent, investigate or mitigate this type of scourge.²⁰ The following table of differences and similarities is presented for a better understanding:

¹⁶ Luis Felipe Dávila *et al*, “Violencia Simbólica: Revisión De Los Estudios Que Acuñan El Concepto En América Latina (2009-2019),” *Novum Jus* 14, no. 2 (2020): 45-82. <https://doi.org/10.14718/NovumJus.2020.14.2.3>.

¹⁷ Manuel Bermúdez Tapia and Paola Alexandra Sierra-Zamora. “La incidencia del narcotráfico en las altas esferas del gobierno peruano” *Novum Jus* 15, no. 2 (2021): 259-293. <https://novumjus.ucatolica.edu.co/article/view/3403/3871>.

¹⁸ United Nations, General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, January 11, 2019. <https://www.iom.int/resources/global-compact-safe-orderly-and-regular-migration/res/73/195>.

¹⁹ Darío Enrique Cortés Castillo, “Crimen transnacional organizado: las organizaciones del narcotráfico mexicano en Colombia,” *Novum Jus* 14, no. 2 (2020): 123 – 146, <https://doi.org/10.14718/NovumJus.2020.14.2.6>.

²⁰ Sebastian Polo Alvis, Enrique Serrano López and Laura Manrique Lara, “Panorama de la frontera entre Colombia y Panamá: Migratorias e ilegalidad en El Darién,” *Novum Jus* 13, no. 1 (2019): 17-43, <https://doi.org/10.14718/NovumJus.2019.13.1.2>.

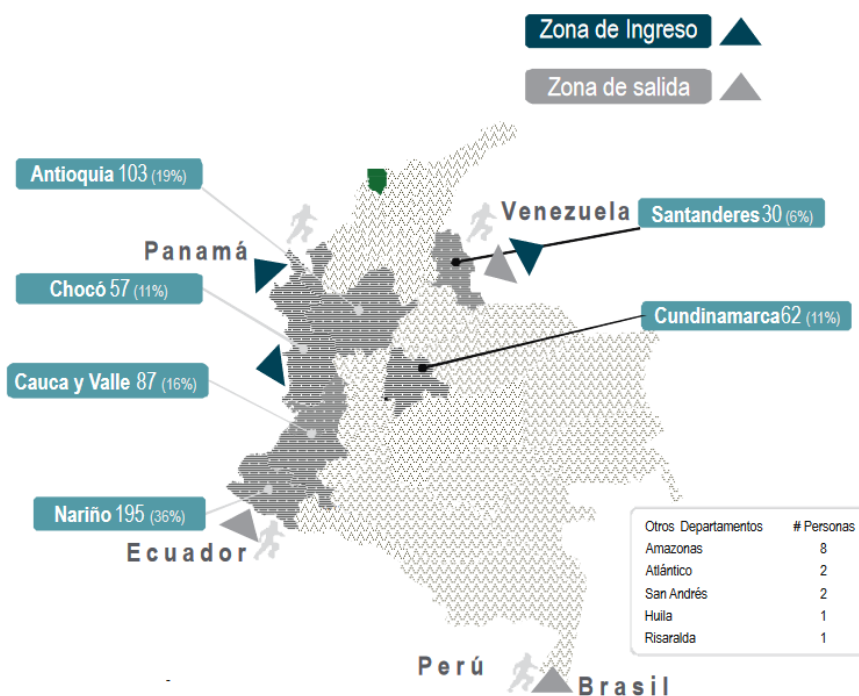
Table 1: Differences and similarities

Concept	Illegal smuggling of migrants	Trafficking in persons
Geography	Illicit trafficking always involves the crossing of international borders. It is a transnational crime.	Trafficking can occur entirely within a country's borders or it can occur transnationally.
Purpose	Migrant smugglers act for "financial or material gain."	The purpose of trafficking in persons is the exploitation of the victim.
Consent	Consent is not an element of the definition of smuggling of migrants. It should be noted that, in practice, smuggled migrants generally accept being smuggled.	Victims of human trafficking may consent to the act or exploitation, but consent is irrelevant if means have been used (and provided that the victim is a child, as it is not necessary to establish the means).
Exploitation	Exploitation is not an element of migrant smuggling. When smugglers exploit migrants, this may constitute aggravated smuggling or, in some cases, human trafficking.	Exploitation is the purpose element of trafficking in persons.
Benefit	Profit ('financial or other benefit') is the element of the purpose of migrant smuggling. Profits are generated through the provision of a service (facilitation of illegal border crossing, authorization of stay or document fraud) for smuggled migrants.	It should be noted that, in practice, traffickers are likely to seek and generate profits through the exploitation of the victim.
Victimization	Smuggled migrants are not "victims" under the Migrants Protocol. Although the term "victim" is not used in the Protocol, they may be considered victims of crimes in situations of aggravated trafficking, when their lives and safety are in danger or when they are subjected to inhuman or degrading treatment, including exploitation.	Trafficked persons are seen as victims of the crime of human trafficking. They may also be victims of other crimes committed in the course of trafficking
Perpetrator	Smugglers can be opportunists, organized criminals, the migrant's own family or friends or others, but only when they act for financial or other material gain.	Traffickers may be organized criminals, family members or friends of the same victim, or others.

