ACCESS

The Role of Courts in Shaping Access to Asylum

ECUADOR NATIONAL REPORT

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project "Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum" ACCESS investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.[1]

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Lorett Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

'**Asylum**' denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against refoulement and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled 'asylum'. The research nevertheless includes such equivalent protection under the term 'asylum'. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under 'asylum'.

'**Accessing asylum**' describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

'**Barriers to accessing asylum**' refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

'**Pushbacks**' denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

[1] Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Turkey (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

'**Pullbacks**' are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

'**Walls and fences**' include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

'**Detention**' is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

'**Externalization of asylum processing**' denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

'**Procedural barriers**' refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

'**Judicial or quasi-judicial body**' is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

'**First instance judicial or quasi-judicial body**' is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. 'Second instance judicial or quasi-judicial body' is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. 'Third instance judicial or quasi-judicial body' is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

'**Legal system**' refers to deeply rooted, historically conditioned attitudes about law's nature and role, the legal system's organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

'**Asylum access adjudication**' refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

'**Socio-legal factors**' refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

'**Judicialization of politics**' refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

'**Forced migration**' refers to 'a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion' (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to 'other displaced persons', we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier's specific functioning? How does it prevent individuals from accessing asylum?

2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?

3. **Place:** Where is the barrier implemented?

4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?

5. **Interaction:** How does the barrier interact with other barriers and the country's asylum system?

6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)

7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?

8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?

9. **Specific Impact**: What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier's general impact?

10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.

11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?

12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?

13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?

14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?

15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?

16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

A. Barriers of general relevance

Pushbacks: ☒

Detention: ☒

Procedural barriers: ☒

B. Barriers of specific relevance to this jurisdiction

Temporary Transit Visitor's Visa (*Visa de Visitante Temporal de Transeúnte*): A transit visa is a mandatory travel document for citizens of certain countries, often those with a high number of asylum applications. This visa allows them to briefly transit through Ecuador, either by airport, land, or sea, to another destination country. During a typical airport stopover, the traveller cannot leave the airport or remain there for more than 24 hours. For land or sea transit, the transit visa holder must travel directly through the Ecuadorian territory to their next point of departure.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: Pushbacks and summary expulsions are primarily carried out by the Ecuadorian National Police and the Immigration Service across the entire territory of Ecuador. While the exact start and end dates of these practices have not been determined, evidence indicates that summary expulsions have been carried out since at least 2010. These actions are often triggered by the lack of required entry documents, such as valid passports or criminal record certificates, hindering regular entry and potentially pushing individuals towards irregular crossings that can complicate asylum applications. Furthermore, summary expulsions, sometimes following administrative detention, have been implemented, often without adequate consideration for asylum needs. For instance, in July 2017, approximately 800 Venezuelan citizens were reportedly denied entry, and in 2016, 121 Cuban nationals were deported following a migration control operation. It should be noted that the implementation of biometric fingerprint controls at borders began in 2009, and more recently, advanced video surveillance technology with facial recognition has been introduced at the northern border. These technological advancements, alongside reports of arbitrary decision-making and concerns arising from the militarization of borders, further shape the context of these practices. These practices and their interaction with bureaucratic impediments raise concerns about access to asylum and due process in Ecuador.

1. Functioning: Pushbacks and summary expulsions function as immediate barriers by preventing individuals from formally entering Ecuadorian territory or by swiftly removing them without due process, thus obstructing their ability to seek asylum. Border rejections, often linked to the requirement of specific entry documents, deter regular entry and can lead individuals to attempt irregular crossings, which may complicate future asylum claims. Summary expulsions, sometimes occurring after detention, operate under previous immigration laws that prioritized deportation for unauthorized entry, often without adequate consideration for asylum needs. Even though individuals might theoretically request protection during deportation hearings, this right has not been consistently upheld, leading to removals that bypass the asylum process altogether. The immediate nature of these actions, whether at the border or within the

country, effectively prevents individuals from initiating or pursuing their right to international protection in Ecuador.

2. Time: The precise commencement and cessation dates of pushbacks remain undefined. However, evidence suggests a notable increase in border expulsions during the Covid-19 pandemic restrictions.

3. Place: The entire territory of the Republic of Ecuador.

4. Actors: Ecuadorian National Police and the Immigration Service are the main actors in expulsions or rejections at the border.

5. Interaction: The intersection of border rejections and summary expulsions with bureaucratic impediments warrants consideration. Border rejections are directly predicated upon the requirement for foreign nationals to present specific documentation for entry into Ecuadorian territory, notably a valid passport or a certificate of criminal records. The absence of such requisite documents precludes regular entry, potentially compelling foreign nationals to undertake unauthorized border crossings, which may subsequently impede the formal submission of an asylum application. While Ecuadorian regulations stipulate that border authorities should permit the entry of foreign citizens seeking asylum, notwithstanding a lack of standard entry documentation, this exception has not been consistently codified, affording authorities considerable discretionary freedom, as will be detailed in the analysis of bureaucratic barriers. Moreover, summary expulsions may be implemented in conjunction with administrative detention pending deportation, particularly in instances where an individual has not voluntarily departed the national territory following a formal expulsion order. Although a theoretical avenue exists for an individual to invoke a claim for international protection during deportation proceedings, the practical application of this right has been inconsistent, and removal may occur despite an express intention to initiate the asylum process.

6. Development: Article 40 of the Ecuadorian Constitution recognizes the right to migrate and forbids the criminalization of migration, and Article 66, paragraph 14, prohibits the collective expulsion of foreigners and stipulates that immigration procedures must be individualized. However, practices such as border rejection and summary expulsions of people present within Ecuadorian territory have been identified, likely due to the punitive approach to immigration.

Prior to the enactment of the current Organic Law on Human Mobility (LOMH, 2017), the Immigration Law No. 1897 (27 December 1971) established in Article 7 the power of immigration authorities to "grant, deny, or revoke a visa to a foreign citizen, notwithstanding compliance with legal and regulatory requirements", which is a "sovereign and discretionary power". This provision was amended in 2001 and subsequently replaced. Ecuadorian Migration Law, from 2005, defined the deportation procedure. Specifically, Article 19 et seq. mandated the deportation of foreign nationals who entered the national territory without undergoing proper immigration inspection. Upon apprehension, as prescribed by Article 20, the National Police were obligated to present the individual forthwith before a judicial authority, thereby initiating legal action without the prerogative of bail. Within a peremptory period of twenty-four hours from the commencement of the deportation procedure, Article 25 required the presiding judge to convene a hearing, to be followed by a judicial resolution within forty-eight hours either ordering or denying deportation, as stipulated in Article 26. A judicial decision denying deportation was subject to administrative consultation with the Minister of Government, who was afforded a period of three days for review and a subsequent period of five days to either affirm or revoke the judicial ruling; affirmation resulted in the immediate release of the individual, whereas revocation mandated the issuance of a deportation order, as outlined in Article 29, against which an appeal could be lodged pursuant to Article 30. Finally, Article 35 dictated that a foreign national subject to an exclusion or deportation order was to be transferred to their country of origin, the country from which they arrived, their previous domicile, or a third country willing to accept them.

In 2017, the LOMH was passed, establishing several provisions that penalize irregular migration, such as fines for not obtaining the required visa on time (Article 170.1) or the possibility of being deported for irregular immigration status (Article 143.3). Moreover, a visa revocation for vaguely defined reasons (Article 68.3), such as exceeding the period of stay outside the country, is also a direct cause for deportation (Article 143.5), with no possibility of recourse for regularization. Pursuant to this legal framework and despite its open-door policy for migrants and refugees, Ecuadorian authorities implemented summary and collective deportations of aliens, raising concerns about violations of due process and the principle of non-refoulement.

In 2010, the Committee against Torture brought to the attention of Ecuadorian authorities the forced return of Colombian asylum seekers in June 2010 and the summary expulsion of another asylum seeker in October 2010, which occurred prior to a decision on his appeal.[2] In March 2011, "Operation Operation Twilight" (*Operación Crepúsculo*) resulted in the arrest of 67 Asian and Arab migrants in Quito,[3] with authorities claiming they were on the United States' "red alert list".[4] Despite the fact that at least 22 of them were asylum seekers, deportation orders were issued,[5] with six individuals ultimately deported to the United States at Interpol's request.[6] This event highlights early concerns regarding due process and the handling of asylum claims in Ecuador.

Furthermore, between July 6th and 13th, 2016, the Ecuadorian government carried out an operation called "migration control", a significant operation targeting Cuban migrants.[7] Following the eviction of Cuban citizens from El Arbolito park in Quito, 149 individuals were detained. In this case, deportation hearings were conducted rapidly, with allegations of limited access to legal counsel and disregard for asylum claims. As a result, 121 Cuban nationals were deported[8] in what was described as an "unprecedented process" marked by "violence and speed".[9] Defence attorneys contested the legality of this collective expulsion, citing violations of due process and international law,[10] since those expelled included asylum seekers, people with legal immigration status, and others who had requested asylum during the hearing.[11] This

[2] Committee against Torture, *Examen de los informes presentados por los Estados parte en virtud del artículo 19 de la Convención Observaciones finales del Comité contra la Tortura. Ecuador*, 45th Session 1-19 November 2010, § 15.
[3] Álvarez Velasco S. (2020). *Ilegalizados en Ecuador, el país de la "ciudadanía universal"*. Sociologías, Porto Alegre, No. 54/2020, pp. 151-153
[4] Freier L., *Migración contemporánea de África, Asia y el Caribe hacia Ecuador, in Migrantes extracontinentales en América del Sur: estudio de casos*, in OIM *Cuadernos Migratorios*, N° 5/2013, p. 103.
[5] La República, *Confirmado: grupo talibán tenía contactos en Ecuador*, 14/09/2011, https://www.larepublica.ec/blog/2011/09/14/confirmado-grupo-taliban-tenia-contactos-en-ecuador/#google_vignette
[6] El Comercio, Paquistaníes cobraban USD 45 000 a terroristas que buscaban ir a EE.UU., 15/09/2011, https://www.elcomercio.com/actualidad/seguridad/paquistanies-cobraban-usd-45-000.html
[7] See Human Rights Watch, *Columna de opinión: Decenas de Cubanos expulsados de Ecuador*, 11/07/2016, https://www.hrw.org/es/news/2016/07/11/columna-de-opinion-decenas-de-cubanos-expulsados-de-ecuador; Álvarez Velasco S. (2020). *Ilegalizados en Ecuador, cit.*, pp. 151-153.
[8] See Colectivo Atopia (2016), "*Bitácora de una Expulsión*", Available in: https://colectivoatopia.wordpress.com/wp-content/uploads/2017/03/bitacoradeunaexpulsion.pdf; Freier L.F., Correa A. and Aron V. (2018) "*El sufrimiento del migrante: la migración cubana en el sueño ecuatoriano de la libre movilidad*", Apuntes Vol. 84, p. 112; Yépez C., (2021) *"Como si afuera nadie se diera cuenta": Memorias y experiencias de un centro de detención llamado "Hotel"*, in *Perífrasis. Revista de Literatura, Teoría y Crítica*, Vol.12/24, Bogotá, p. 195; Herrera G. (2022). "Migration and Migration Policy in Ecuador in 2000–2021", UNDP LAC PDS N° 33, p. 23.
[9] Herrera G., *La expulsión de ciudadanos cubanos: violenta resolución a conflictos latentes en la política migratoria ecuatoriana (Coyuntura)*, in *Andina Migrante*, 20/2016, p. 14.
[10] *Plan V, La guerra contra los cubanos en Ecuador, 11=07/2016,* https://planv.com.ec/historias/la-guerra-contra-cubanos-ecuador/*; Ecuavisa, Defensa de cubanos asegura que hubo una "expulsión colectiva" en Ecuador, 12/07/2016,* https://www.ecuavisa.com/noticias/defensa-cubanos-asegura-que-hubo-expulsion-colectiva-ecuador-KAEC173966*;* Martin Noticias, "*Correa sobre cubanos: Ecuador "no va a convertirse en un país de coyoteros"",* 17/07/2026, Available in: https://www.martinoticias.com/a/cuba-rafael-correa-ecuador-cubanos-deportaciones/126167.html. See also Coalition for Migration and Refugee, 2017, Shadow report on compliance with the International Convention on the protection of the rights of all migrant workers and members of their families (ICMW), Ecuador 2017, p. 6.
[11] See Criminal Judicial Unit, Metropolitan District of Quito, Pichincha Province, No. 17151201600570, 10/07/2016; Criminal Judicial Unit, Metropolitan District of Quito, Pichincha Province, No. 17151201600549, 14/07/2016.

could have been due to the foreign policy of Rafael Correa's government, which considered Cuba a safe country.[12] This situation highlights the significant influence of governmental ideology and foreign policy in shaping Ecuador's asylum policies.[13] The detained migrants were held for more than three days[14] in the garage of the Flagrancy Unit in Quito, sleeping on the floor, waiting for the deportation hearing. These incidents underscore concerns about Ecuador's adherence to international human rights standards in its immigration enforcement practices.

Beyond summary expulsions, pushbacks have been identified on the border with Colombia and Peru. In July 2017, Ecuadorian immigration authorities reportedly denied entry to approximately 800 Venezuelan citizens at the border with Colombia. They were detained at the Rumichaca immigration checkpoint in the international bridge.[15] Furthermore, in 2019, two incidents were documented: the forced return of Venezuelan citizens at the border with Colombia and the collective expulsion of individuals who had illegally entered Ecuadorian territory and were subsequently returned to Colombia. On February 26th, twenty-two migrants, including adults and children, were immediately expelled via the Rumichaca International Bridge. A similar expulsion of seven Venezuelans occurred on March 13th at the same location.[16] These two incidents, separated by just fifteen days, suggest a potential pattern of rapid group expulsions by the Ecuadorian National Police. In 2020, Ecuador's Constitutional Court recognized that both the Ministry of Government and the National Police violated the rights to migration, freedom of movement, and the prohibition of collective expulsion.[17]

The Covid-19 pandemic exacerbated challenges related to migration control. In 2021, concerns over the spread of Covid-19 led Ecuador and Peru to deploy military personnel to border regions to contain the movement of Venezuelan migrants.[18] This highlights the tension between public health concerns and the protection of migrants' rights during times of crisis.

Moreover, in 2022 the authorities declared the province of Esmeraldas a special security zone ("*Zona Especial de Seguridad*") due to its strategic importance in the drug trafficking routes of Mexican cartels operating through Colombia. The authorities emphasized the vulnerability of all Ecuadorian borders and provinces to organized crime and drug trafficking, highlighting Esmeraldas as the shortest exit point for cartels seeking to move drugs through the territory.[19] To combat this, over 1,400 soldiers were deployed to conflict areas in Esmeraldas to curb drug-related violence.[20] The authorities specified the allocation of substantial military resources, including four battalions, an intelligence unit, and land, naval, and air assets, to counter the presence and influence of illegal armed groups in the region. In March 2023, a new Decree was issued extending the state of emergency in the province of Esmeraldas.[21]

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[12] See Rodríguez N. (2014) The eye of the beholder: Asylum adjudication by diplomatic authorities in Latin America, RLI Working Paper No. 12, p. 20.

[13] Hammoud-Gallego O. (2022). "A Liberal Region in a World of Closed Borders? The Liberalization of Asylum Policies in Latin America, 1990–2020", International Migration Review, Vol. 56(1), P. 83.

[14] Vera M., "*El ecuatoriano de mañana es el cubano de hoy*", in *La República*, 10/07/2016, https://www.larepublica.ec/blog/2016/07/10/ecuatoriano-manana-cubano-hoy/

[15] Colectivo Atopia, "*Crisis Migratoria en Frontera Ecuador-Colombia. Impiden ingreso de población venezolana a Ecuador*", 27/07/2017, https://colectivoatopia.wordpress.com/2017/07/27/crisis-migratoria-en-frontera-norte/

[16] IACHR, IACHR Concerned about Ecuador's New Measures to Address Forced Migration of Venezuelans, 27/07/2019, https://www.oas.org/en/iachr/media_center/PReleases/2019/047.asp. See also Dejusticia, *Corte Constitucional de Ecuador reconoció vulneración de derechos en casos de expulsiones colectivas*, 16/03/2022, https://www.dejusticia.org/corte-constitucional-de-ecuador-reconocio-vulneracion-de-derechos-en-casos-de-expulsiones-colectivas/

[17] Constitutional Court, cases No. 63919-JP and No. 794-19-JP, 2020.