Source: United Nations, Office on Drugs and Crime (UNODC), "Módulo 11: diferencias y similitudes," Serie de módulos universitarios: Trata de personas y tráfico ilícito de migrantes (Viena, 2019), https://www.unodc.org/documents/e4j/tip-som/Module_11_-_E4J_TIP-SOM_ES_FINAL.pdf

The regulatory changes made to the Political Constitution of the neighboring country of Ecuador in 2008 have facilitated and encouraged migratory movements, leading to an increase in migrant smuggling in the region. According to the figures documented by *Migración Colombia*²¹ in the dimension of the crime of migrant smuggling in Colombia (2013), the Colombian-Ecuadorian border has been established as the main area of entry into the national territory by criminal groups. The department of Nariño reports 36% of the cases that were detected, which represents 217 cases within a total of 548 victims.

Figure 1: Detection of victims of migrant smuggling in Colombia



Source: UNODC, "Detección de víctimas de tráfico de migrantes en Colombia, según departamento. Periodo enero-septiembre 2012," *Dimensión del delito de tráfico de migrantes en Colombia: realidades institucionales, legales y judiciales*, 2012, p.18. https://www.unodc.org/documents/colombia/2013/Agosto/Investigacion_trafico_migrantes.pdf

²¹ Entity attached to the Ministry of Foreign Affairs of Colombia, whose mission is to exercise control as a migration authority. Colombia, *Migración Colombia*, *Boletín flujos migratorios*, 2020: 7. www.migracioncolombia.gov.co.

The phenomenon was already much more advanced than the figures managed to detect. The main factors include: Firstly, i) the inclusion of the term of *universal citizenship* in Ecuador, following its constitutional change, wanting to offer guarantees²² in the elimination of visas for all inhabitants of the world in free transit of border areas. The concept incorporated is found in article 416: Ecuador's relations with the international community, in paragraph 6 "*advocates the principle of universal citizenship, the free mobility of all inhabitants of the planet and the progressive end of the condition of foreigner as a transforming element of unequal relations between countries, especially North-South.*"²³ It clearly relates to the paradigms referring to the Global South and its often unequal relationship to its Northern counterpart.²⁴

The National Assembly of the Republic of Ecuador, through the Organic Law of Human Mobility 2017,²⁵ highlights the equality between foreigners and Ecuadorians in obtaining the same rights and duties. Likewise, it refers to the principle of Universal Citizenship as the axis of the supremacy of people as subjects of rights. Article 2 conceives universal citizenship as "*The recognition of the power of the human being to move freely throughout the planet. It implies the portability of their human rights regardless of their migratory status, nationality and place of origin, which will lead to the progressive end of the status of foreigner...*"²⁶

The ultimate goal of human rights and the application of these for each of the inhabitants of the world is to be free and allow free mobility. However, it must be observed carefully and be carried out in compliance with the requirements of each jurisdiction, so that the sovereignty of each State can comply with national interests and objectives while observing international commitments. These commitments, signed by the States taking part on the UN Charter of the United Nations (1945)²⁷ and consecrated by the Charter of the Organization of American States (1948),²⁸ hold as its principle that "international order is essentially constituted by respect for the personality, sovereignty and independence of States and by the faithful fulfillment of the obligations emanating from treaties and other sources of the international law,"

²² Daniel Ricardo Vargas Díaz and Fernanda Navas-Camargo, "Colombia's special jurisdiction for peace, use of Case concept within their decisions and harm to procedural guarantees," *Opción* 36, no. 93 (2020): 48-62, <https://produccioncientificaluz.org/index.php/opcion/article/view/32727>.

²³ Ecuador, *Constitution of the Republic of Ecuador*, October 20, 2008.

²⁴ Fernanda Navas-Camargo. "The Global South and the Social Reality of Latin America: Towards the Construction of New Paradigms," *Novum Jus* 14, no. 2, (2020): 11–21, <https://doi.org/10.14718/NovumJus.2020.14.2.1>.

²⁵ Ecuador, *Organic Law on Human Mobility*, Official Register Supplement 55 (August 10, 2017).

²⁶ Ecuador, *Organic Law on Human Mobility*, Official Register Supplement 55, art. 2 (August 10, 2017).

²⁷ Charter of the United Nations (UNC 1945), treaty that puts the UN into operation on June 26, 1945.

²⁸ Charter of the Organization of American States, Bogotá (1948).

ratified by the International Covenant on Civil and Political Rights (1966).²⁹ Even though they seek to apply norms of best interest that guarantee human rights, they cannot ignore what emanates through the different international instruments that seek the protection of States and their members, respecting the limits and borders without ignoring the phenomena of current social structures.³⁰

Secondly, ii) the institutional transition that took place in determining the entity in charge of carrying out immigration procedures: from an intelligence department to a new entity created in order to focus this type of phenomena on it. The first, that is, the Administrative Department of Security DAS (for its acronym in Spanish) was an entity directly dependent on the Presidency of the Republic and served as a technical body with high capabilities in the development of its branch from the perspective of security and defense. The second resulted from the transformation and migration of the DAS into an entity attached to the Ministry of Foreign Affairs: the Special Administrative Unit Migration Colombia -MIGRACION COLOMBIA. This new entity has an administrative vocation and a mission focused on the foreign policies of the nation. It was created without a security force that could allow immediate, effective and efficient action aimed at reducing high-impact crimes related to migration, irregular migration, arms trafficking, drug trafficking, smuggling of migrants and Human Trafficking.

Lastly, iii) the great territorial capacity occupied by the borders with which Colombia limits. Effective control in these spaces could affect a large part of the nation's budget allocated to security and defense. The absence of these controls has allowed the increase of irregular crossings and the formation and strengthening of criminal groups who use the smuggling of migrants or human trafficking as their source of financing, along with drug trafficking, arms trafficking and smuggling among other criminal acts. The border with the highest percentage of migrant smuggling is Ecuador-Colombia, with an approximate length of 586 kilometers, as stated in the Treaty of limits between the Republic of Colombia and the Republic of Ecuador in Bogota in 1916.³¹

²⁹ International Covenant on Civil and Political Rights (1966), adopted by the United Nations General Assembly in its resolution 2200 A (XXI) of 16 December 1966.

³⁰ Germán Silva García, "¿El derecho es puro cuento? Análisis crítico de la sociología jurídica integral," *Novum Jus* 16, no. 2, (2022): 49–75. <https://doi.org/10.14718/NovumJus.2022.16.2.3>.

³¹ Colombia, Ministry of Foreign Relations, "Land Border Colombia-Ecuador," *Sovereignty and Borders*, June 2022, <https://www.cancilleria.gov.co/politica/ecuador>.

The Ministry of the Interior, through the Anti-Trafficking Operational Center, articulates the provision of protection and assistance services by the competent entities at national level. According to the information available to the ministerial portfolio, between 2008 and 2022, there have been 1,490 provisions services articulated between 2008 and 2022, for 1,490 victims,³² showing how migrant smuggling has increased.

It is necessary to clarify that there is a series of routes that have been defined by the various transnational criminal networks in accordance with the geostrategic positions of each of the States they traverse (between Ecuador and Mexico). These routes are created in conformity with the flexibility of the immigration regulations of each State. Migrations in recent decades are projected from south to north with greater affluence. The flexibility adopted by the Ecuadorian Constitution has allowed the entry of extracontinental citizens (i.e., citizens of Africa and Asia), as well as citizens of Latin America and the Caribbean who, in the face of different situations of conflict and armed conflict,³³ ³⁴ decide to emigrate. According to different statistics, migratory movements increase year after year so much that, conferring to the Interamerican Development Bank (IDB), for the year 2000 migration in the world reported an estimated growth from 173 million people to 272 million in 2019, which estimates 3.5% of the world population.³⁵ Crossing these routes does not only entail irregular entry into several States, but also latent dangers that threaten human dignity and security.³⁶

The smuggling of migrants threatens various aspects of security: against a State, against individual freedom and against life, as stated by Badrán Robayo: “the trafficking of migrants has such delicate consequences as the systematic murder of

³² Colombia, Ministry of the Interior, “Comportamiento de la trata de personas 2008-2022,” *Estadísticas y datos abiertos* (2022), p.1, <https://www.mininterior.gov.co/grupo-de-lucha-contra-la-trata-de-personas/estadisticas-y-datos-abiertos/>

³³ Luis Alexander Montero Moncada, Jonnathan Jiménez Reina and Carlos Alberto Ardila Castro, “Efectos geopolíticos de la guerra de Ucrania,” *Novum Jus* 17, no. 1, (2023): 205–235, <https://doi.org/10.14718/NovumJus.2023.17.1.9>.

³⁴ Mario Urueña Sánchez and Miriam Dermer Wodnicki, “Ucrania en el tablero geoestratégico ruso: Un análisis desde los códigos geopolíticos (1991-2022).” *Novum Jus* 16, no.3, (2022) : 17–42, <https://doi.org/10.14718/NovumJus.2022.16.3.2>.

³⁵ Inter-American Development Bank (IDB), “Module 1 International migration: concepts, data and trends,” *Migration policy and governance in Latin America and the Caribbean*, (2020).