[18] France 24, *La militarización de las fronteras, un nuevo obstáculo en la odisea de los migrantes venezolanos*, 02/02/2021, https://www.france24.com/es/programas/migrantes/20210202-migrantes-militares-frontera-peru-ecuador

[19] Executive Decree N° 411, *Declaratoria de estado de excepción, causal, motivación, ámbito territorial y período de duración*, 29/04/2022.

[20] Pelcastre J., *Ecuador intensifica operaciones militares en frontera con Colombia*, in *Diálogo Américas*, 13/10/2022, https://dialogo-americas.com/es/articles/ecuador-intensifica-operaciones-militares-en-frontera-con-colombia/

[21] Executive Decree N° 681, *Declárese el estado de excepción por grave conmoción interna en la provincia de Esmeraldas con una duración de 60 días*, 10/03/2023.

While the stated objective of border militarization measures is the preservation of national security, such measures may engender an adverse consequence by impeding the free transit of individuals seeking refuge within Ecuadorian territory, who may be subject to immediate rejection at the frontier.

7. Rationale: The Ecuadorian government has justified the rejections at borders and the expulsions as a measure to combat drug trafficking, human trafficking, maintain public order, and control irregular migration. Nevertheless, the practice raises concerns about racial profiling, discrimination against specific nationalities, and disregard for individual protection needs.

8. Legal Status: Individuals prevented from accessing asylum through these measures are treated in the general framework for non-citizens. Only by initiating legal action can they obtain protection. Those subjects to border rejection are left without legal recourse, as such rejections are often verbal and lack a formal administrative act susceptible to appeal or judicial challenge. Conversely, in cases of summary expulsion from the national territory, affected individuals may possess the right to file an appeal before the competent judicial authorities.

9. Specific Impact: Despite the barrier's non-discriminatory design, its implementation creates heightened vulnerabilities for specific populations, notably women, children, LGBTQ+ or people with disabilities. Border rejections significantly heighten the vulnerability of these individuals, leaving them stranded and exposed to violence from criminal organizations, human trafficking, exploitation, police misconduct, and other dangers.[22]

10. Reach: While the exact number of individuals affected by this barrier is unreported, analysis of official entry data from the Tulcán land border (2007-2023), a primary entry point from the north, reveals an impact on regular foreign entries due to Ecuadorian-imposed restrictions to Colombians and Venezuelans. These restrictions, considered administrative barriers such as additional requirements for Colombian and Venezuelan citizens,[23] correlate with observable decreases in entries. The highest number of foreign entries through Tulcán was in 2018 (997,819). Following additional requirements for Colombians in 2008, entries decreased from 128,572 in 2007 to 125,669 in 2008 and 100,440 in 2009. Similarly, after measures for Venezuelans in 2018-2019, entries fell from 997,819 in 2018 to 582,344 in 2019, with further drops during Covid-19 before a 2023 increase.[24] This data suggests a link between stricter entry rules and reduced regular foreign entries at Tulcán. It is also posited that these restrictions likely led to an increase in irregular entries.

11. Source: The 1971 Immigration Law No. 1897, in its Article 7, vested immigration authorities with the "sovereign and discretionary power" to grant or deny visas, even when legal requirements were met. The 2005 Ecuadorian Migration Law outlined a specific deportation procedure in its Article 19 et seq., particularly for unauthorized entry, detailing a process involving arrest, mandatory judicial presentation without bail, a hearing within 24 hours, a judicial deportation decision within 48 hours, administrative consultation with the Minister of Government for denials, potential appeals, and the transfer of deported individuals as per Article 35. More recently, the 2017 LOMH asserts the nation's sovereign right to control its human mobility policy. Specifically, Article 2 of the LOMH establishes this principle, emphasizing the State's independent authority within its borders, as guided by the Constitution and international law. Furthermore, Title II, Chapter I, Section I, beginning with Article 123, mandates that all entries and exits from Ecuadorian territory must occur through official immigration checkpoints, with the state responsible for ensuring these processes respect human rights. Moreover, in Article 141 and the detailed causes for

[22] Miller S. and Panayotatos D., (2019), A Fragile Welcome. Ecuador's Response to the influx of Venezuelan. Refugees and Migrants, in Refugees International, Field Report, June 2019, p. 5.
[23] A detailed analysis of these obstacles will be carried out in the section dedicated to Procedural barriers: Request for additional documents.
[24] Analysis conducted with data from the National Institute of Statistics and Census (Instituto Nacional de Estadísticas y Censo), *Registro Estadístico de Entradas y Salidas Internacionales. Entradas y Salidas de ecuatorianos y extranjeros, según cantón de ubicación de las Unidades de control migratorio y vía de transporte, serie estadística 1997- 2023*, https://www.ecuadorencifras.gob.ec/entradas-y-salidas-internacionales/

deportation in Article 143, new grounds were established, including unauthorized entry (excluding those seeking protection), fraudulent documents, failure to regularize, repeated offenses, visa revocation, posing a security threat, and severe criminal convictions, with immediate deportation following sentences for serious crimes.

12. Justification: The justifications provided for preventing entry or expelling individuals have included adherence to national immigration laws and international agreements on migration. In some instances, expulsions have been framed as protective measures for the individuals being expelled, such as safeguarding them from human trafficking. In particular:

Summary expulsions: In 2016, the Ecuadorian authorities justified the expulsions of Cuban nationals in order to protect them "from human trafficking".[25] While Ecuador acknowledges the sovereign right of States to expel a foreign person from their territory, it firmly maintains that such actions must adhere to international human rights commitments. These commitments are universal and apply regardless of an individual's immigration status. Crucially, Ecuador emphasizes that expulsion decisions must be reached through an individualized assessment that considers the person's protection needs and rejects any form of collective expulsion. This stance underscores a commitment to upholding human rights standards in the context of migration enforcement.[26]

Pushbacks: In 2017, concerning the rejection of approximately 800 Venezuelan citizens at the Rumichaca International Bridge, the Ministry of the Interior stated that immigration control followed the LOMH and Ecuador's international agreements. They also cited the Ecuadorian-Venezuelan Migration Statute, which guarantees safe, orderly, and free migration, and denied any "restrictive, discriminatory, or xenophobic actions against Venezuelan citizens or any other nationality".[27]

13. Domestic and International Reactions: The prevention of entry and summary expulsions implemented by Ecuador has expressed significant concern at both domestic and international levels. These measures have been criticized for potentially violating the principle of non-refoulement and for failing to comply with international human rights norms and standards, particularly the right to seek and receive asylum, access to territory, and the prohibition of collective expulsions.

Summary expulsions: In 2016, a group of academics and human rights defenders in Ecuador spoke out against the expulsion of Cuban citizens evicted from El Arbolito park (Quito), stating that this was not "an isolated incident", but rather evidence of the migration policy that the Ecuadorian state was effectively implementing, particularly against the foreign population.[28] In October 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed concern about the detention and mass deportation of Cuban citizens in July 2016, highlighting allegations of due process violations in suspending or challenging the decision. It stated that the judicial release orders in this case were "revoked by the executive branch", resulting in the deportation of the individuals.[29]

Pushbacks: With respect to the expulsions and the imposition of documentary requirements for the entry of Venezuelan citizens into Ecuador, the Venezuelan Human Mobility Working Group, in 2019, issued an open letter expressing concern regarding the implementation of restrictive entry measures applicable to Venezuelan nationals. The letter asserted that the practical effect of these measures would be to preclude

[25] Martin Noticias, "*Correa sobre cubanos",* cit.; Herrera G., *La expulsión de ciudadanos cubanos*, cit., p. 14. Herrera G. (2022). *Migration and Migration*, cit. p. 23.
[26] Permanent Mission of Ecuador to the United Nations, 78th Session of the General Assembly, Agenda Item 81: Expulsion of Foreigners, New York, 11/11/2022.
[27] Ministry of the Interior, *Ministerio del Interior aclara situación sobre ingreso de extranjeros al Ecuador*, 2017, https://www.ministeriodegobierno.gob.ec/comunicado-3/
[28] La Línea de fuego, Revista Digital. (2016). *Pronunciamiento en contra de deportaciones arbitrarias a migrantes cubanos en Ecuador.* https://lalineadefuego.info/pronunciamiento-en-contra-de-deportaciones-arbitrarias-a-migrantes-cubanos-en-ecuador/
[29] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Concluding observations on the third periodic report of Ecuador, 5 October 2017, § 26.

Venezuelans in need of international protection from entering Ecuadorian territory or accessing asylum procedures. This constitutes a violation of the principle of non-refoulement, encompassing the prohibition of border rejection and refusal of admission.[30] Moreover, in a 2019 statement, the Inter-American Commission on Human Rights (IACHR) reminded the Ecuadorian authorities that, although States have the power to establish their immigration policies and laws, these must be in accordance with inter-American and international human rights norms and standards, among which are the need to guarantee the rights to seek and receive asylum, access to territory, non-rejection at the border, non-refoulement and the prohibition of collective expulsions, as well as the right to equality and non-discrimination.[31] Likewise, a report by Refugees International urged the Ecuadorian authorities to honour their commitment to non-refoulement, non-discrimination, integration, and non-criminalization of irregular migration.[32]

In July 2020, a Colombian legal advocacy group Dejusticia, filed an *amicus curiae* brief with Ecuador's Constitutional Court concerning the collective expulsion of 29 Venezuelans from the Ecuador-Colombia border. The brief detailed the difficulties Venezuelan migrants face in obtaining legal status in Colombia, which hinders their access to basic rights. Dejusticia argued that Ecuador's immediate group expulsions violated the principle of non-refoulement. Furthermore, they asserted that returning these individuals to the Colombian border region exposed them to heightened danger due to the area's unstable security. Dejusticia also emphasized the risk of these migrants being subsequently deported from Colombia to Venezuela due to their irregular status. This, they argued, would violate their right to seek international protection and have their cases individually and fairly assessed.[33] Likewise, the Human Rights Centre of the Andrés Bello Catholic University filed another amicus curiae in which it reiterated that collective deportations against people in need of international protection constitute a denial of access to the territory and refuge due to the irregular entry of these people. It added that the affected people required international protection, and Ecuador, as the receiving country, should subject them to the processes established under the law to regularize their condition. Therefore, by applying the assumptions of the Human Mobility Law for economic migrants, it violated the legal security of those affected, since it did not provide them with the international protection that the law offers.

In February 2021, the High Commissioner for Human Rights referred to the militarization of border management by Ecuador, Peru, and Chile, as well as worrying reports that people are being expelled without due evaluation of their vulnerability or protection needs.[34] Moreover, the Special Rapporteur on the human rights of migrants in 2021 indicated that Chile, Ecuador, and Peru had resorted to militarization of their border governance in response to the large-scale migration of Venezuelans. He added that these States were reportedly expelling migrants without adequately assessing their vulnerabilities or protection needs, raising concerns.[35] Furthermore, in February 2021, 99 civil society organizations subscribed to an open letter to the governments of Peru and Ecuador, to express deep concern about the immigration control measures implemented since January 2021, which involve the mobilization of military forces and deployment of combat vehicles along the border between Ecuador and Peru. The organizations indicated that these types of measures contravene the international agreements and treaties signed by Ecuador and

[30] See Refugees International, Visa Imposed by Ecuador on Venezuelan Migrants and Refugees Goes Against International Human Rights Obligations, 27/08/2019, https://www.refugeesinternational.org/advocacy-letters/visa-imposed-by-ecuador-on-venezuelan-migrants-and-refugees-goes-against-international-human-rights-obligations/

[31] IACHR, *IACHR Concerned about Ecuador's*, cit.

[32] Miller S. and Panayotatos D., *A Fragile Welcome.* cit.

[33] Dejusticia, *Corte Constitucional de Ecuador reconoció vulneración de derechos en casos de expulsiones colectivas*, 16/03/2022, https://www.dejusticia.org/corte-constitucional-de-ecuador-reconocio-vulneracion-de-derechos-en-casos-de-expulsiones-colectivas/

[34] HCHR, Bachelet updates Human Rights Council on recent human rights issues in more than 50 countries, 26/02/2021, https://www.ohchr.org/en/2021/02/bachelet-updates-human-rights-council-recent-human-rights-issues-more-50-countries?LangID=E&NewsID=26806

[35] Human Rights Council, *Informe del Relator Especial sobre los derechos humanos de los migrantes, Felipe González Morales, Informe sobre las formas de hacer frente a los efectos en los derechos humanos de las devoluciones en caliente de migrantes en tierra y en el mar*, 47th session, 21 June to 9 July 2021, §81.

Peru regarding Human Rights and put at risk the civilian population that is in a condition of forced mobility and in need of international protection.[36]

Likewise, Refugees International recommended removing financial and bureaucratic barriers to the regular entry of Venezuelan nationals, as well as increasing immigration processing capacity and reducing fees for obtaining visas or overstaying. Additionally, it requested maintaining Ecuador's commitment to the principles of non-refoulement, non-discrimination, integration, and non-criminalization of irregular migration[37].

14. Externalization: Regarding the outsourcing of immigration control functions, it should be noted that in 2023, Peru and Ecuador established an agreement to improve information exchange and collaboration on immigration security. According to authorities, this alliance allows for the exchange of crucial data, such as criminal records, arrest warrants, entry and exit restrictions, and alerts about fraudulent or stolen identity documents. The agreement signed by both countries seeks to "strengthen internal security and protect the rights of migrants". By facilitating the exchange of information and deploying it at checkpoints, both nations can "improve immigration management", especially considering their status as transit countries.[38]

15. Technology: From 2009 onwards, Ecuador started employing biometric fingerprint controls at its borders with Peru (Huaquillas) and Colombia (Rumichaca). Although Ecuadorian authorities denied any discriminatory intent toward Colombians,[39] the introduction of this measure occurred while a decree was in effect requiring Colombian citizens entering Ecuador to present a criminal record check.

Furthermore, at the northern border with Colombia, since 2024, Ecuadorian authorities have implemented technological tools for border control, such as an advanced video surveillance system with data analytics and dedicated interview rooms, to detect and process irregular migrant crossings. Located at the Rumichaca International Bridge, the main border crossing between the two countries, a system of 24 strategically positioned cameras with facial recognition and other analytics has been implemented. This is intended to enhance investigations and forensic analysis, while also improving border controls against human trafficking, migrant smuggling, and associated crimes via a two-tier interview process. Ecuadorian authorities have expressed their intention to expand this integrated border management model to the southern border with Peru, drawing inspiration from European practices.[40] This project has been implemented with the support of the International Organization for Migration (IOM) and funding from the European Union through the European Border Management Program (Eurofront).[41]

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[36] Open Letter to the Governments of Peru and Ecuador, Quito, 4/02/2021, https://21475655-932b-4f16-93c9-e4289a9616ac.filesusr.com/ugd/d2c5ad_c931e94e525a4a0e841e6319ac9ef75f.pdf.

[37] Miller S. and Panayotatos D., *A Fragile Welcome*, cit., p. 6.

[38] Superintendencia Nacional de Migraciones, *Perú y Ecuador suscriben convenio para fortalecer el control migratorio en la frontera*, 24/08/2023, https://www.gob.pe/institucion/migraciones/noticias/823723-peru-y-ecuador-suscriben-convenio-para-fortalecer-el-control-migratorio-en-la-frontera

[39] Portafolio, *Ecuador aplicará desde mediados de enero sistema biométrico de huella digital para controlar inmigración*, 24/11/2008, https://www.portafolio.co/economia/finanzas/ecuador-aplicara-mediados-enero-sistema-biometrico-huella-digital-controlar-inmigracion-485312; El Tiempo, *Más control a visitantes extranjeros, en Ecuador*, 25/011/2008, https://www.eltiempo.com/archivo/documento/MAM-3205015

[40] Primicias, *Control en Rumichaca se reforzará con cámaras de reconocimiento facial*, 24/02/2024, https://www.primicias.ec/noticias/sociedad/puente-rumichaca-camaras-control/

[41] IMO, *La Organización Internacional para las Migraciones donó Sistema de Videovigilancia para mejorar la gestión fronteriza en Ecuador*, 05/03/2024, https://ecuador.iom.int/es/news/la-organizacion-internacional-para-las-migraciones-dono-sistema-de-videovigilancia-para-mejorar-la-gestion-fronteriza-en-ecuador; see also EUROFRONT, *Expertos de Colombia, Ecuador y la UE estudian el sistema "One Stop Control" para mejorar la movilidad y seguridad en Rumichaca*, 14/12/2022, https://www.programaeurofront.eu/es/novedad/expertos-estudian-el-sistema-one-stop-control-de-la-ue-para-mejorar-la-movilidad-y-seguridad-en-rumichaca-colombia-ecuador

16. Other: There is information indicating that Ecuadorian authorities have acted arbitrarily by denying entry or expelling foreigners in border areas, leaving entry to the country subject to personal discretion without due process guarantees. This arbitrariness is reportedly rooted in "discretion and racism".[42]

In 2010, the Committee against Torture identified additional concerns arising from the militarization of the Colombian border. The Committee's findings indicated persistent abuses and acts of violence against the civilian population, specifically Colombian asylum seekers and refugees, perpetrated by both illegal armed groups and members of the Ecuadorian and Colombian security forces. The Committee also documented allegations of sexual abuse and assaults against refugee women and asylum seekers, reportedly committed by State security personnel and the Ecuadorian Armed Forces. Furthermore, information was received regarding the sexual harassment and coercion of women and girls, predominantly Colombian nationals, into sexual relations under threat of expulsion.[43]

Detention (Administrative detention)

Summary: The detention of irregular migrants for deportation purposes in private or police facilities, administered by the Ministry of the Interior and the National Police, hampered access to asylum procedures. This practice obstructed access to asylum by restricting freedom of movement, hindering the submission of applications, and limiting access to legal assistance. Even explicit requests for international protection during deportation hearings were sometimes rejected. While the government justified detention as necessary to control irregular migration, maintain public safety, and prevent abuse of the asylum system, the prolonged nature of detention, which often lasted days or months, raised significant human rights concerns. This practice was within the legal framework of Ecuador's Migration Law (2005), which allowed for the detention of foreigners for deportation purposes if they entered the country irregularly. Despite this legal basis, the detention of migrants and asylum seekers, documented in operations such as "Identity" (2010), "Twilight" (2011) and El Arbolito park (2016), and potential violations of the right to non-refoulement drew criticism from civil society, human rights organizations, and the IACHR, which emphasized the need for individual assessments and respect for the right to seek asylum.

1. Functioning: The barrier functioned through the detention of irregular migrants in both private and police facilities nationwide. Ostensibly, this detention was aimed at obtaining swift deportation orders and their subsequent execution. However, this practice directly obstructed access to asylum by curtailing individuals' freedom of movement, thereby hindering the submission of asylum applications and access to legally mandated aid. Even during deportation hearings, explicit requests for international protection faced rejection due to perceived lack of judicial competence or untimeliness. Although intended to be brief, detention for deportation could extend to days or months, exacerbating human rights violations against those held.

2. Time: There is no exact date for the start of either measure or a date for its completion. The two migrant detention centres have ended their operations; however, detention can still be carried out in police facilities. Likewise, the permanence in the restricted areas of the airports is still maintained.

3. Place: In Quito (Ecuador's capital), migrants facing expulsion were held primarily at the Temporary Detention Shelter (*Albergue Temporal de Detenciones*) "Hotel Hernán", which operated from 2011 to 2013 and was replaced by the Temporary Reception Centre (*Centro de Acogida Temporal*) "Hotel Carrión", which operated from 2013 to 2017.[44] Flagrancy Units and police stations were also deployed for this purpose.

[42] See Álvarez Velasco S. (2020). *Ilegalizados en Ecuador, cit.*, pp. 150-151; Committee against Torture, *Examen de los informes*, cit., §§ 14, 15; Garcia, G. (2020), *Venezolanos en Ecuador: prácticas de seguridad, criminalización y control*, Border Criminology, Faculty of law blogs, University of Oxford, https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/03/venezolanos-en-0

[43] Committee against Torture, *Examen de los informes*, cit., §§ 14, 15.

[44] See Global Detention Project, Hotel Hernán (Albergue Temporal de Detenciones), https://www.globaldetentionproject.org/countries/americas/ecuador/detention-centres/1752/hotel-hernan-albergue-temporal-de-detenciones; and Hotel Carrión (Centro de Acogida Temporal),

In other cities across the country, migrants were held in Provisional Detention Centres (PDCs), with individuals who had violated the law,[45] as well as Flagrancy Units and police stations.

4. Actors: The Ministry of the Interior and the Ecuadorian National Police were the central actors to implement this barrier, overseeing the "shelters" and police stations where migrants were detained before deportation.

5. Interaction: The detention of irregular migrants, often in temporary shelters or police facilities, is closely linked to their expulsion from the country.[46] While their freedom of movement is restricted and they face immediate deportation, their time in these facilities can extend from a couple of days to months, potentially limiting their access to legal aid and other safeguards. Furthermore, migrant detention intersects with bureaucratic obstacles, such as the absence of visas or specific documents required for certain nationalities, hindering their ability to legally remain in the country or seek refugee status.

6. Development: Throughout the analysed period, individuals with irregular migration status in Ecuador were detained for deportation purposes, with authorities utilizing temporary shelters as detention centres for foreigners awaiting removal, instead of standard prison facilities.[47] This detention, intended to be brief, reportedly extended to days or even months. Alarmingly, individuals who had requested international protection were also detained and remained in these centres despite pending asylum applications.

Although Article 41 of the Ecuadorian Constitution (2008) explicitly protects asylum seekers from being penalized for irregular entry, arbitrary detention of both migrants and applicants for international protection for deportation was observed. These detentions and deportations frequently breached the principle of non-refoulement, as individuals with potential protection needs were forcibly returned, and some endured prolonged, indefinite detention lasting for months.[48] Immigration arrests were carried out under the Ecuadorian Migration Law, (12 April 2005). This law authorized the detention of foreign nationals for deportation purposes if they had entered the country without submitting to immigration inspection by Immigration Service officials or in an unauthorized place or time (Article 19 et seq.).

Due to this legal framework, in June 2010, the Ecuadorian Police conducted Operation "Identity" (*Operación Identidad*), a crime-combating measure. This operation involved controls in public spaces, shopping centres, and neighbourhoods with high concentrations of Cuban and Colombian populations. Consequently, approximately 224 individuals of various nationalities were detained, including 52 of Cuban origin.[49] Notably, among those detained were victims of trafficking and asylum seekers who were subjected to deportation proceedings.[50] In March 2011, Operation Twilight (*Operación Crepúsculo*) took place,[51] during

https://www.globaldetentionproject.org/countries/americas/ecuador/detention-centres/1732/hotel-carrion-centro-de-acogida-temporal; Yépez C., *"Como si afuera nadie se diera cuenta": Memorias y experiencias de un centro de detención llamado "Hotel"*, in Perífrasis. Revista de Literatura, Teoría y Crítica, Vol.12/24, Bogotá, July/Dec. 2021, p. 186.

[45] Altamirano-Zavala A. 2024, *La Deportación en Ecuador, Análisis Procesal*, Digital Publisher, Vol. 9/6, p. 990

[46] Global Detention Project, 2015, "Immigration Detention in Ecuador", p. 6.

[47] See Yépez C., *"Como si afuera nadie se diera cuenta": Memorias y experiencias de un centro de detención llamado "Hotel"*, in Perífrasis. Revista de Literatura, Teoría y Crítica, Vol.12/24, Bogotá, July/Dec. 2021, p. 186; Álvarez Velasco, S. et al. (2021). *Viviendo al Límite: Migrantes Irregularizados en Ecuador*. Quito: Colectivo de Geografía Crítica de Ecuador, Red Clamor y GIZ, pp. 23-24.

[48] Appelbaum, A. (2012). "Challenges to Refugee Protection in Ecuador: Reflections from World Refugee Day". Georgetown Public Policy Review (Washington: Georgetown University). https://gppreview.com/2012/06/26/challenges-to-refugee-protection-in-ecuador-reflections-from-world-refugee-day/; Coalition for Migration and Refugee, 2017, Shadow report on compliance with the International Convention on the protection of the rights of all migrant workers and members of their families (ICMW), Ecuador 2017, p. 11.

[49] Arcentales J. (2010) Migración cubana: Recomendaciones de Política Pública para Ecuador incluyente, Informe Temático No. 2. Dirección Nacional de Promoción de los Derechos Humanos y la Naturaleza, p. 34.

[50] Coalition for Migration and Refuge, (2011), *Ecuador. Examen Periódico Universal. Derechos humanos de las personas en movilidad (migración, refugio, desplazamiento, trata de personas y tráfico de migrantes)*, p. 4.

[51] El Comercio, *Paquistaníes cobraban USD 45.000 a terroristas que buscaban ir a EE.UU.*, cit.; La República, *Confirmado: grupo talibán tenía contactos en Ecuador*, 14/09/2011, https://www.larepublica.ec/blog/2011/09/14/confirmado-grupo-taliban-tenia-contactos-en-ecuador/

which the Ecuadorian police arrested 67 Asian and Arab migrants in four neighbourhoods of the capital of Ecuador. The migrants were taken to a special prison in Quito. At least 22 men from Sri Lanka and Pakistan were asylum seekers at the time. Following the intervention of the Ecuadorian public defender, the last detainees who had not yet been deported were released at the beginning of June 2011, after three months of detention.[52]

In 2011, Ecuadorian authorities began using the Hotel Hernán facilities as a temporary shelter before deportation. Later in 2013, this operation was transferred to the Hotel Carrión, a shelter for detained foreigners who were in Ecuador without proper documents, with expired visas, or who were engaged in activities for which they did not have immigration permits. Both structures functioned as Migrant Detention Centres in Quito,[53] administered by the Ministry of the Interior, where immigrants were deprived of their liberty for long periods of time due to the impossibility of deportation to their countries of origin.[54] Ecuador was one of the only countries in the region that had developed a dedicated detention facility for depriving people of their liberty due to their migration status.[55] In August 2015, a French Brazilian academic and human rights defender was detained in the Hotel Carrión and reported that conditions were similar to a prison, with scheduled outdoor time, eating times, and restricted visitation hours. In particular, "a detainee of Filipino origin had already been waiting for six months to see a lawyer, for a court to set her deportation date. Another Argentine detainee had been waiting a month for a trial".[56] Ecuadorian authorities maintained that foreign citizens in these reception centres were temporarily housed, "not detained", while deportation procedures were completed, guaranteeing human rights. They also acknowledged potential delays due to external factors like obtaining travel documents.[57]

Furthermore, in 2016, 151 Cuban nationals were detained in the police operation held in El Arbolito park (Quito). The detainees were transferred to the Flagrancy Unit of the Prosecutor's Office without having committed any crime, only evading immigration filters.[58] The warrantless detention lasted more than 24 hours.[59] According to available information, the police officers deprived the group of migrants of their fundamental rights, such as the right to call their families, friends, and lawyers, thus violating their right to due process.[60] The Prosecutor's Office denied that they were detained and requested several deportations to the country of origin.

7. Rationale: The government justifies detention as a measure to control irregular migration, maintain public security, and prevent the abuse of the asylum system. Nevertheless, there is a lack of a clear official rationale for the prolonged and arbitrary detention of individuals seeking asylum.

8. Legal Status: People detained in temporary migrant shelters had to be brought before a judge before deportation.[61] During the shelters' operation, cases were reported of people who, despite having expressed

[52] Freier L., *Migración contemporánea de África, cit.*, p. 103.
[53] Herrera G., *La expulsión de ciudadanos cubanos*, cit., p. 15.
[54] Coalition for Migration and Refuge, 2011, *Ecuador. Examen Periódico Universal*, cit. p. 5.
[55] Ceriani Cernadas P., Immigration Detention through the Lens of International Human Rights: Lessons from South America, in Global Detention Project, Working Paper No. 23, 2017, p. 7.
[56] Lavinas Picq M., (2017) *De la academia a las rejas: detención y criminalización en Ecuador*, in *Ecuador Debate 101*, p.115.
[57] See Ministry of the Interior, *Extranjeros en proceso de deportación no son detenidos, reciben albergue de manera temporal*, https://www.ministeriodegobierno.gob.ec/48005-2/; Ministry of the Goverment, *Centro de Acogida Temporal Hotel Carrión garantiza el respeto a los Derechos Humanos*, https://www.ministeriodegobierno.gob.ec/centro-de-acogida-temporal-hotel-carrion-garantiza-el-respeto-a-los-derechos-humanos/
[58] See Criminal Judicial Unit, Metropolitan District of Quito, Pichincha Province, No. 17151201600570, 10/07/2016; Criminal Judicial Unit, Metropolitan District of Quito, Pichincha Province, No. 17151201600549, 14/07/2016.
[59] Plan V, *La guerra contra los cubanos*, Cit.; Ecuavisa, *Defensa de cubanos, cit.*
[60] See Freier L., *Migración contemporánea de África, cit.*, 2013, p. 103; Yépez C., *"Como si afuera nadie se diera cuenta"*, cit., p. 195.
[61] Article 19 et seq. of Ecuadorian Migration Law mandated the deportation of foreigners entering the country without proper immigration inspection. Upon arrest, as stipulated in Article 20, the National Police must immediately place the individual before a judge, initiating legal action without the possibility of bail. Within 24 hours of the deportation procedure, Article 25 requires the judge to order a hearing, followed by a resolution within 48 hours either ordering or denying deportation (Article 26).

their desire to be recognized as refugees, remained detained for months or simply had their verbal request not processed[62].

9. Specific Impact: The barrier does not initially have a particular impact on specific groups, such as children, women, LGBTQ+ people, or people with disabilities. However, some research on detention in temporary shelters shows evidence of dynamics of xenophobic, racial, and gender discrimination.[63]

10. Reach: There are no specific figures available to determine the number of people detained in temporary shelters or in restricted areas of airports.

11. Source: Ecuadorian Migration Law (12 April 2005), articles 19 et seq.). Article 135 of the LOMH.

12. Justification: Ecuadorian authorities justified the detention of irregular migrants as a measure to ensure the deportation process. The official position is that these individuals, "who are in the reception centre, are not in detention status". For the Ecuadorian authorities, the migrants were temporarily "housed" while the administrative procedures to execute the deportation were carried out. Stating that the entry of foreign citizens into the "temporary reception centre" is ordered by a competent judicial authority, therefore, "the permanence of foreigners is fully legitimate".[64]

13. Domestic and International Reactions: Concerning detentions in migrant centres, particularly the mass detention of Cuban nationals for deportation, Ecuadorian civil society expressed opposition to these actions.[65] In 2011, civil society organizations reported that detained immigrants seeking asylum face critical issues: their claims are sometimes dismissed as "abusive or unfounded" without proper review by the Refugee Commission. Furthermore, deportation hearings often require formal refugee certification from the Ministry, contradicting the inherent nature of refugee status, which is declarative. These practices place vulnerable individuals at risk of deportation and return to the country of origin, as evidenced by cases of deported Cubans and Colombian asylum seekers.[66] In 2011, the United Nations High Commissioner for Refugees (UNHCR) observed that while the detention of asylum seekers and refugees was not widespread in Ecuador, detainees were held in temporary detention and migration control centres along the northern border. Consequently, it recommended that Ecuador implement a protocol to ensure law enforcement authorities verify the status of all detained foreign nationals, thereby preventing the deportation of individuals requiring international protection. UNHCR further recommended reducing the use of detention for individuals in need of such protection.[67]

Moreover, in 2016, the IACHR expressed concern over detentions and deportations of Cuban migrants in Ecuador, emphasizing the nation's duty to safeguard the fundamental rights of all migrants. This included explicit protection for rights like freedom, personal safety, fair legal procedures, and the right to seek asylum. Crucially, the IACHR stressed that Ecuador must conduct thorough, individualized assessments before any deportation, justifying each decision. Furthermore, the Commission reiterated the absolute necessity of adhering to the principle of *non-refoulement*, prohibiting the return of any individual to a country where they face risks to their life, safety, or liberty. According to IACHR, this principle serves as the cornerstone of protection for those seeking refuge.[68]

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[62] Yépez C., *"Como si afuera nadie se diera cuenta", cit.*
[63] See Yépez C., *"Como si afuera nadie se diera cuenta", cit.*, p. 192.
[64] See Ministry of the Interior, *Extranjeros en proceso,* cit.; El Comercio, *'Hotel Carrión' es un albergue para extranjeros bajo custodia*, 27/08/2015, https://www.elcomercio.com/actualidad/seguridad/hotelcarrion-albergue-extranjeros-policia-ecuador.html; El Comercio, *El hotel Carrión lleva casi tres años de recibir a huéspedes 'especiales'*, 12/07/2016, https://www.elcomercio.com/actualidad/seguridad/hotelcarrion-migracion-cuba-autoridades-crisis.html
[65] Burneo C., *El cable de luz*, 12/07/2016, https://dialoguemos.ec/2016/07/el-cable-de-luz/
[66] Coalition for Migration and Refuge, 2011, *Ecuador. Examen Periódico Universal*, cit., p. 6.
[67] Ministry of Justice, Human Rights and Cults, *Examen Periódico Universal del Ecuador 2012*, pp. 46, 54.
[68] IACHR, *CIDH expresa preocupación ante detenciones y deportaciones de migrantes cubanos en Ecuador*, 26/07/2016, https://www.oas.org/es/cidh/prensa/Comunicados/2016/102.asp

Detention at the airport

Summary: Individuals deemed inadmissible are often held in restricted "sterile rooms" within Ecuador's international airports in Quito and Guayaquil. This de facto detention aims to deter asylum applications by preventing formal entry and pressure individuals to continue their journeys or return home. Ecuadorian authorities, primarily the police and immigration agents, justify denying entry based on the LOMH, citing issues like a lack of documentation or security concerns. The stance that airport restricted areas are "neutral ground" further complicates asylum seekers' ability to claim rights. Despite the theoretical possibility of seeking protection upon arrival, the discretionary application of inadmissibility rules effectively obstructs access to Ecuador's asylum system, a practice that has drawn concern from international bodies.