³⁶ Human Security Unit: Application of the Human Security Concept and the United Nations Trust Fund for Human Security, Office for the Coordination of Humanitarian Affairs, United Nations, is about protecting the vital essence of all human life from critical (serious) and pervasive (widespread) threats in a way that enhances human freedoms and the full realization of the human person. Human security integrates three freedoms: freedom from fear, freedom from want (or misery) and freedom to live in dignity.

groups of people trying to cross the border between Mexico and the United States, at the hands of the mafias operating in the area.”³⁷

There are also factors such as the conditions and ways of life of countries in poverty, inequality, among others.³⁸ It is important to point out that many of these movements are irregular in origin, nurturing in the understanding that people who cross borders without complying with the requirements established by the authorities are exerting a human right when migrating. However, this same must be a guarantee of order and regularity on the part of the States and likewise as a commitment to provide attention to migrants. The guarantee of security and tranquility to those associated with States must also be reciprocated within the framework of respect for these rights. With irregular migration come more issues that can put States at risk, such as the inhumane conditions in which people are often transported; rafts without security conditions; unsanitary vehicles; as well as the creation of armed groups responsible for controlling these structures as “authorities” who decide how and who can cross, offering portfolios in the best style of travel agencies demanding amounts of money that sometimes exceed what the people can afford.

In Mexico, as revealed by the International Commission on Human Rights (IACHR) report in 2013, some of these criminal organizations used migrants for a wide array of illegal dealings, such as using them as human couriers for the passage of weapons and drugs; sexual assault; kidnapping; extortion and even forced disappearance.³⁹ The smuggling of migrants is not an issue that affects a single country but entire regions, generating a negative impact on the security of each of the States, and justifying the need to work in coordination.

Human Trafficking

Previously known as White Slave Trafficking, this practice used to refer to the exploitation of white women used for sexual purposes mainly. However, these characteristics fall short of the definition that the UN has exposed.

³⁷ Farid Badrán Robayo, “Las agendas de seguridad de los estados latinoamericanos y el crimen transnacional como amenaza consolidada en américa latina,” *Estudios en seguridad y defensa* 6, no.12 (2011): 5-20, <https://doi.org/10.25062/1900-8325.79>.

³⁸ Fernanda Navas-Camargo and Ingri Natalia Pérez Cagua, “Parroquia de Santa Águeda, Bogotá: caso estudio sobre la educación para la construcción de paz,” *Novum Jus* 13, no. 2 (2019): 187-208, <https://doi.org/10.14718/NovumJus.2019.13.2.10>.

³⁹ Inter-American Commission on Human Rights (IACHR), *Derechos humanos de los migrantes y otras personas en el contexto de la movilidad humana en México*, 2013. <http://www.oas.org/es/cidh/migrantes/docs/pdf/informe-migrantes-mexico-2013.pdf>

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons,⁴⁰ Especially Women⁴¹ and Children, supplementing the United Nations Convention against Transnational Organized Crime, establishes one of the definitions that is internationally accepted and by which the States that ratified this commitment:

Human Trafficking means the recruitment, transportation, transfer, harboring or receipt of persons, through the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to obtain the consent of a person who has control over another person, for exploitation purposes. Exploitation shall include, at a minimum, exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of human organs.⁴²

It is important to specify that the condition of slavery that occurs through trafficking in persons degrades the victim to a merchant object. As manifested in *Metamorphosis of Slavery: Legal Manual on Human Trafficking*, it “is a violation of Human Rights that threatens the very essence of these by reducing the human being to a tradable object.”⁴³ This is due to the way in which the human being is negotiated in commercial chains, moved inside or outside a State subjected it to conditions of slavery and exploitation, reducing its being to the smallest expression. This model of what is considered modern slavery has generated an economic retribution comparable to the revenues generated by the trafficking of arms and drugs, including hired assassinations, sexual exploitation and the transport of weapons and drugs.

According to the figures handled by the COAT (Anti-Trafficking Operational Center) of the Observatory of the Crime of Trafficking in Persons⁴⁴ of the Ministry of the Interior,⁴⁵ between 2008-2022 1,490 victims have received provisions services. These figures do not conform to the reality of this crime, since there are many cases that

⁴⁰ United Nations, General Assembly, “Resolution 55/25 of 15 November 2000,” *United Nations Convention against Transnational Organized Crime*, annex II.

⁴¹ Germán Silva García and Vannia Ávila Cano, “Control penal y género ¡Baracunátana! Una elegía al poder sobre la rebeldía,” *Revista Criminalidad* 64, no. 2 (2022): 23-34, <https://doi.org/10.47741/117943108.352>.

⁴² United Nations, General Assembly, “Resolution 55/25 of 15 November 2000,” art. 4.

⁴³ Ofelia Gómez Díez, *Metamorphosis of Slavery: Legal Manual on Trafficking in Persons*, (Bogotá, Fundación Esperanza, 2005).

⁴⁴ The Anti-Trafficking Operational Centre (COAT) is an instance of coordination and articulation of the competent national and territorial entities to provide protection and assistance services for victims of trafficking in persons.

⁴⁵ Colombia, Ministry of the Interior, “Comportamiento de la trata,” 1.

never come to be reported by victims under threats, which shows a complexity in the understanding and prosecution of this scourge. Reducing the number of Migrant Smuggling today is an extremely complex task, since it no longer depends only on internal factors but also on the global trends and an increasing percentage of migration, most of it irregular.

Colombia highlights the pilot plan of a Safe Transit App as a mean to reduce the contact of migrants with people dedicated to irregular procedures and traffickers. This App, available for free, seeks that irregular migrants can register through mobile devices. With it, migrants are issued a safe-conduct that allows them to stay in the country for 10 days and departing voluntary, as well as use accommodation and formal transportation. The data that the irregular migrant registers within the app cannot be used for sanctioning purposes by the migration authority.

Obtaining Colombian Nationality fraudulently

Back in the 1930's parishes and Catholic churches were in charge of registering. Then the National Police had this designation, afterwards the Ministry of Government and in 1948 the National Civil Registry was created and allowed for making registrations extemporaneously. These facts on how registry has been historically made to obtain the Colombian nationality do enjoy high credibility among the experienced officials who exercised their functions in the Administrative Department of Security-DAS and who currently work in the Special Administrative Unit of *Migración Colombia*,⁴⁶ the entity created in the national development plan from the government of years 2010-2014.

In the remote territories neglected by the State, it was made possible through Decree 1260 of 1970 that registration could be performed outside the prescribed term (i.e., within the following month of birth), by accrediting authentic documents or copies of the parish acts or according to the religious rite performed or in "(...) lastly, on the basis of affidavits submitted to the registration officer by two skilled witnesses who witnessed the event or had direct and reliable knowledge of it (...)." ⁴⁷ This norm threatens security and defense in the nation, the region and even in aspects at international level, taking into account that it has been used by individuals

⁴⁶ Entity created in 1953 with the name of Colombian Intelligence Service (SIC) in order to produce strategic intelligence with functions of investigation; identification; judicial background; protection of dignitaries and immigration oversight, entrusted by decree 3169 of 1968 by President Lleras Restrepo.

⁴⁷ Colombia, Presidency of the Republic, *Decreto 1260 de 1970*, art. 50: Modified, art. 1, D. 999.

and criminal organizations to obtain and ensure registration through fraudulent means (such as issuing false statements of witnesses or presenting false or adulterated documents) or through corruption. The latter is accomplished by securing the complicity of officials (whether from the Registry or notaries) to issue extemporaneous records to persons who do not have the requirements that allow them to exert the right to obtain nationality in Colombia.

In the border areas of Colombia with Venezuela, Brazil, Ecuador and even Peru, there are cases of double registration because the citizens of these surrounding areas and border integration apply the double registration of births, which allows them to have dual nationality. Although it has become a custom, it is not necessarily legal.

Through the 90s, the departmental registrar of the Department of Amazonas, Colombia, was investigated *ex officio* by DAS officials who were alerted by the notary of the municipality due to the high figures of extemporaneous records taking place in the department, all of which sought the presentation of witnesses to obtain Colombian nationality in accordance with Decree 1260 of 1970 (Article 50). The sectional direction of the DAS, in response to this phenomenon, established a weekly service of accompaniment and investigation to the high requests for extemporaneous registration.

As a result of the inquiries carried out by the officials, thanks to testimonies issued by citizens of Peruvian nationality, it was preliminarily determined that the person who served as registrar in the Colombian Amazon was a Peruvian citizen, who had obtained Colombian nationality through late registration. Given the cooperation and understanding of the border authorities, it was possible to request an inspection at the place of registration of Peruvian citizens. Once it was going to be carried out, the files corresponding to the registry of citizens was lost in a fire at their place of holding. The lack of this documentation, a key piece in the presentation of a formal accusation for this public official, led to its withdrawal. It should be noted that this server managed to issue hundreds of Colombian civil registries irregularly, favoring Peruvian citizens who claimed lack of registration to obtain the benefits of Colombian nationality.

These criminal tendencies had several modalities, even foreign individuals who entered the national territory with Colombian documentation were detected. The criminal networks oversaw the preparation of these citizens in order to get through the different immigration and security controls. Some of these migrants came to

know even more general culture than Colombians themselves. Once the criminal networks were detected, they were charged with the crimes of Migrant Smuggling, Aggravated Conspiracy to Commit a Crime, Ideological Falsity in a Public Document, Procedural Fraud and Prevarication by Action.⁴⁸

These criminal networks of Migrant Trafficking carried out their work taking advantage of the regulatory norms of the Statute of the Civil Status of persons. This led the government to adjust the available normative components to the factual conditions that surround registration. Such an adjustment was specially required considering the vast number of applications made by Venezuelan citizens in recent years. Decree 356 of 2017⁴⁹ established a series of stricter rules at the time of carrying out the procedure for the late registration of birth in the Civil Registry. It also established that if the applicant is over 7 years old, the immigration authority must be consulted in order to carry out verifications of them being foreign or not. In order to regulate the aforementioned Decree, the RNEC issued circular 052 of March 29, 2017⁵⁰ for the correct application of the decree, stating that the only valid antecedent document for registration would be the civil registry of birth of the country of origin, presented in Spanish and duly apostilled and legalized.