1. Functioning: The barrier's purpose is to deter asylum applications at the airport from transit passengers or those deemed inadmissible. Inadmissible individuals are de facto detained in "sterile rooms" at Quito and Guayaquil international airports: restricted, temporary holding areas for those awaiting "return".[69] Holding individuals in restricted airport areas effectively prevents them from formally entering the country and initiating the asylum application process on Ecuadorian territory. The pressure to continue their journey or return to their country of origin, coupled with de facto detention, discourages or outright blocks their access to the asylum system in Ecuador. The authorities' stance that the airport's restricted area is "neutral ground" further complicates their ability to claim rights within Ecuador.

2. Time: No start date has been identified for this barrier. The permanence in the restricted areas of the airports is still maintained.

3. Place: International airports in Ecuador, particularly in Mariscal Sucre International Airport in Quito and José Joaquín de Olmedo International Airport in Guayaquil.

4. Actors: The Ecuadorian Police is the primary institutional actor responsible for enforcing this policy. Airport immigration agents also play a key role. Airlines have a secondary, albeit necessary, function in ensuring that transit passengers continue their journeys and do not remain in the airport. In particular, Article 137 of the LOMH establishes that transportation companies are immediately responsible for the return of inadmissible individuals. No other jurisdictional or international actors are involved directly in the implementation of this policy.

5. Interaction: Bureaucratic obstacles, particularly within the visa and documentation application processes for specific nationalities, can extend the reach of this barrier. De facto detention in private facilities, such as airports, mainly involves the expulsion of migrants and asylum seekers. These people, whose freedom of movement is restricted, are subject to immediate expulsion. However, their stay in these places can last for days or months, and they may not have access to legal assistance. Although individuals could theoretically seek international protection upon arrival at an airport, the discretionary and potentially arbitrary nature of immigration authorities could lead to denied entry and pressure for immediate departure, either to their country of origin or a third country.

6. Development: Facing stricter European border controls, Ecuador, alongside Brazil, has become a frequent departure point for African and Asian refugees and migrants who arrive by air and then proceed via other routes towards North America. Ecuador's initial visa-free policy spurred increased migration and asylum claims from Pakistan, Nigeria, Bangladesh, Cuba, and Haiti; however, the subsequent imposition of visa requirements led to a reduction in regular migration from these nations.[70]

According to Article 136 of the LOMH, the state is granted the authority to deny entry to foreign individuals based on their actions or omissions. Article 137 lists the grounds for inadmissibility, including,

[69] Yépez C., *"Como si afuera nadie se diera cuenta"*, cit., p. 187.
[70] Freier L., *Migración contemporánea de África, cit.,* p. 103; Tines N., Getting it together: Extra-regional migration in South, Central and North America and the need for more coordinated responses, MMC Research Report, 2021, pp. 19, 23. See also Global Detention Project, 2015, "Immigration Detention in Ecuador", p. 4.

among others, presenting false documents, having a no-entry order due to prior deportation or a migration offense, lacking a valid travel document or required visa, being considered a security risk, intentionally evading migration controls, or obstructing migration authorities. In case of a lack of a valid identification document or a valid visa, immediate departure is ordered without an administrative procedure, with the possibility of return once the issue is resolved. If a person is identified as a victim of human trafficking, a specific procedure outlined in the law's regulations will be followed.

Since 2010, there have been reports of denials of entry at international airports. Some passengers are immediately returned to their country of origin or to the country of destination, if they are a passenger in transit. However, there have been reports of people who have spent days trying to resolve their situation. One of the most well-known cases of people who were denied entry to Ecuador occurred in April 2014, when a group of seven Cubans remained at the Mariscal Sucre airport for nine days. As of mid-September 2017, at least 41 people were in the restricted area of Quito International Airport.[71] Between February and March 2018, six African citizens were de facto detained in the restricted area of Quito International Airport. Despite some having requested international protection, authorities attempted their repatriation. While two habeas corpus petitions were filed, it wasn't until 2022 that the Ecuadorian Constitutional Court recognized the violation of the six citizens' rights. At that time, it also established a rule prohibiting immigration detention following denial of access to the territory and ratified the State's obligation to respect minimum due process guarantees in those proceedings.[72]

7. Rationale: Ecuadorian authorities consider that denial of entry at the airport may be motivated by various reasons, such as non-compliance with immigration requirements, security alerts, or precautionary measures. The person denied entry should immediately leave the airport, either continuing their journey to a third country or returning to the country of departure.

8. Legal Status: National legislation does not protect individuals denied entry to Ecuador at the airport, who are expected to immediately depart, either to another country or their origin. Refusal to leave can result in de facto detention within the airport, potentially requiring a habeas corpus petition for release. While technically possible to seek international protection at the airport, administrative authorities might arbitrarily obstruct this process, pressuring individuals to leave the country.

9. Specific Impact: The barrier does not initially have a particular impact on specific groups, such as children, women, LGBTQ+ people, or people with disabilities.

10. Reach: There are no specific figures available to determine the number of people de facto detained in the restricted areas of Ecuadorian airports.

11. Source: Articles 136 and 137 of the LOMH from 2017 "inadmissibility". The state has the authority to deny entry to a foreign national based on their actions or omissions. Article 137 outlines several reasons for inadmissibility, including presenting false documents, having a prior deportation record, lacking a valid passport or visa, or being deemed a threat to public security. Other grounds include attempting to evade or obstruct migration control, not carrying a required vaccination certificate, or failing to pay previous migration-related fines. The law specifies that inadmissibility procedures cannot be initiated against children or adolescents. Furthermore, according to the law, inadmissibility does not apply to individuals seeking international protection; in such cases, the process should be transferred to the human mobility authority.

[71] El Comercio, *41 pasajeros inadmitidos de enero a agosto del 2017 en el Aeropuerto Internacional Mariscal Sucre de Quito*, 14/09/2017, https://www.elcomercio.com/actualidad/quito/pasajeros-inadmision-aeropuertomariscalsucre-documentacion-sueloneutro.html

[72] See Constitutional Court of Ecuador, Case 1214-18-EP/22; Guerrero N. (2023). *Nuestra propia versión del filme "La Terminal"*, in *Defensoría Pública. Casos Relevantes 2022*, Quito, pp. 65-69.

12. Justification: Ecuadorian authorities justify denying airport entry based on security concerns or the failure to meet regular entry requirements, typically for tourism or a valid visa.[73] They view attempts to enter without fulfilling these requirements as an effort to bypass the nation's immigration laws. Moreover, immigration officials do not consider a foreigner to have entered Ecuador until their passport is stamped.[74] In this regard, the airport's restricted area has been considered "neutral ground" ("*suelo neutro*"),[75] implying that individuals remaining there are not within Ecuadorian territory but in an international zone, a designation used to limit their potential rights.

13. Domestic and International Reactions: In 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed concern over reported temporary detentions at Quito International Airport. It recommends that Ecuador fully comply with the legal prohibition of detention for migration-related reasons and guarantee the principle of non-detention and access to the Ombudsman's Office and public defender services during airport admission and entry procedures.[76]

14. Externalization: Airlines play a crucial role in the delegated functions of immigration control, specifically by ensuring that passengers present valid identification and the necessary visas to enter Ecuador. If travellers do not have an Ecuadorian visa, they are responsible for ensuring that the person continues their journey to the destination country.

15. Technology: In November 2019, Ecuador and the United States signed an agreement to implement the Personal Identification Secure Comparison and Evaluation System (PISCES) in Ecuador, a project using biometric technology to monitor the movement of foreigners at airports and other immigration points, starting with the Mariscal Sucre (Quito) and José Joaquín de Olmedo (Guayaquil) international airports. The project includes hardware, software for facial and fingerprint recognition, and technical assistance, with the stated goal of assisting in the fight against terrorism.[77]

Procedural barriers: Deadlines

Summary: The establishment of deadlines for asylum applications in Ecuador, a measure applied nationwide by the Ministry of Foreign Affairs and Human Mobility, has evolved through presidential decrees, ranging from 30 days to a restrictive 15 days before settling at 90 days in 2017. These time limits interact directly with the risk of detention and expulsion for those who fail to comply, as missing the deadline necessitates regularization of status or potential deportation. The rationale behind shorter deadlines was the assumption that genuine asylum seekers would apply immediately upon arrival. However, this approach has faced criticism domestically and internationally, with concerns raised about its negative impact on due process, potentially violating the principle of *non-refoulement* and hindering access to protection for vulnerable individuals who may face logistical and informational barriers in applying promptly. While authorities justified these measures as necessary for a more rigorous process, the strict timeframes have been identified as a significant bureaucratic obstacle to accessing asylum in Ecuador.

1. Functioning: The imposition of strict deadlines for asylum applications functions as a significant barrier to accessing protection. These limited timeframes, particularly the shorter ones, can prevent individuals

[73] Infobae, *En una semana, Ecuador negó la entrada a 19 extranjeros en los aeropuertos de Quito y Guayaquil*, 02/12/2024, https://www.infobae.com/america/america-latina/2024/12/02/en-una-semana-ecuador-nego-la-entrada-a-19-extranjeros-en-los-aeropuertos-de-quito-y-guayaquil/

[74] Coalition for the Migration and Refugee, 2017, *Shadow report*, cit., p. 10.

[75] El Comercio, *41 pasajeros inadmitidos de enero a agosto del 2017 en el Aeropuerto Internacional Mariscal Sucre de Quito*, 14/09/2017, https://www.elcomercio.com/actualidad/quito/pasajeros-inadmision-aeropuertomariscalsucre-documentacion-sueloneutro.html

[76] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of Ecuador, 05/10/2017.

[77] Ministry of the Government, *Ecuador y Estados Unidos fortalecen sus relaciones en materia de seguridad*, 18/11/2019, https://www.ministeriodegobierno.gob.ec/ecuador-y-estados-unidos-fortalecen-sus-relaciones-en-materia-de-seguridad/

fleeing persecution from effectively accessing the asylum system. Newly arrived individuals may be traumatized, lack information about the asylum process, or face logistical challenges in gathering necessary documentation and legal assistance within such a short period. Consequently, failure to meet these deadlines can lead to applications being deemed inadmissible, effectively blocking individuals from having their protection needs assessed and potentially resulting in denial of entry or deportation simply due to a procedural technicality rather than a substantive evaluation of their claim.

2. Time: The deadline for submitting asylum applications for individuals lacking legal residence in Ecuador has varied over time through legal measures. Initially set at 30 days in 1992, it was drastically reduced to 15 days in 2012 and finally extended to 90 days under the 2017 LOMH.

3. Place: This bureaucratic barrier applies throughout the territory of the Republic of Ecuador.

4. Actors: The Ministry of Foreign Affairs and Human Mobility is the key player, as it is responsible for the administrative procedure for determining refugee status.

5. Interaction: Strict deadlines for asylum applications and appeals can interact with detentions and expulsions. Those who miss the application deadline or the appeal period must regularize their immigration status. Otherwise, they may be subject to administrative detention and subsequent expulsion from the country. Short deadlines can prevent people from accessing or continuing to seek protection, thus increasing their risk of forced expulsion.

6. Development: Until 2017, the deadlines for submitting asylum applications or appealing negative decisions were established by presidential decrees. Decree No. 3301 of 1992, Regulations for the application in Ecuador of the standards contained in the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, established a clear timeframe within which individuals needed to initiate their asylum claim. This submission was required either before the applicant's authorization to remain in Ecuador expired, or, if the applicant lacked authorization for legal residence, within a strict thirty-day period from their entry into the national territory (Article 7).

In 2012, Decree 1182 (Regulations for the application of the Right to Refuge in Ecuador) was adopted. The Decree created two key obstacles for asylum seekers in Ecuador: Deadlines and a pre-admissibility stage, which will be analysed in the next section. The Decree mandates that "any application for refugee status" must be submitted "within 15 days of entering Ecuadorian territory" (Article 27), a marked contrast to the previous 30-day period applicable to people without a residence permit (Article 7, Decree No. 3301, 06/05/1992). Under the new legislation, the 15-day period was applicable to all asylum seekers, regardless of their immigration status at the time of filing. Moreover, the Decree expressly stated that applications that do not meet these requirements (the deadline) "will not be accepted". The deadline presented a considerable obstacle, particularly for individuals crossing from Colombia through remote rural areas. This immediate post-border period was particularly difficult because many individuals, driven by fear, a lack of information on refugee law or other circumstances, did not immediately identify as refugees or asserted their rights.[78] Refugee organizations reported that most new arrivals did not meet this deadline, placing them in a vulnerable position as an undocumented migrant, at risk of deportation to Colombia.[79]

Likewise, the Decree established a deadline of three days for filing an administrative appeal if the application was deemed inadmissible and five days to submit an appeal if the decision denied the refugee

[78] Appelbaum, A. (2012). *Challenges to Refugee Protection*, cit.

[79] Human Rights Watch, Letter to President Correa on Refugee Rights, 20/06/2013, https://www.hrw.org/news/2013/06/20/letter-president-correa-refugee-rights; Reliefweb, OCHA, Landmark decision for the protection of refugees in Ecuador, 26/09/2014, https://reliefweb.int/report/ecuador/landmark-decision-protection-refugees-ecuador; Ubidia Vásquez, D. (2015). *La inconstitucionalidad parcial del Decreto 1182 sobre el derecho a solicitar refugio en el Ecuador: Análisis y efectos*. USFQ Law Review, 2(1), pp. 154-156.

status.[80] Before that, asylum seekers were allotted 30 days to appeal a negative decision.[81] Due to an unconstitutionality action brought by human rights organizations, some of the provisions of Decree 1182 lost validity in 2014. However, the rest of the Decree's regulations remained in effect until August 2017, when the LOMH came into force. After the partial declaration of unconstitutionality of Decree 1182, the deadline for submitting an application for international protection was adjusted in 2014 to "three months" from the date of entry into Ecuadorian territory, also 15 days for filing administrative appeals, regularizing immigration status, or departing the country if an application was deemed inadmissible, as well as a 15-day limit for appealing a decision denying refugee status.[82] Despite some positive aspects of this court's decision, like adopting the regional refugee definition, the Constitutional Court validates negative steps in refugee protection in Ecuador. These include limiting access to the refugee status determination (RSD) process, setting application deadlines, and broadening reasons to revoke refugee status. Critically, the Court ruled that regulating refugee rights via executive decree is legally acceptable, leaving this potentially problematic practice in place.[83]

The current LOMH from 2017 establishes a 90-day period for submitting asylum applications, which has been accepted without criticism.

7. Rationale: The reduction of the asylum application window from 30 to 15 days, along with the establishment of brief deadlines for administrative appeals against unfavourable decisions, is justified by the assertion that individuals genuinely in need of international protection would seek it promptly upon arrival. This rationale presumed that immediate application was indicative of a legitimate claim.

In a letter to Human Rights Watch (HRW), Ecuadorian authorities indicated that "all Latin American countries establish deadlines for submitting asylum applications", adding that Ecuador "is not the most rigorous in this regard" and that it contemplated "exceptions in qualified cases".[84]

8. Legal Status: Individuals who have been unable to submit their applications due to failure to comply with the deadlines established by law are not protected in Ecuadorian territory and must regularize their immigration status.

9. Specific Impact: This bureaucratic barrier has no particular impact on specific groups, such as children, women, LGBTQ+ people, or people with disabilities.