This decision was triggered by the large number of citizens and criminal networks detected to be trying to obtain registration and subsequently obtaining Colombian nationality fraudulently. Although the measure served to carry out a more exhaustive verification, it was transformed into a vehicle for numerous acts of corruption. Officials of the Registry and notaries agreed to take payments for carrying out procedures fraudulently:

Seven registrars arrested for smuggling migrants. According to the investigations carried out by the Colombian Migration Judicial Police Group, the public servants [...] were supposed to issue untimely civil birth registries to foreign citizens, using false witnesses, thus supplanting their identity. Foreigners, mostly Venezuelan and Cuban citizens, paid the registrars sums ranging from 600,000 to 1,000,000 pesos. Once they obtained their civil registration as Colombian citizens, they proceeded to

⁴⁸ El País, "Cae red que falsificaba documentos para extranjeros en Registraduría y notarías del Valle," *El País*, December 04, 2018, <https://www.elpais.com.co/valle/desmantelan-red-en-registraduria-del-por-falsificar-documentos-para-extranjeros.html>.

⁴⁹ Colombia, Presidency of the Republic, *Decreto 356 de 2017*, "por el cual se modifica la Sección 3 del Capítulo 12 del Título 6 de la Parte 2 del Libro 2 del Decreto 1069 de 2015, Decreto Único Reglamentario del Sector Justicia y del Derecho" (Bogotá, Circular 052, March 29, 2017).

⁵⁰ Colombia, Presidency of the Republic, *Decreto 356 de 2017*, Circular 052, March 29, 2017.

request their citizenship card and other documents to travel, on some occasions, to a third country or to move, freely, within the national territory.⁵¹

Citizens of various nationalities posing as Colombian nationals sought to deceive the authorities at checkpoints in order to migrate to other States. Were it not for the Migration Officers previously trained in the Superior Academy of Intelligence and Public Security of the DAS this irregularity would have passed unnoticed.

However, these registrations were not only sought out for immigration purposes: the following news piece, taken from *El Tiempo*, reports a variation of the crime that enabled the trafficking of children: “A registrar in the department of Norte de Santander was captured for allegedly being involved in the falsification of documents for a criminal network that engages in the sale of children and the smuggling of migrants,”⁵² thus affecting their best interests.⁵³ The media also recorded:

20 at the Registry were Captured for Selling Identity Cards to Migrants: ... the investigative body reported on a network that would have obtained \$ 8 billion in four years by selling around 8,000 documents to Venezuelans, Cubans, Syrians, Chinese and Lithuanians. The new operations are part of the second phase of the operation against this alleged network of trafficking of migrants and identity documents were carried out in Barranquilla, ...and Malambo.⁵⁴

There are many more cases detected by the immigration authorities of citizens trying to leave the country with documents obtained fraudulently, such as those of Venezuelan citizens obtained these documents to carry out espionage activities, according to the following news piece:

Maduro’s Spy Paid \$ 2.5 Million per Colombian ID: EL TIEMPO established that Olivares entered the country through Cucuta in August 2019. ... he ended up confessing what he was doing in national territory and how he accessed the identity documents issued by the Registry. He arrived with several photos, with a white background,

⁵¹ El Tiempo, “Capturan a siete registradores por tráfico de migrantes,” *El Tiempo*, November 16, 2016, <https://www.eltiempo.com/archivo/documento/CMS-16751547>.

⁵² El Colombiano, “Capturan registrador por expedir documentos falsos para venta de niños y tráfico de migrantes,” *El Colombiano*, August 03, 2021, <https://www.elcolombiano.com/colombia/a-la-carcel-un-registrador-por-falsificar-documentos-para-venta-de-ninos-y-trafico-de-migrantes-KF15324916>.

⁵³ Olenka Deniss Woolcott and Rosa Elizabeth Guío Camargo. “Niños, niñas y adolescentes como sujetos de especial protección constitucional frente a la publicidad en Colombia.” *Novum Jus* 16, no. 3 (2022): 257–282, <https://doi.org/10.14718/NovumJus.2022.16.3.10>.

⁵⁴ Caracol Radio, “Capturan a 20 de la Registraduría por venta de cédulas a migrantes,” *Caracol Radio*, August 15, 2019, https://caracol.com.co/emisora/2019/08/15/barranquilla/1565894288_020267.html.

and with Flores and González to get an original Colombian birth record that would allow him to access a Colombian identity and blend in with the country to carry out intelligence work.⁵⁵

Due to the delicate situation Venezuelan citizens pose in Colombia and the concern of the governments of Juan Manuel Santos and Iván Duque, a series of regularizations of these citizens have been issued through temporary documents, allowing them to settle in Colombia on a regular basis. These measures include the Special Permanence Permit, in different phases, and which today is known as the Temporary Protection Permit (valid for 10 years). Another measure is the TMF Border Migration Card, which allowed the pendulum population to cross the border constantly and regularly. These documents are aimed at Venezuelan citizens but have also been used by collectives of the Venezuelan president's regime to carry out espionage activities within Colombian territory. Many cases have been detected, including Russian and Cuban citizens whose accredited diplomatic presence in Colombia has been misused with the purpose of espionage, thus violating the security and defense of Colombia and the region.

The Transformation of an Intelligence Entity with Immigration Functions to a Migratory Administrative Entity

The elimination of the Administrative Department of Security (DAS) was due to reasons that undermine the normal conduct of an agency of these characteristics, among others, those associated with illegal interceptions and corruption issues. However, the agility with which the process of eliminating the DAS was carried out causes great astonishment, ignoring the importance and the achievements in security and national defense the entity contributed to the Colombian State and the region.

There has not been a guarantee of effective fulfillment of tasks that were developed in the previous intelligence agency. One of the most important reasons was expressed in the creation of a new intelligence agency of civilian nature, which to the date has been managed by personnel of the military forces. Even if they have experience in intelligence, their involvement blurs the civilian nature, mission and objectives the

⁵⁵ El Tiempo, "Espía de Maduro pagó \$ 2,5 millones por cédula colombiana," *El Tiempo*, May 13, 2020, <https://www.eltiempo.com/unidad-investigativa/espia-de-nicolas-maduro-pago-2-5-millones-por-cedula-colombiana-494774>.

new entity was designed to hold and these can change as a result of the military's management. An opportunity to create a new entity is necessary to procure a projection that meets public policy requirements and enables the measuring of its positive and negative impact for the State. Faced with this, the following are a series of items that were not considered at the time of the creation of a specialized entity of a migratory nature:

1. The annual percentual increase in migratory flows, which reflect an increase between 2012-2020 of 8.6, and a decrease in 2020 given the State's decision to close borders due to COVID-19.

Table 2: Historical migratory flows of Colombians and foreigners 2012 - 2020

Colombian and Foreigner Migratory Fluxes 2012-2020				
Year	Colombians	Foreigners	Total	%Variation
2012	6.073.122	3.371.146	9.444.268	
2013	7.017.205	3.631.429	10.648.634	12,8%
2014	7.647.515	4.068.713	11.716.228	10,0%
2015	7.596.194	4.738.300	12.334.494	5,3%
2016	7.364.061	5.335.477	12.699.538	3,0%
2017	7.826.398	6.535.302	14.361.700	13,1%
2018	8.466.659	8.252.928	16.719.587	16,4%
2019	8.690.052	7.956.282	16.646.334	-0,4%
2020	2.572.366	2.046.517	4.618.883	-72,3%
Total	63.253.572	45.936.094	109.189.666	

The behavior of the total migration fluxes between 2012 and 2019 presents an average yearly growth of 8.6% excluding the percentual data of 2020, given its atypical nature due to the context of COVID-19, which considerably influenced the reduction of migratory fluxes. The flux of foreigners represents 42.1% of the total fluxes between 2012 and 2020, while the flux of Colombians represents 57.9%. In 2020, migratory fluxes were reduced by 72.3% in comparison to 2019.

Source: Colombia, Migración Colombia, *Boletín de flujos migratorios*, 2020, p. 7.

The migratory entity is entrusted the registration of foreign citizens residing in Colombia and the work of verifications. That is, control and registration of the activities carried out by foreigners throughout the Colombian territory, including judicial police tasks and the investigation of the commission of crimes related to migration. Important factors such as the failure of State intelligence to foresee the migratory wave and subsequent diaspora have led to the increase and functional capacity of the migration authority carrying with them a higher burden in what they develop as part of the inclusion and regularization of these people.

2. The Intelligence Agency (DAS) and MIGRACION Colombia: the creation of the migratory entity began approximately just a few months before the end of the intelligence agency and has demonstrated a lack of vision in terms of location of the entity and the settings where the activity of immigration takes places, lacking “smart borders.”⁵⁶
3. The training of officials has not been constant on issues related to security, defense and migration missionally: situations of regular or irregular migration may be related, in some cases, to criminal types, such as falsification in documents; material falsehood; ideological falsehood; smuggling of migrants; trafficking in persons, arms or narcotics; among others that contribute to an inadequate minimization of socialization.⁵⁷

It is necessary that the migration personnel become integral as a state security agent, with grounding on security, analysis and profiling, as well as knowledge in documentation, interviews and detection of anomalous situations that allows it to be the first line of defense of the country.⁵⁸

4. Wages: Each of the managers who have been part of the team have expressed their concern about the salary level of the public servants of *Migración Colombia*, but to the date, no efforts have been known to address this issue by government representatives in their former or the new administration.