10. Reach: There are no public figures available that allow us to know the number of people affected by this bureaucratic barrier.

11. Source: Decree No. 3301 of 1992, Decree 1635 of 25 March 2009 (articles 3 and 5), and Decree 1182 of 19/06/2012 (Article 25 and the subsequent articles). LOMH from 2017.

12. Justification: Regarding the deadlines and other provisions of Decree 1182, Ecuadorian authorities justified such measures to avoid the "abuse" of asylum. The president of Ecuador indicated that asylum applications had been "drastically reduced" because many more requirements were being met, and this will be "strictly reviewed to grant refugee status to those who truly deserve it". "Previously, the process was very lax; that has now been corrected".[85]

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[80] See articles 33 and 48 Decree 1182.
[81] Article 24, Decree No. 3301, 6 May 1992.
[82] Constititutional Court of Ecuador, No. 002-14-SIN-CC, 14/08/2014.
[83] Salazar D. 2017, *La protección jurídica de los refugiados en Ecuador: retrocesos normativos y su convalidación jurisprudencial,* Revista del Centro de Estudios Constitucionales, Vol. 4, p. 274.
[84] Ministry of Foreign Affairs and Human Mobility, 2013, *Pronunciamiento de Human Rights Watch sobre el refugio en Ecuador no corresponde a la Verdad*, 20/06/2013.
[85] El Comercio, *Correa dice que Ecuador endureció requisitos para conceder estatus de refugiado*, 18/07/2011, https://www.elcomercio.com/actualidad/politica/correa-dice-que-ecuador-endurecio.html; El Comercio, *Ecuador es más estricto con requisitos para conceder estatus de refugiados,* https://www.elcomercio.com/actualidad/politica/correa-dice-que-ecuador-

13. Domestic and International Reactions: A significant point of concern regarding the new asylum regulations centred on the imposition of strict deadlines for applications. Critics argued that these limited timeframes, such as the reduction to a mere 15 days for registration, presented a considerable barrier for individuals fleeing persecution. The socioeconomic realities faced by many asylum seekers, coupled with logistical challenges in reaching authorities and preparing their cases shortly after arrival, meant that these deadlines could prevent genuine refugees from accessing the protection system. This procedural hurdle risked denying individuals a fair opportunity to have their claims examined, potentially leading to inadmissibility and forced return, despite their need for international protection. Some of the statements are presented below:

In 2012, the Coalition for Migration and Refugees in Ecuador expressed concern about the Ecuadorian government's adoption and implementation of Executive Decree 1182. A key concern was the deadlines and conditions, which do not fit the socioeconomic realities of the majority of refugees or the Ecuadorian context, hindering effective protection processes and the eradication of discrimination and xenophobia in the country.[86] That year, UNHCR also indicated that the adoption of Decree 1182 had made it "more difficult for people of concern to gain access to asylum".[87]

In a 2013 public letter to the Ecuadorian President concerning Decree 1182, HRW raised concerns about its impact on asylum seekers' due process rights, particularly their right to fair claim examinations. The stringent 15-day asylum registration deadline was one of the concerns raised by HRW.[88] In a second letter, HRW called on the Ecuadorian authorities to take into account the fact that "some asylum seekers may struggle to reach asylum authorities within 15 days of arrival in the country" for logistical reasons.[89] Likewise, Access asylum Ecuador also argued that the decree violated refugees' rights protected by Ecuador's Constitution and international agreements. It claimed that the decree failed to guarantee asylum seekers access to their rights while their claims are pending, violated the principle of non-refoulement, and denied due process by limiting people's time and means to prepare their defence.[90] Moreover, in 2014, HRW submitted a joint amicus brief with the Human Rights and Genocide Clinic of Benjamin N. Cardozo School of Law before the Constitutional Court of Ecuador, contending that Decree 1182 violates Ecuador's international legal obligations to protect refugees and asylum-seekers.[91]

Procedural barriers: Preliminary admissibility stage (Accelerated Procedure)

Summary: The establishment of a pre-admissibility stage in Ecuador's asylum process, implemented through decrees in 2009 and reiterated in 2012, aimed to expedite claim processing by allowing authorities to quickly filter out "manifestly unfounded" or "abusive" applications. This initial assessment, conducted by the Ministry of Foreign Affairs, empowered the General Directorate of Refugees to reject claims within a short timeframe, bypassing a full review by the Refugee Commission. A key characteristic of this stage was the limited or absent right to appeal these initial rejections, compelling individuals to either regularize their immigration status or leave the country, potentially leading to administrative detention and expulsion if they failed to comply. While intended to streamline the system and reduce the Refugee Commission's

endurecio.html; Hurtado Caicedo, F; et al. (2020). *(Des)protección de las personas refugiadas en Ecuador*. Quito: FES-ILDIS and Colectivo de Geografía Crítica de Ecuador, p. 23.

[86] Coalition for Migration and Refuge in Ecuador, 2012, *Pronunciamiento frente a nuevo decreto que regula el derecho al reconocimiento del estatuto de refugiado en el Ecuador.*

[87] UNHCR, 2012 Global Report Ecuador.

[88] Human Rights Watch, *Letter to President Correa*, cit.

[89] Human Rights Watch, Response to Ecuadorian Government on Refugee Rights, 22/07/2013, https://www.hrw.org/news/2013/07/22/response-ecuadorian-government-refugee-rights

[90] Asylum Access Ecuador, Public Unconstitutionality Action Admitted to Review by the Constitutional Court of Ecuador, 04/07/2013.

[91] Human Rights Watch, Ecuador: Amicus Brief Challenges Refugee Decree Provisions Violate Rights of Asylum Seekers, Others, 16/06/2014, https://www.hrw.org/news/2014/06/16/ecuador-amicus-brief-challenges-refugee-decree

workload, this expedited procedure was criticized for undermining due process rights, including the right to a fair hearing and appeal, and for potentially violating the principle of non-refoulement by denying individuals the opportunity for a substantive evaluation of their need for protection. The broad discretion granted to officials in determining inadmissibility led to a reduced acceptance rate for asylum seekers during its implementation until the passage of the LOMH in 2017.

1. Functioning: Designed to quickly filter out "manifestly unfounded" or "abusive" asylum claims, the pre-admissibility phase enabled Ecuadorian authorities to reject applications based on an initial assessment, bypassing a detailed evaluation. As these initial rejections were not initially appealable, affected individuals were compelled to either regularize their immigration status or leave the country.

2. Time: The pre-admissibility stage was established in 2009 and then reissued in 2012, remaining in effect with some changes until the approval of the current LOMH in 2017.

3. Place: The pre-admissibility stage applies throughout the territory of the Republic of Ecuador.

4. Actors: The Ministry of Foreign Affairs and Human Mobility is a key player, as it is responsible for the administrative procedure for determining refugee status.

5. Interaction: The pre-admissibility stage of asylum applications directly led to administrative detentions and expulsions. Those whose claims were rejected at this early stage faced a short deadline to either regularize their status or depart, with failure to do so leading to the application of immigration laws and the risk of administrative detentions to facilitate their deportation.

6. Development: Decree 1635, enacted on 25 March 2009, marked a substantial shift in Ecuador's asylum procedures by amending Decree No. 3301 of 1992, the existing framework for implementing the 1951 Geneva Convention on Refugees. Previously, under Decree 3301, individuals seeking asylum received a Provisional Certificate valid for 90 days, permitting free movement while their application was reviewed, and had the right to appeal a negative decision to the Minister of Foreign Affairs up to thirty days after receiving notification of the denial. If the negative decision was appealed, the applicant could remain in the country until a final decision was reached, and their Provisional Certificate was renewed to cover this period. However, Decree 1635 introduced a critical preliminary admissibility phase. Upon application, the Provisional Certificate's validity was drastically reduced to just ten business days. More importantly, this new stage empowered the General Directorate of Refugees to summarily deem asylum claims "manifestly unfounded or abusive" inadmissible, either immediately or within 10 business days, thus bypassing the need for a full review by the Refugee Commission. A significant drawback for applicants was the initial lack of an appeal mechanism for these inadmissibility rulings, leaving them with a 30-day ultimatum to either regularize their immigration status or voluntarily leave Ecuador. Moreover, Decree 1635 failed to define "manifestly unfounded or abusive" requests, granting authorities complete discretion in rejecting applications they deemed to fall under these classifications. Additionally, Decree 1635 imposed a requirement for applicants to personally appear within 60 days of their final interview to receive the outcome of their case, with non-compliance leading to automatic notification of the decision. [92] This procedure, in effect until 2012, introduced a faster, but less appealable, initial screening process that undermined fundamental due process rights,[93] including the right to be heard by a competent authority and the right to appeal the decision. As a result, asylum recognition, especially for Colombians, faced increased scrutiny, resulting in a policy of rejecting applications.[94] Critically, the decree contravened the principle of refugee protection by denying individuals the opportunity for substantive case processing.

[92] See Decree 1635 of 25 March 2009; Coalition for Migration and Refuge, 2011 *Ecuador. Examen Periódico Universal, Cit.,* Cantor DJ. European influence on asylum practices in Latin America: accelerated procedures in Colombia, Ecuador, Panama and Venezuela. In: Lambert H, McAdam J, Fullerton M, eds. The Global Reach of European Refugee Law. Cambridge University Press; 2013:71-98.
[93] Salazar D. 2017, *La protección jurídica*, cit., p. 285.
[94] Laplace L. (2016). *"La politique des droits des réfugiés colombiens en Équateur: des discours aux pratiques des acteurs de l'aide"*, in *Cahiers des Amériques latines*, Vol. 83.

This placed them in a precarious position, vulnerable to potential detention and expulsion,[95] directly violating the principle of non-refoulement and the prohibition against penalizing individuals seeking protection based on their irregular entry or stay.

In 2012, Ecuadorian authorities made further changes to the asylum procedure. With Decree 1182 of 19 June 2012, Regulations for the implementation of the right of refuge in Ecuador, asylum-seekers were required to undergo an admissibility procedure, a preliminary stage (articles 19 et seq.). If the application met the initial requirements, it proceeded to the admissibility stage, where the Ministry registered it and prepared a technical report. A notification of admissibility was issued as soon as possible. However, in exceptional cases where immediate admission wasn't possible, a certification of presentation was granted, allowing the applicant to remain in the country solely for the duration of the process, without the formal status of an asylum seeker. If the application was deemed manifestly unfounded (completely unrelated to refugee definitions), abusive (fraudulent intent or evading justice), or illegitimate (applicant committed crimes warranting exclusion in Ecuador) by the Refugee Directorate, the application was declared inadmissible, and the applicant was given a brief period, up to three days, to file administrative appeals, regularize their immigration status, or leave the country. If the application was accepted, the Technical Secretariat issued a Provisional Certificate as a refugee claimant for up to 90 days, granting a temporary stay and certain rights. If the final decision by the Commission was negative, the applicant was notified and could appeal to the Minister of Foreign Affairs within five days. While the appeal was pending, the individual was permitted to remain in Ecuador, and their certificate was renewed until a final resolution was issued. If the appeal was also denied, the person had a short period, generally 15 days, to regularize their status or leave the country, with immediate departure mandated in cases of denial based on security or public order concerns.

Like the previous limitations, this process allowed officials to decline to adjudicate an asylum application through substantive RSD procedures. Instead, they could deny the application on the determination that the case was "manifestly unfounded" or "abusive",[96] as defined by the legal dispositions in the decree. During its implementation, the expedited procedure stage was interpreted inappropriately and broadly by officials, resulting in a significant reduction in the acceptance rate of asylum seekers in Ecuador.[97] Following a successful unconstitutionality action by human rights organizations, some parts of this decree became invalid in 2014. The remaining regulations, however, remained in effect until the LOMH took effect in August 2017. After the declaration of partial unconstitutionality in 2014, a 15-day period was established for administrative appeals, regularizing immigration status, or leaving the country if an application was inadmissible.[98]

7. Rationale: The initial admissibility stage for asylum applications was established to streamline the process by allowing authorities to summarily dismiss claims deemed not to meet the requirements, thereby reducing the workload of the Refugee Commission.

8. Legal Status: People who are prevented from accessing asylum by these measures receive the same treatment as foreigners. They do not enjoy protection in Ecuadorian territory.

9. Specific Impact: The bureaucratic barriers have no particular impact on specific groups, such as children, women, LGBTQ+ people, or people with disabilities.

[95] UNHCR. 2011. *Submission*, Cit., p. 3.
[96] Human Rights Watch, *Letter to President Correa*, Cit.; Reliefweb, OCHA, *Landmark decision*, Cit.; Ubidia Vásquez, D. (2015). *La inconstitucionalidad parcial*, cit., pp. 154-156. For instance, by September 2013, roughly 50% of asylum applications had been rejected. This indicates that a significant proportion of cases were dismissed without a thorough examination of the applications' merits and the applicants' need for international protection. UNCHR (2014). *Informe anual 2013. Resumen ejecutivo*, Quito, p. 11.
[97] Appelbaum, A. (2012). *Challenges to Refugee Protection*, Cit.; Human Rights Watch, *Letter to President Correa*, Cit.; Reliefweb, OCHA, *Landmark decision*, Cit.; Ubidia Vásquez, D. (2015). *La inconstitucionalidad parcial*, cit., pp. 154-156.
[98] Constititutional Court of Ecuador, No. 002-14-SIN-CC, 14/08/2014.

10. Reach: There are no public figures available that allow us to know the number of people affected by bureaucratic barriers.

11. Source: Decree 1635 of 25 March 2009 (articles 3 and 5) and Decree 1182 (Regulations for the application of the Right to Refuge in Ecuador), 19 June 2012.

12. Justification: Ecuadorian authorities stated in 2012 that the admissibility procedure for classifying refugees "rigorously follows the guidelines and directions of UNHCR Executive Committee".[99] However, they did not offer further details or justifications for establishing the eligibility stage or reducing the timeframes for each stage. However, it has been reported that the "expedited procedure", originally intended for refugees from outside the continent, was also applied to Colombian asylum seekers due to Ecuador's conviction that a more streamlined and restrictive process was necessary to mitigate security risks associated with the influx of Colombian refugees.[100]

13. Domestic and International Reactions: The introduction of a new regulatory framework for asylum in Ecuador sparked significant controversy, particularly concerning its initial admissibility stage. This preliminary assessment raised concerns about due process and access to protection due to limited appeal options and broad official discretion. Critics argued that this approach contradicted constitutional and international refugee rights, made it more difficult to access asylum, violated the right to a fair examination of claims, and potentially breached the principle of non-refoulement. Consequently, this initial filtering mechanism became a central point of contention for those advocating for refugee rights in Ecuador. Some of the statements made against this barrier are presented below:

In 2012, the Coalition for Migration and Refugees in Ecuador expressed concern about the Ecuadorian government's adoption and implementation of Executive Decree 1182. The Coalition highlighted that this decree contradicts the principles and rights recognized in the Ecuadorian Constitution and international human rights and refugee instruments. A key concern was the restriction of the refugee definition by eliminating the Cartagena Declaration, which could deny protection to many people fleeing widespread violence, particularly Colombians. Furthermore, the timelines and conditions, which do not fit the socioeconomic realities of the majority of refugees or the Ecuadorian context, hinder effective protection processes and the eradication of discrimination and xenophobia in the country.[101] That year, UNHCR also indicated that the adoption of Decree 1182 had made it "more difficult for people of concern to gain access to asylum".[102]

In a 2013 public letter to the Ecuadorian President concerning Decree 1182, HRW raised concerns about its impact on asylum seekers' due process rights, particularly their right to fair claim examinations. Their concerns focus on the decree's restrictive definition of refugee; novel admissibility procedure permitting the rejection of "manifestly unfounded" claims; stringent 15-day asylum registration deadline; extensive authority granted to officials to reject applications based on alleged prior crimes without adequate review; and undue power vested in officials to revoke refugee status. HRW emphasized that, considering the majority of refugees in Ecuador at that time were Colombian individuals fleeing widespread violence and human rights abuses, the exclusion of the Cartagena Declaration's broader refugee definition from the decree risked denying legally mandated refugee status and protection to thousands of Colombians.[103]

Likewise, Asylum Access Ecuador also argued that the decree violated refugees' rights protected by Ecuador's Constitution and international agreements. It claimed that the decree failed to guarantee asylum seekers access to their rights while their claims are pending, violated the principle of non-refoulement, and

[99] Ministry of Foreign Affairs and Human Mobility, 2013, *Pronunciamiento de Human Rights Watch sobre el refugio en Ecuador no corresponde a la Verdad*, 20/06/2013.
[100] Cantor DJ. *European influence*, cit., p. 91.
[101] Coalition for Migration and Refuge in Ecuador, 2012, *Pronunciamiento frente a nuevo decreto que regula el derecho al reconocimiento del estatuto de refugiado en el Ecuador.*
[102] UNHCR, 2012 Global Report Ecuador.
[103] Human Rights Watch, *Letter to President Correa*, cit.

denied due process by limiting people's time and means to prepare their defence.[104] Moreover, in 2014 HRW submitted a joint amicus brief with the Human Rights and Genocide Clinic of Benjamin N. Cardozo School of Law before the Constitutional Court of Ecuador, contending that Decree 1182 violates Ecuador's international legal obligations to protect refugees and asylum-seekers.[105] Furthermore, in 2015, UNHCR reiterated that "access to asylum in Ecuador remains difficult" due to the provisions of Decree 1182.[106]

Procedural barriers: Request for additional documents

Summary: Ecuador has implemented bureaucratic barriers, primarily through presidential and ministerial decrees, requiring criminal records and, at one point, passports with a minimum validity for certain nationalities, particularly at the northern and southern borders. These measures, enacted by the Ministry of the Interior and the National Police, function by preventing lawful entry for those who cannot provide the stipulated documentation. This denial of entry directly hinders access to the asylum system, as physical presence is required to apply, and individuals turned away at the border may later have asylum claims obstructed due to their irregular status. While some of these requirements, like the passport validity for Venezuelans, had specific timeframes, the demand for criminal records, initially for Colombians and later Venezuelans, has persisted, despite constitutional challenges and concerns raised by human rights bodies regarding discrimination and the obstruction of the right to seek asylum. Although exemptions for asylum seekers were introduced for the criminal record requirement in 2024, the historical implementation of these barriers impacted access to protection.