Conclusions and recommendations

The increase in irregular migration must observe mechanisms addressed jointly by the States, no matter how willing they are to welcome or provide safe passages for migrants. If addressed as a joint regional problem, each of the participants can provide a series of tools that seek to protect the floating population as well as the interests of each State.

⁵⁶ El Tiempo, “El DAS empieza ‘cacería’ de emigrantes ilegales en Risaralda,” *El Tiempo*, May 24, 2010, <https://www.eltiempo.com/archivo/documento/CMS-7724041>.

⁵⁷ Lady Andrea Beltrán Cárdenas. “Delito y Subcultura Carcelaria: ¿Cómo Minimizar El Proceso De Desocialización?” *Novum Jus* 16, no.1 (2022): 99-113, <https://doi.org/10.14718/NovumJus.2022.16.1.5>.

⁵⁸ Colombia, National Planning Department, *Bases del Plan Nacional de Desarrollo 2010-2014: Prosperidad para todo* (Bogota, Departamento Nacional de Planeación, 2011). <https://www.dnp.gov.co/plan-nacional-desarrollo/Paginas/prosperidad-para-todos-2010-2014-juan-manuel-santos.aspx>.

It is also worth noting that this is a measure that seeks to correct part of the Colombian problem in the trafficking of migrants. However, it will not completely solve the problem, if it does not manage to agree with neighboring countries, in this specific case with Brazil and Ecuador.⁵⁹

The press and human rights organizations have exposed the situation of the municipality of Necoclí-Antioquia, overwhelmed by the high flows of people trying to cross through the Darién Gap: a jungle of complex terrain, used by criminal groups. The App, which is in the implementation phase by the Colombian authorities, allows a safe transit of migrants who use Colombia as a transit state to continue the route north.

A series of crises in Colombia demand an addition to investment in resources for the health services and maintenance of these people. This situation, in terms of multidimensional security, would show a great vulnerability in our security and defense mechanisms as a nation, because there would be no certainty as to who really are migrants and who use these corridors for illicit purposes, such as espionage or the transit of terrorist groups from the east.

The strengthening of the migration authority is a key step to be able to face this situation, considering the mission and projection in security that must cover the Entity. In addition, it should be assisted by civil authority, military and police intelligence, as well as the Military Forces and police.

Regarding the obtention of Colombian nationality through fraudulent means, it is necessary to address a series of strategies that protect the identity and public faith, as well as the security and defense of our nation. The strengthening of the migratory profile of Colombians has been progressive and in accordance with a series of commitments and adoptions in various matters, and this holds great importance considering the nation's interest in the projection of our territory as a touristic destination in the world. These reasons should be put on the agendas of public policies, hoping that our passport will be accepted by more States eliminating visa requirements, special permits or payments for tourist or business activities. It is also necessary to make a thorough examination of the processes by which Colombia grants nationality by adoption to individuals, considering all of the issues discussed surrounding extemporaneous registration.

⁵⁹ María Alejandra Salazar Rojas. "Incidencia de las normas internacionales para la protección de los trabajadores migrantes irregulares en Colombia." *Novum Jus* 10, no. 2 (2016): 89-101, <https://doi.org/10.14718/NovumJus.2016.10.2.5>.

These are some of the ways in which criminal groups take advantage of the rule in their favor to obtain documents irregularly:

1. Through personal falsehood or impersonation.
2. Obtaining a new civil registry, with both Colombian parents, of which they “attest” to the birth in Colombia.
3. New civil registry with one of the parents registered as Colombian and the other foreigner, providing witnesses and declarants with an apostilled foreign civil registry.
4. False identification documentation in which he declares to be the son of a Colombian national to acquire Colombian nationality.
5. Through our nation’s indigenous groups.
6. The corruption of officials who achieve registration through a numerical quota (of a deceased person or a new one) to obtain a certificate.

These must be addressed from the criminal and constitutional points of view. In order to protect the value of being Colombian, as well as our identity, institutions and public faith, it is necessary to create a criminal type that allows judicialization of these conducts. Not all people seek to migrate, but to settle in the national territory, so the crime of smuggling of migrants would not cover them in the materialization of the penalty. According to consultations carried out, the only American State that currently has a criminal type that protects its identity and documentation is Mexico⁶⁰.

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⁶⁰ Mexico, Constitutional Government of the State of Mexico, *Decreto número 165*, “Código Penal del Estado de México,” (Toluca de Lerdo, *Gaceta del Gobierno: Periódico oficial del Gobierno Constitucional del Estado de México*, tomo CLXIX, no. 55), <https://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/gct/2000/mar203.PDF>.

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