1. Functioning: The imposition of criminal records and valid passport requirements at the border functions as a significant impediment to accessing asylum by preventing lawful entry. Requiring these documents, which can be difficult or impossible for individuals fleeing persecution to obtain, directly leads to border rejections and potential expulsions. This denial of regular entry can then be used by authorities to argue against an individual's right to seek asylum, citing their irregular immigration status. Consequently, those who turned away due to a lack of the required documentation are effectively blocked from formally entering the territory and initiating the asylum application process, potentially leaving them without legal protection and vulnerable to detention and deportation.

2. Time: Only the barrier referring to the request for a passport with more than six months of validity for Venezuelan citizens had a start date (August 2018) and an expiration date (November 2018). The requirement to present a criminal record certificate at the land border, established in 2019, remains in effect.

3. Place: The barrier regarding the application for a passport with a minimum of six months validity and the criminal record certificate has been applied particularly on the northern border with Colombia and the southern border with Peru.

4. Actors: The Ministry of the Interior and the National Police of Ecuador are the main actors in this barrier.

5. Interaction: This bureaucratic barrier significantly impacts border rejections, expulsions, and migrant detentions. Specifically, the requirement for valid passports and criminal record certificates directly correlates with forced returns at the border, effectively precluding lawful entry into Ecuador for non-compliant individuals. This denial of lawful entry may impede access to international protection

[104] Asylum Access Ecuador, Public Unconstitutionality Action Admitted to Review by the Constitutional Court of Ecuador, 04/07/2013.
[105] Human Rights Watch, Ecuador: Amicus Brief Challenges Refugee Decree Provisions Violate Rights of Asylum Seekers, Others, 16/06/2014, https://www.hrw.org/news/2014/06/16/ecuador-amicus-brief-challenges-refugee-decree
[106] UNHCR, Global Appeal 2015 Ecuador.

applications, as authorities may cite irregular immigration status as grounds for obstruction. Furthermore, such obstruction can result in irregular immigration status, thereby exposing individuals to detention and potential deportation.[107]

6. Development: In Ecuador, bureaucratic barriers have developed over time through legal measures or informal administrative practices. While the 2008 Ecuadorian Constitution and the Ecuadorian Refugee Policy from 2008 recognize the principle of non-discrimination based on nationality, immigration status or criminal record (Art. 11. 2 CRE), and the right to seek and receive asylum, the effective realization of this right was hindered by the absence of specific legislation until the 2017 LOMH. Refugee protection was based solely on executive decrees, instruments subordinate to law and lacking the inherent legal guarantees of legislation approved through established legislative procedures.[108] In fact, presidential decrees, particularly those issued during the administrations of Rafael Correa (2007-2017) and Lenín Moreno (2017-2021), were used to impose general and administrative limitations on this right, as well as obstacles to regularizing the immigration status of certain nationalities because they were considered to represent "a potential risk or threat to national security."[109] In 2024, the administration of Daniel Noboa (2021-2025) imposed a new restriction on all foreigners entering through the land border between Colombia and Ecuador.

Colombian nationals: Despite a previous open-door policy, the bureaucratic barriers to accessing refuge in Ecuador began to become evident with the Executive Decree No. 1471, dated 3rd December 2008, mandated that Colombian citizens present a criminal record certificate, or "judicial record", issued by the Administrative Department of Security (DAS), the Colombian Executive Branch's intelligence agency, as a prerequisite for entry into Ecuadorian territory. A decision was announced while diplomatic relations with Colombia remained strained following a 2008 cross-border incident. This decree was subsequently amended by Executive Decree No. 1522, dated 7th January 2009, which exempted minors and legally recognized refugees from this requirement. In 2009, a public action of unconstitutionality was filed against Executive Decree No. 1471 and its subsequent reform by Executive Decree No. 1522. In December 2017, the decrees were definitively declared unconstitutional.[110]

Venezuelan nationals: In August 2018, Ecuador introduced a new bureaucratic obstacle for Venezuelans seeking to enter Ecuadorian territory. Ministerial Agreement No. 000242, issued by the Ministry of Foreign Affairs and Human Mobility, stipulated that Venezuelan citizens must present a passport valid for at least six months, a requirement that had also been imposed by other countries in the region, such as Chile, Panama, and Peru.[111] This restrictive measure was implemented in response to the "unusual migratory flow" of Venezuelans in the border provinces of Carchi and El Oro, as well as in Pichincha. Notably, the decree contained no exceptions to this requirement, leaving border authorities with discretionary power to admit asylum seekers lacking valid passports. In August 2018, the Judge of the Third Judicial Unit for Family, Women, Children, and Adolescents in Quito granted precautionary measures requested by the Ombudsman's Office, the Public Defender's Office, and academic and civil society organizations, citing violations of the rights of Venezuelan citizens seeking entry. Following this judicial decision, the Ministry

[107] On this subject, Ecuador's 2008 Refugee Policy stated that "the vast majority of the refugee population in Ecuador lives in a state of invisibility" and, as a result, some refugees have been "subject to detention and deportation", in violation of the principle of non-refoulement. Ministry of Foreign Affairs, Trade and Integration, 2008, *Política del Ecuador en Materia de Refugio*, p. 28.
[108] Salazar D. 2017, *La protección jurídica*, cit., p. 279.
[109] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2017, *Concluding observations*, Cit. § 18 (c).
[110] Constitutional Court of Ecuador No. 035-17-SIN-CC, 13/12/2017.
[111] Freier L. & Luzes M. (2020) "How Humanitarian are Humanitarian Visas? An Analysis of Theory and Practice in Latin America", in Jubilut L., Mezzanotti G. & Vera Espinoza M. (eds.), Latin America and Refugee Protection: Regimes, Logics and Challenges, p. 283.

of Foreign Affairs and Human Mobility issued Ministerial Agreement No. 244 on 22 August 2018.[112] While seemingly accepting the court's ruling that barred the requirement of a passport for Venezuelan migrants, the agreement instead demanded that they present their national ID card along with a valid certificate. This certificate had to be issued by a regional or international organization recognized by the Ecuadorian government or by an authorized Venezuelan entity with an apostille. This measure became a legal workaround in practice. It accepted the judge's ban on requiring the passport, but then demanded another document that was just as difficult to get.[113] The application of such measure was extended until the end of November 2018 by Ministerial Agreement No. 000280, as in the previous decree, no reference was made to any exception to such requirement.

Furthermore, in January 2019, Ecuadorian authorities imposed a new entry requirement for Venezuelan nationals, requiring the submission of duly apostilled or legalized Criminal Record Certificate from their country of origin or their country of residence for the preceding five years.[114] Subsequently, in February 2019, a resolution was adopted that provided limited exceptions to this requirement, specifically for minors, individuals with Ecuadorian relatives, those holding Ecuadorian residency, and those in transit to a third nation. In March 2019, the Ecuadorian Ombudsman's Office, in conjunction with various Ecuadorian organizations, initiated legal proceedings, filing a constitutional action to challenge the legality of these decisions before the Constitutional Court, seeking a declaration of unconstitutionality. The Court ordered the suspension of the effects of the challenged regulations and subsequently declared them unconstitutional.[115]

All these executive decrees did not provide exceptions for asylum seekers, and despite criticism, the measures remained in effect for several years.[116] Consequently, individuals lacking the requisite documentation were not guaranteed access to the asylum system[117] or were compelled to apply to their national authorities to obtain such documents. In January 2024, Ministerial Agreement No. 0007 reinstated the requirement for an apostilled criminal record certificate for individuals seeking land entry through the borders with Colombia and Peru. The Guidelines for the Implementation of this agreement explicitly exempt applicants for international protection from this requirement (Article 5, h), subjecting them instead to the provisions of the Human Mobility Law. Although exemptions for asylum seekers were introduced in 2024, the initial imposition created a barrier that prevented regular entry into Ecuadorian territory and, consequently, hampered access to the asylum system, as applicants for international protection could be verbally rejected at the border. And in the case of irregular entry, the application could be rejected and the person deported.

7. Rationale: The request for criminal records from Colombian and Venezuelan citizens is predicated on security concerns and the suspicion that individuals crossing the border may pose a criminal risk.

Decree 1471 (2008) indicated that Ecuadorian national security had been "seriously affected" due to the incursion, "primarily by Colombians, who in some cases became part of criminal associations". Moreover,

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[112] See Bolívar L. and Rodríguez C., *Crisis migratoria venezolana y responsabilidad de los Estados*, in Informe Especial, Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA), pp. 20, 21; Ministry of Foreign Relations and Human Mobility, Ministerial Agreement No. 000244, 24/08/2018.

[113] Burbano M., Zaldívar A. & Vera M. (2019) "*La política pública migratoria ecuatoriana en el caso de la crisis migratoria venezolana*", Revista de la Facultad de Jurisprudencia, Pontificia Universidad Católica del Ecuador, No. 6, p. 130.

[114] Interministerial Agreement No. 0000001, dated January 21, 2019, that imposed an additional requirement on Venezuelan citizens seeking entry into Ecuadorian territory, in addition to the documents specified in Ministerial Agreement No. 244 of August 22, 2018, issued by the Ministry of Foreign Affairs and Human Mobility. See also, El Universal, *Gobierno ecuatoriano pide antecedentes judiciales a venezolanos tras feminicidio*, 21/01/2019, https://www.eluniversal.com/internacional/31016/gobierno-ecuatoriano-pide-antecedentes-judiciales-a-venezolanos-tras-feminicidio

[115] Constitutional Court of Ecuador, N° 0014-19-IN, 07/06/2023.

[116] González G., *Problemas y Desafíos de la Convención de 1951*, OAS: *Refugiados, sesión especial*, 2008, www.oas.org/es/sla/ddi/docs/refugiados_sesion_especial_2008_presentacion_gonzalo_gonzalez.pdf2008.

[117] UNHCR. (2011). Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic Review: 3rd Cycle, 27th Session Ecuador, p. 3.

Decree 1522 (2009) specified that it is the obligation of the Ecuadorian State to "guarantee citizen security and ensure the maintenance of public order". Decree 1635 of 25 March 2009 indicated that the essential objective of the Extended Registration procedure for Colombians national "is to be inclusive, to seek the greatest possible scope and impact, offering the opportunity for all Colombian nationals in need of international protection to have the possibility of accessing the process for the recognition of refugee status, with the aim of being made visible and therefore, accessing the exercise of their fundamental rights". For that reason, was "necessary to modify the composition of the Commission to determine the Status of Refugees in Ecuador, to make it possible". Likewise, Ministerial Agreement No. 0007 of January 2024 aims to "prevent and control the entry of individuals belonging to terrorist organizations, organized crime or who constitute a threat or risk to public security and the structure of the State". In this regard, "the agencies in charge of carrying out immigration control will require foreign citizens entering through the borders of Peru and Colombia to present the Certificate of Criminal Record from the country of origin or residence during the last five years, duly apostilled" (article 1).

8. Legal Status: The lack of the required criminal record not only leads to denied entry into Ecuador but also prevents individuals from accessing the country's legal protections, including the possibility of submitting an asylum application, which requires being on Ecuadorian territory.

9. Specific Impact: This bureaucratic barrier has no particular impact on specific groups, such as children, women, LGBTQ+ people or people with disabilities.

10. Reach: As in the case of pushbacks, there are no official reports that allow determining the number of people affected by this measure, however an analysis of official entry data from the Tulcán land border (2007-2023), a primary entry point from the north, reveals an impact on regular foreign entries due to Ecuadorian-imposed restrictions on Colombians and Venezuelans. These restrictions, considered administrative barriers such as additional requirements for Colombian and Venezuelan citizens, correlate with observable decreases in entries. The highest number of foreign entries through Tulcán was in 2018 (997,819). Following additional requirements for Colombians in 2008, entries decreased from 128,572 in 2007 to 125,669 in 2008 and 100,440 in 2009. Similarly, after measures for Venezuelans in 2018-2019, entries fell from 997,819 in 2018 to 582,344 in 2019, with further drops during Covid-19 before a 2023 increase.[118] This data suggests a link between stricter entry rules and reduced regular foreign entries at Tulcán. It is also posited that these restrictions likely led to an increase in irregular entries.

11. Source: Presidential decrees served as the legal instrument for establishing the criminal record check as a condition for entering Ecuador:

Colombian nationals: Executive Decree No. 1471, 3rd December 2008 and Decree No. 1522, 7th January 2009. Decree No. 667 03/03/2011 *Modifíquense el Decreto 1471 de 3 de diciembre del 2008, publicado en el Registro Oficial No. 490 de 17 de diciembre del 2008*

Venezuelan nationals: Ministerial Agreement No. 000242, 16 August 2018, and Ministerial Agreement No. 000280, 30 October 2018, issued by the Ministry of Foreign Affairs and Human Mobility. Ministerial Agreement No. 0000001, 21 January 2019, and Ministerial Agreement No. 0000002, 01 February 2019; Ministerial Agreement No. 0007, 11 January 2024, and Guidelines for the Application of Ministerial Agreement 0007, from 12 January 2024.

12. Justification: The primary justification provided for requesting criminal records from foreign nationals, specifically Colombians and Venezuelans, centres on national security concerns. Ecuadorian authorities

[118] Analysis conducted with data from the National Institute of Statistics and Census (Instituto Nacional de Estadísticas y Censo), *Registro Estadístico de Entradas y Salidas Internacionales. Entradas y Salidas de ecuatorianos y extranjeros, según cantón de ubicación de las Unidades de control migratorio y vía de transporte, serie estadística 1997- 2023*, https://www.ecuadorencifras.gob.ec/entradas-y-salidas-internacionales/

stated that the entry of individuals without prior vetting posed a risk, with some reportedly becoming involved in criminal activities within the country. Some of the statements are presented below:

Colombian nationals: Ecuadorian authorities justified their requirement for criminal records from Colombian citizens by stating that national security had been significantly impacted by the entry of individuals, primarily Colombians, some of whom were reportedly joining criminal groups. Emphasizing the state's responsibility to ensure citizen security and public order, a decree was issued mandating that Colombians entering as tourists or in transit must present a legalized document from Colombian authorities certifying the absence of a criminal record, alongside standard entry requirements. Non-compliance with this condition would lead to the denial of entry into Ecuador.[119] Moreover, President Rafael Correa, in 2009, justified the criminal record requirement by claiming that Colombia's inadequate southern border security allowed criminal gangs and irregular groups to operate within Ecuador, committing crimes and then retreating to Colombia without facing punishment. Despite this requirement, President Correa rejected accusations of xenophobia.[120]

Venezuelan nationals: Regarding the requesting apostilled criminal records for Venezuelan citizens wishing to enter Ecuador, the Vice President of Ecuador justified the measure by indicating that all avenues had been exhausted to request the Venezuelan government to provide databases that allow "verifying the information of those arriving in the country".[121] In 2023, the Ecuadorian Minister of the Interior indicated that the control of the two regular migration crossings on the border between Ecuador and Peru, located in Huaquillas and Macará, will be reinforced. He also indicated the need to urgently reform the Law on Human Mobility, which he defined as "the most fragile in the region", regretting the inability to request criminal records from those entering the country[122]. Ecuadorian authorities justified Decree 244 by citing the influx of Venezuelan migrants and widespread identity card fraud by Venezuelan citizens. They argued that the cards' technical complexity hindered effective validation and asserted their right to control migration per Article 123, paragraph 1 of the LOMH.[123]

13. Domestic and International Reactions: Concerns have been raised regarding how entry requirements, such as the demand for criminal records and specific documentation, act as barriers to accessing asylum. It has been argued that such requirements can be discriminatory and stigmatizing towards certain nationalities. International human rights bodies have expressed worry that these measures could compel individuals in need of international protection to risk their safety and that selectively applying these requirements may contravene constitutional protections against discrimination. Furthermore, there's apprehension that demanding documentation that may be difficult or impossible for asylum seekers to obtain, coupled with increased border controls, could restrict the fundamental right to seek asylum. The emphasis from international organizations has been on ensuring that entry procedures do not obstruct access to RSD and that individuals seeking protection are not penalized for irregular entry. Some of the statements are presented below:

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[119] Ministry of Foreign Affairs and Human Mobility, *Ecuador establece condiciones para el ingreso de ciudadanos colombianos a territorio ecuatoriano*, 11/12/2008, https://www.cancilleria.gob.ec/2008/12/11/ecuador-establece-condiciones-para-el-ingreso-de-ciudadanos-colombianos-a-territorio-ecuatoriano/

[120] El Tiempo, *Presidente de Ecuador Rafael Correa justificó las restricciones a ingreso de colombianos*, 24/01/2009, https://www.eltiempo.com/archivo/documento/CMS-4773423

[121] El Universal, *Gobierno ecuatoriano pide antecedentes judiciales a venezolanos tras feminicidio*, 21/01/2019, https://www.eluniversal.com/internacional/31016/gobierno-ecuatoriano-pide-antecedentes-judiciales-a-venezolanos-tras-feminicidio

[122] DW, *Ecuador pide "corredor" para venezolanos expulsados del Perú*, 09/11/20239 de noviembre de 2023, https://www.dw.com/es/ecuador-propone-un-corredor-humanitario-para-venezolanos-expulsados-del-per%C3%BA/a-67359123/

[123] Ministerial Agreement No. 000244, 18 August 2018, §§ 1-3

Colombian nationals: In 2009, Colombia's Foreign Minister criticized the measure, expressing concern that it could be discriminatory and stigmatizing towards Colombians.[124] In 2009, the Human Rights Committee raised concerns regarding reports that, despite constitutional protections against discrimination based on criminal records (Article 11.2) and a draft amendment to Decree 3301 prohibiting such requests for refugees, the requirement for criminal record certificates was being selectively applied to Colombian immigrants seeking entry into Ecuadorian territory.[125] Moreover, in 2010, the Committee against Torture expressed concern regarding Executive Decree No. 1471, from December 2008, which mandated the submission of a criminal record certificate for Colombian citizens seeking entry into Ecuadorian territory. The Committee reasoned that enforcing this requirement on asylum seekers would compel individuals in need of international protection to jeopardize their safety.[126] In 2012, the CMW regretted that the requirement of a criminal record exclusively for immigrants from Colombia to enter Ecuador continued, as it led to stigmatization and contravened the Constitution.[127] In 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families highlighted concerns about the negative perception of foreign nationals, particularly Colombians, Peruvians, Cubans, and Venezuelans, alongside various African and Asian nationalities, who were viewed as potential threats to national security. Of specific concern was the observed xenophobia directed towards the Colombian population.[128]

Venezuelan nationals: In 2019, Refugees International recommended that Ecuador rescind "unrealistic entrance requirements for Venezuelan refugees and migrants"[129] and facilitate Venezuelan entry by opening borders and removing financial and bureaucratic barriers. This included increasing immigration processing capacity, lowering visa fees, and adhering to principles of non-refoulement, non-discrimination, integration, and avoiding criminalization of irregular migration. They also urged Ecuador to accelerate RSD, ensuring that Venezuelans meeting the criteria of the 1951 Refugee Convention or the Cartagena Declaration received necessary international protection.[130] Likewise, the IACHR expressed its concern regarding the requirements for apostilled or legalized documents for entry into Ecuador, and the establishment of police and immigration authority checkpoints at the Rumichaca International Bridge along the Colombian border. Furthermore, the IACHR stated that measures such as border closures, the requirement of unattainable official documents, and increased police presence could lead to restrictions on the right to asylum.[131]

That year, Human Rights Watch (HRW) submitted an *amicus curiae* brief to the Constitutional Court of Ecuador, in *Case No. 0014-19-CN*, addressing the legality of Ecuador's immigration requirements for Venezuelan citizens. The brief emphasized that certain Venezuelans may qualify as refugees under the 1951 Refugee Convention, while others may fall under the broader definition outlined in the Cartagena Declaration. Consequently, HRW argued that governments imposing passport requirements for legal immigration status on Venezuelans must guarantee that such requirements do not obstruct access to RSD

[124] El Tiempo, *Presidente de Ecuador Rafael Correa justificó las restricciones a ingreso de colombianos*, 24/01/2009, https://www.eltiempo.com/archivo/documento/CMS-4773423
[125] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations by the Human Rights Committee, Ecuador, Ninety-seventh session Geneva, 12–30 October 2009, §18.
[126] Committee against Torture, *Examen de los informes*, cit., § 13.
[127] Ministry of Justice, Human Rights and Cults, *Examen Periódico Universal*, cit., p. 54.
[128] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2017, *Concluding observations*, Cit. § 18 (c).
[129] Miller S. and Panayotatos D., Quito III: What Regional Governments Must Do to Help Displaced Venezuelans, Issue Brief, August 2019.
[130] Miller S. and Panayotatos D., *A Fragile Welcome*. cit, p. 5.
[131] IACHR, *IACHR Concerned about Ecuador's*, cit.

for those lacking valid passports. Furthermore, these governments must refrain from penalizing Venezuelans for unauthorized entry or stay when they are seeking protection.[132]

Moreover, in 2023, Amnesty International called on Ecuador to ensure all Venezuelans could effectively apply for refugee status. They advocated for Ecuador to utilize the broader refugee definition from the 1984 Cartagena Declaration, potentially granting collective recognition to Venezuelan asylum seekers. Furthermore, they stressed that Ecuador must not return any Venezuelans to their home country, adhering strictly to the principle of non-refoulement.[133]

Procedural barriers: Administrative failures

Summary: Administrative failures in Ecuador significantly impede asylum access. These include arbitrary and xenophobic actions by authorities during application processes and the logistical burdens of mandatory in-person appearances at potentially distant offices. Lengthy processing times further obstruct access. These issues, alongside legal deadlines, leave individuals unable to apply for protection. Reports indicate discouragement among asylum seekers, misinformation about eligibility, and a large backlog of pending cases. Moreover, technological and linguistic barriers exacerbate these difficulties. While the government aims to improve the system, these distinct administrative shortcomings currently undermine the right to seek asylum.

1. Functioning: Administrative shortcomings in Ecuador constitute impediments to accessing asylum. These include instances of arbitrary and xenophobic behaviour by certain authorities during the reception and processing of asylum claims, which can effectively preclude individuals from submitting applications. Furthermore, the requirement of in-person appearances at immigration offices, potentially situated at a considerable distance from an individual's entry point, coupled with protracted application processing times, while not entirely preventing claim submission, substantially obstructs and extends the asylum procedure, thereby undermining meaningful access to international protection.

2. Time: There is no set start or end date for the obstacle.

3. Place: The barrier applies throughout Ecuador.

4. Actors: Commission for Refugees and Statelessness (*Comisión de Refugio y Apatridia*), formerly known as the Refugee Directorate of the Ministry of Foreign Affairs and Human Mobility.

5. Interaction: These administrative deficiencies that hamper the initiation of refugee status recognition procedures can contribute to the detention of irregular migrants and their subsequent expulsion from the country. By not submitting a formal asylum application, these individuals lack protection and are subject to legal action by immigration authorities. Moreover, administrative failures compounded with legal deadlines create significant barriers to asylum in Ecuador. Individuals seeking to apply within the stipulated timeframes can be hindered by arbitrary refusals to process claims or the logistical challenge of traveling to distant immigration offices. These administrative deficiencies, coupled with strict deadlines, undermine the right to seek asylum by either preventing application submission altogether or severely complicating the process.

6. Development: Reports indicate that Venezuelan individuals were dissuaded from seeking refugee status by Ecuadorian authorities. Civil society organizations documented instances where officials advised applicants to abandon their claims, asserting that Venezuelans would not be granted refugee recognition. Although the Ministry of Foreign Affairs has clarified that these statements do not reflect the Ecuadorian government's official stance on international protection, some reports indicate that authorities maintained

[132] Human Right Watch, *Amicus curiae sobre la emigración venezolana a Ecuador*, 08/05/2019, https://www.hrw.org/es/news/2019/05/08/amicus-curiae-sobre-la-emigracion-venezolana-ecuador
[133] Amnesty International, *Regularization and Protection*, cit., p. 6.

that Article 98.2 of the LOMH, which defines a refugee in accordance with the Cartagena Declaration, was inapplicable to the Venezuelan situation.[134] Moreover, reports indicate that many people lack awareness of asylum application procedures in Ecuador, leading to missed opportunities for refugee status recognition. Even among those familiar with the process, some choose not to apply due to misinformation from Ecuadorian authorities who claim their nationality is ineligible, or due to hearing about rejected applications from fellow citizens.[135]

Moreover, the complex and centralized application system has created a substantial backlog of pending cases. While the process should ideally take three months, reports indicate that many applicants wait over a year, and some up to six years, for RSD.[136] There is information indicating that the eligibility commission, which is responsible for judging cases, meets irregularly and faces a significant backlog in resolving cases. Furthermore, some decisions have been made without sufficient objective evidence.[137]

Another obstacle to asylum applications in Ecuador is the requirement to complete some administrative procedures in person. While the initial application can be submitted online, applicants must attend an interview at the offices of the Directorate of International Protection.[138] This entails travel, often considerable, for those residing in rural areas or small towns. For instance, individuals in Huaquillas and Machala (located in the southwest of the country) must travel approximately four hours to the Guayaquil office.[139] This obstacle is also linked to deadlines. There are reports that during the validity of the regulation imposing a 15-day limit for submitting applications for international protection, some applicants were unaware of the requirement to appear in person at designated registration centres or lacked the financial resources to travel the distance, which could be up to four hours.[140]

7. Rationale: There is no stated rationale for the barrier.

8. Legal Status: Those who are prevented from applying for asylum due to administrative deficiencies are not protected by Ecuadorian law and must regularize their immigration status or leave the country.

9. Specific Impact: This bureaucratic barrier has no particular impact on specific groups, such as children, women, LGBTQ+ people, or people with disabilities.

10. Reach: There are no figures to determine the impact of the barrier.

11. Source: There is no source for the barrier.

12. Justification: The Ecuadorian authorities have not provided justifications for the administrative failures.

13. Domestic and International Reactions: No reactions have been identified in relation to this barrier.

14. Technology: Amnesty International has highlighted that visa and registration processes in Ecuador, which involve both online and in-person steps, present potential challenges. Access to technology, internet connectivity, and digital literacy are essential. In this regard, people who lack these resources and skills could face significant difficulties.[141] Meanwhile, Ecuadorian authorities are actively working to improve the management of refugee and human mobility issues, with a strong focus on strengthening the RSD process. In this sense, they adopted the UNHCR's ProGres v4 system, a case management software

[134] Amnesty International, Ecuador: Unprotected in Ecuador: Venezuelan refugee women survivors of gender-based violence, 17/11/2022, p. 17.
[135] Amnesty International, *Regularization and Protection*, cit., p. 14.
[136] Donger E. et al. (2017). Protecting Refugee Youth in Ecuador: An Evaluation of Health and Wellbeing, p. 20
[137] UNHCR (2017). Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report. Universal Periodic Review: 3rd Cycle, 27th Session Ecuador, p. 3.
[138] See Álvarez Velasco S. (2020). *Ilegalizados en Ecuador, cit.*, p. 157; Amnesty International, Ecuador: Unprotected in Ecuador: Venezuelan refugee women survivors of gender-based violence, 17/11/2022, pp. 17, 18.
[139] Amnesty International, *Ecuador: Unprotected in Ecuador.* cit., p. 18.
[140] Appelbaum, A. (2012). *Challenges to Refugee Protection*, cit.
[141] Amnesty International, *Regularization and Protection*, cit., p. 29.

integrated into UNHCR's database, that provides both online and offline functionality, allowing authorities nationwide real-time access to a single, centralized database. This not only standardizes procedures but also incorporates biometric identification (fingerprints and iris scans) to enhance security and improve the efficient management of cases. The system provides immediate updates on procedural status and helps identify specific protection needs for individuals seeking international protection. While the Ecuadorian government uses ProGres v4 for registration and RSD, UNHCR and its partners like HIAS access modules related to assistance, protection, and resettlement.[142]

16. Other: Administrative corruption is another factor cited in Ecuador's migration system. According to a study on migration from Africa and Asia to the United States, migrants and refugees face numerous risks during their journey, including exploitation by corrupt officials, especially in some countries, including Ecuador.[143]

Although the language barrier has not been mentioned in the information available so far, it may be a factor hindering access to information and the submission of asylum applications for non-Spanish speakers. The official information available online, as well as the form that applicants must complete as the first step, is only available in Spanish.[144]

B. Barriers of specific relevance to jurisdiction

Temporary Transit Visitor's Visa (*Visa de Visitante Temporal de Transeúnte*) – Transit visa

Summary: Effective 1st September 2025, Ecuador's Ministry of Foreign Affairs and Human Mobility implemented a new, mandatory temporary transit visa for citizens of 45 jurisdictions, including Cuba, Haiti, and Venezuela. The measure, justified as a means to enhance national security and immigration control, requires travellers to apply and pay a fee online at least 20 days in advance, and provides no exemptions for asylum seekers. The transit visa also carries significant financial and procedural burdens, including a USD 50 application fee, a USD 30 visa cost, and the need for an apostilled criminal record, making it difficult for low-resource asylum seekers to comply. While this visa allows for a single entry and a stay of up to 30 days, travellers are typically limited to a 24-hour layover in the airport, where they can be *de facto* detained until their asylum claim is processed. The policy represents a major shift from previous regulations, which allowed most travellers from these countries to transit through Ecuador without a visa.

1. Functioning: The temporary Transit Visitor's Visa (*Visa de Visitante Temporal de Transeúnte*) is a mandatory travel document for citizens of certain countries, often those with a high number of asylum applications, including Cuba, Haiti, and Venezuela. This visa allows them to briefly transit through Ecuador, either by airport, land, or sea, to another destination country. During a typical airport layover, the traveller cannot leave the airport or remain there for more than 24 hours. For land or sea transit, the transit visa holder must travel directly through the Ecuadorian territory to their next point of departure. These visas do not have an exception for individuals seeking international protection. This means that those fleeing persecution, who often come from the same countries to which these visa requirements apply, cannot simply enter that country through regular channels. The need for this visa, which is subject to an expensive application process and rigorous immigration checks before the journey even begins, can stop an asylum seeker from boarding a flight or entering Ecuador, where they could make an asylum claim.

[142] See Asylum Capacity Support Group, Ecuador, https://acsg-portal.org/pledges/ecuador/; Ibid., Ecuador: Improving electronic case management through ProGres v4 system, https://acsg-portal.org/tools/ecuador-improving-electronic-case-management-through-the-implementation-of-progres-v4-system/
[143] Tines N., *Getting it together*, cit., p. 19.
[144] See https://www.gob.ec/tramites/3878/webform, last access 30/04/2025.

2. Time: The Temporary Transit Visitor's Visa was announced by Ecuador in mid-2025 and began to be implemented on 1st September 2025, following amendments to the regulations of the Human Mobility Act.

3. Place: The Temporary Transit Visitor's Visa is a requirement implemented throughout Ecuador. Nationals of countries requiring a visa must obtain one before transiting through the Ecuadorian territory to a third country. Transit, whether by air, land, or sea, is subject to the approval of this requirement.

4. Actors: The main agent is the Ministry of Foreign Affairs and Human Mobility, through whom visa applications must be made. However, transportation companies are responsible for verifying that the person meets this requirement before boarding.

5. Interaction: Temporary Transit Visitor's Visa directly interacts with border rejections. When someone needs a transit visa for Ecuador based on their nationality, they can be denied entry at the border if they don't have one. This applies even if they're just passing through on the way to another country. The only exceptions are if they have a document that allows them to enter, like a tourist visa or a residence permit.

The transit visa can also be a factor in de facto detentions in restricted areas of airports. This is because a person with a transit visa can theoretically board a flight with a layover in Ecuador and then request international protection upon arrival. They can then remain in the airport's restricted facilities until their application is finalized.

6. Development: Starting 1st September 2025, Ecuador has implemented a major change to its visa policy, now requiring citizens from 45 jurisdictions to secure a transit visa before their journey. This new "Temporary Visitor in Transit Visa" must be applied for online, at least 20 days in advance, and it is not available upon arrival at any Ecuadorian airport or point of entry.

Previously, most travellers from these countries could transit through Ecuador without a visa. This was possible as long as they stayed within the airport's international transit area and did not go through customs or immigration. The same applied to those crossing by land or sea—they could enter the country without a visa if their nationality did not require one for entry.

This policy shift, announced in June by the Ecuadorian Ministry of Foreign Affairs and Human Mobility, is part of a wider effort to enhance national security and manage migration. The new rule particularly impacts travellers from countries in Asia, Africa, and Latin America, who must now obtain this electronic visa in advance to avoid being denied boarding by airlines or denied entry by Ecuadorian authorities.

The visa process has also become more restrictive due to its associated costs and requirements. The application fee is USD 50, with an additional USD 30 to obtain the visa. Furthermore, applicants must provide an apostilled criminal record certificate and show proof of funds equal to one Ecuadorian minimum wage (USD 470). These financial and procedural burdens make it difficult for many people to apply for this visa and, consequently, to enter the country through legal channels.

7. Rationale: The rationale for imposing this measure is to strengthen state security and immigration control.

8. Legal Status: People affected by this barrier lack legal status in Ecuador. Those who do not obtain a transit visa will not be able to make a stopover in Ecuadorian territory. Those who manage to travel and make a stopover may request international protection at the airport or point of entry, but will not be considered asylum seekers until their application is registered.

9. Specific Impact: The transit visa requirement appears to have a specific impact on asylum seekers with limited resources, as the fee to process a transit visa application is USD 50, and the cost of the visa, once approved, is USD 30. Added to this is the cost of obtaining the visa requirements, which include obtaining a properly apostilled criminal record.

10. Reach: Although specific figures on the number of people affected by this barrier are not available, it is noteworthy that the transit visa requirement is imposed on countries with high levels of asylum applications in Ecuador, as is the case for Venezuelan nationals. Part III will detail how, in recent years, asylum applications from Venezuelan citizens have exceeded the number of applications submitted by Colombian nationals.

11. Source: According to Ecuador's Regulation to the LOMH, a transit visa is a formal authorization required for foreign nationals from specific countries who intend to pass through Ecuador. As defined in Article 50, a visa grants a person permission to stay or travel through the country for a set period. Article 105A clarifies that a transit visa is mandatory for citizens of countries that require a tourist visa, even if their sole purpose is to pass through Ecuadorian territory. Article 105B outlines the specific conditions and requirements, stipulating that the visa is for transit only, must be applied for at least 20 days in advance, and is generally valid for a single entry for up to 30 days. The article details the mandatory documents, including a valid passport, proof of funds, a criminal background check, and evidence of onward travel. It also specifies additional requirements for minors and people with disabilities, ensuring a comprehensive legal framework for granting transit visas

12. Justification: The Ecuadorian government has justified the adoption of this policy as part of a broader effort to strengthen immigration controls and prevent risks associated with the irregular transit of people, as well as to meet international security commitments.[145]

13. Domestic and International Reactions: To date, no statements have been identified regarding the establishment of this measure.

III. SELECTING BARRIERS

Part II of this report will examine, through jurisprudence, the significant role of bureaucratic barriers in systematically impeding access to international protection. These often less visible administrative obstacles, such as restrictive eligibility criteria, burdensome documentation requirements, and stringent application deadlines, demonstrably impact asylum applications. Consequently, a thorough assessment of the cumulative effect of these bureaucratic impediments on vulnerable populations is essential, recognizing their capacity to establish de facto barriers to international protection. Furthermore, the second part will extend to an investigation of the implementation of border-rejection measures and summary expulsions in the Ecuadorian context, facilitating comparative analysis with practices in other nations to foster a comprehensive understanding of evolving trends in asylum deterrence.

[145] LEXIS Noticias (2025) "*Ecuador exige visas de tránsito a ciudadanos de 45 países para reforzar el control migratorio*", 9/06/2025, https://www.lexis.com.ec/noticias/ecuador-exige-visas-de-transito-a-ciudadanos-de-45-paises-para-reforzar-el-control-migratorio

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

Pushbacks and summary expulsions: function as immediate barriers by preventing individuals from formally entering Ecuadorian territory or by swiftly removing them without due process, thus obstructing their ability to seek asylum. Border rejections, often linked to the requirement of specific entry documents, deter regular entry and can lead individuals to attempt irregular crossings, which may complicate future asylum claims. Summary expulsions, sometimes occurring after detention, operate under previous immigration laws that prioritized deportation for unauthorized entry, often without adequate consideration for asylum needs. Even though individuals might theoretically request protection during deportation hearings, this right has not been consistently upheld, leading to removals that bypass the asylum process altogether. The immediate nature of these actions, whether at the border or within the country, effectively prevents individuals from initiating or pursuing their right to international protection in Ecuador.

Type of body: First instance, second instance, and Constitutional instance

Administrative detention: The barrier functioned through the detention of irregular migrants in both private and police facilities nationwide. Apparently, this arrest was aimed at obtaining swift deportation orders and their subsequent execution. However, this practice directly obstructed access to asylum by curtailing individuals' freedom of movement, thereby hindering the submission of asylum applications and access to legally mandated aid. Even during deportation hearings, explicit requests for international protection faced rejection due to perceived lack of judicial competence or untimeliness. Although intended to be brief, detention for deportation could extend to days or months, exacerbating human rights violations against those held.

Type of body: First instance, second instance, and Constitutional instance

De facto detention at the airport: The barrier's purpose is to deter asylum applications at the airport from transit passengers or those deemed inadmissible. Inadmissible individuals are de facto detained in "sterile rooms" at Quito and Guayaquil international airports: restricted, temporary holding areas for those awaiting "return". Holding individuals in restricted airport areas effectively prevents them from formally entering the country and initiating the asylum application process on Ecuadorian territory. The pressure to continue their journey or return to their country of origin, coupled with de facto detention, discourages or outright blocks their access to the asylum system in Ecuador. The authorities' stance that the airport's restricted area is "neutral ground" further complicates their ability to claim rights within Ecuador.

Type of body: First instance, second instance, and Constitutional instance

Procedural barriers- Deadlines: The imposition of strict deadlines for asylum applications functions as a significant barrier to accessing protection. These limited timeframes, particularly the shorter ones, can prevent individuals fleeing persecution from effectively accessing the asylum system. Newly arrived individuals may be traumatized, lack information about the asylum process, or face logistical challenges in gathering necessary documentation and legal assistance within such a short period. Consequently, failure to meet these deadlines can lead to applications being deemed inadmissible, effectively blocking individuals from having their protection needs assessed and potentially resulting in denial of entry or deportation simply due to a procedural technicality rather than a substantive evaluation of their claim.

Type of body: First instance, second instance, and Constitutional instance.

Procedural barriers- Preliminary admissibility stage (Accelerated Procedure): Designed to quickly filter out "manifestly unfounded" or "abusive" asylum claims, the pre-admissibility phase enabled Ecuadorian authorities to reject applications based on an initial assessment, bypassing a detailed evaluation. As these initial rejections were not initially appealable, affected individuals were compelled to either regularize their immigration status or leave the country.

Procedural barriers- Request for additional documents: The imposition of criminal record and valid passport requirements at the border functions as a significant impediment to accessing asylum by preventing lawful entry. Requiring these documents, which can be difficult or impossible for individuals fleeing persecution to obtain, directly leads to border rejections and potential expulsions. This denial of regular entry can then be used by authorities to argue against an individual's right to seek asylum, citing their irregular immigration status. Consequently, those who turned away due to a lack of the required documentation are effectively blocked from formally entering the territory and initiating the asylum application process, potentially leaving them without legal protection and vulnerable to detention and deportation.

Procedural barriers- Administrative failures: Administrative shortcomings in Ecuador constitute impediments to accessing asylum. These include instances of arbitrary and xenophobic behaviour by certain authorities during the reception and processing of asylum claims, which can effectively preclude individuals from submitting applications. Furthermore, the requirement of in-person appearances at immigration offices, potentially situated at a considerable distance from an individual's entry point, coupled with protracted application processing times, while not entirely preventing claim submission, substantially obstructs and extends the asylum procedure, thereby undermining meaningful access to international protection.

Type of body: First instance, second instance, and Constitutional instance

No cases related to one or more selected barriers

To date, a review of judicial decisions has not revealed any direct rulings specifically addressing the procedural barrier at the pre-admissibility stage of asylum claims. The decisions identified that touch upon this initial phase are primarily concerned with the application of deadlines for requesting refugee status or appeal summary rejections, which have been discussed in detail within this section. However, it is plausible that other judicial decisions exist that have specifically engaged with the pre-admissibility stage for distinct reasons, such as the rejection of applications deemed "manifestly unfounded". Future research may need to explore these avenues to fully understand the judicial interpretation and application of pre-admissibility criteria.

Moreover, judicial analysis in Ecuador has not produced any rulings that directly address the "Request for Additional Documents" as an autonomous bureaucratic barrier within the asylum application process. This lack of targeted jurisprudence may stem from the intrinsic connection between such documentation requirements and the initial act of territorial entry. As discussed in Part I of this report, the imposition of entry requirements—such as the mandatory presentation of a valid passport or a criminal background certificate—has effectively obstructed the ability of certain foreign nationals, particularly those in urgent need of international protection, to access Ecuadorian territory and thereby initiate an asylum claim.

The only constitutional jurisprudence that tangentially engages with this issue involves two notable decisions. In case *No. 035-17-SIN-CC* (13 December 2017), the Constitutional Court declared the unconstitutionality of Executive Decrees No. 1471 and No. 1522, which imposed additional documentation requirements on Colombian citizens entering Ecuador as transients or tourists. While the decrees exempted recognized refugees from these requirements, the Court found the measures discriminatory and incompatible with constitutional principles of equality and human mobility. Similarly, in case *No. 14-19-IN/23* (7 June 2023), the Court invalidated Ministerial Agreements No. 242 and No. 244 issued by the Ministry of Foreign Affairs and Human Mobility, which established additional entry barriers specifically targeting Venezuelan nationals. In both cases, the Court emphasized the impermissibility of

imposing differential and disproportionate conditions on the entry of migrants and asylum seekers based on nationality. Although these rulings do not explicitly address the "Request for Additional Documents" within the asylum determination phase, they are instructive in signalling the Court's disapproval of migration control mechanisms that create indirect barriers to the exercise of the right to seek asylum.

Nevertheless, it remains conceivable that court cases exist where asylum seekers have explicitly argued that the inability to provide these specific documents constituted a preclusive barrier to accessing the asylum procedure itself. Further research into such cases would be necessary to fully ascertain the extent to which this documentation requirement has been litigated as an independent obstacle to seeking asylum.

Likewise, to date, no court rulings have been issued regarding the "Transit visa" barrier. The imposition of this measure is very recent, and no lawsuits have been filed regarding it.

B. Institutional settings

In Ecuador, any judge can hear constitutional guarantee actions. Civil and criminal judges alike may preside over both Protection Actions and Habeas Corpus Actions. According to the 2008 Constitution and the LOG JCC, all judges and courts are competent to hear jurisdictional guarantees. As a result, cases are assigned to any first-instance court or tribunal through a random system.[146] This aspect will be further explored in Part III.

Pushbacks:

- **First instance judicial body**:
  - *Tribunal de Garantías Penales con sede en el Cantón Tulcán* (Criminal Court of Guarantees based in the Tulcán Canton)
  - *Unidad Judicial Civil del Cantón Tulcán* (Civil Judicial Unit of the Tulcán Canton)
  - *Primera Unidad Judicial Penal de Contravenciones del Cantón Quito en la Provincia de Pichincha* (First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha)
  - *Sala Especializada en lo Penal, Militar, Policial y de Tránsito de la Corte Provincial de Justicia de Pichincha* (Specialized Chamber of Criminal, Military, Police, and Transit Laws of the Provincial Court of Justice of Pichincha)
- **Second instance judicial body**: *Corte Provincial de Justicia del Carchi* (Provincial Court of Justice of Carchi)
- **Constitutional Court**: *Corte Constitucional del Ecuador* (Constitutional Court of Ecuador)

Detention:

- **First instance judicial body**:
  - *Tribunal de Garantías Penales con sede en la parroquia de Quitumbe del Distrito Metropolitano de Quito, provincia de Pichincha* (Criminal Court of Guarantees based in the parish of Quitumbe, Metropolitan District of Quito, province of Pichincha)
  - *Tribunal de Garantías Penales con sede en el cantón Quito* (Criminal Guarantees Court based in the canton of Quito)
- **Second instance judicial body**:
  - *Sala Penal de la Corte Provincial de Pichincha* (Criminal Chamber of the Provincial Court of Pichincha)
  - *Sala Especializada de lo Laboral de la Corte Provincial de Justicia de Pichincha* (Specialized Labor Chamber of the Provincial Court of Justice of Pichincha)

[146] Arcentales Illescas J. (ed) "*El reto de la protección de los derechos de las personas en movilidad humana. Efectividad de las garantías jurisdiccionales*". Serie Cuadernos de Protección, 2014, Quito, Vol. 2, p. 62.

- **Constitutional Court**: *Corte Constitucional del Ecuador* (Constitutional Court of Ecuador)

Procedural barriers:

- **First instance judicial body**:
  - *Tercera Unidad Judicial de la Familia, Mujer, Niñez y Adolescencia del cantón Quito* (Third Judicial Unit for Family, Women, Children and Adolescents of the Quito Canton)
  - *Unidad Judicial Multicompetente Penal con sede en el cantón Lago Agrio, provincia de Sucumbíos* (Multi-Competence Criminal Judicial Unit based in the Lago Agrio canton, Sucumbíos province)
  - *Unidad Judicial de la Familia, Niñez y Adolescencia de Lago Agrio* (Judicial Unit for Families, Children and Adolescents of Lago Agrio)

  Second instance judicial body:

  - *Primera Sala de lo Civil, Mercantil, Inquilinato y Materias Residuales de la Corte Provincial de Justicia de Pichincha* (First Chamber of Civil, Commercial, Tenancy and Residual Matters of the Provincial Court of Justice of Pichincha)
  - *Sala Única Multicompetente de la Corte Provincial de Esmeraldas* (Multicompetent Single Chamber of the Provincial Court of Esmeraldas)
  - *Sala Multicompetente de la Corte Provincial de Justicia de Sucumbíos* (Multi-Competence Chamber of the Provincial Court of Justice of Sucumbíos)
- **Constitutional Court**: *Corte Constitucional del Ecuador* (Constitutional Court of Ecuador)

Executive bodies involved in asylum access adjudication

In Ecuador, executive bodies are central to the adjudication and administration of asylum access, underscoring the largely administrative nature of the country's asylum system. The Ministry of Foreign Affairs and Human Mobility (MREMH) serves as the primary governmental authority for asylum matters. Within the MREMH, the Commission on Refugees and Statelessness is specifically responsible for receiving, processing, and adjudicating asylum claims. Notably, the MREMH functions as both the first-instance decision-making body and the appeals authority in RSD procedures. The Commission, appointed by the Minister of Foreign Affairs, comprises three principal members and two alternates, all officials from the Ministry. The Coordinator of the Commission may invite UNHCR officials and representatives from governmental or non-governmental organizations to participate in meetings to offer prospects, granting them the right to speak but not to vote.[147]

As established, the Executive Branch of Ecuador holds exclusive competence over the asylum process, with primary responsibility vested in the Ministry of Foreign Affairs and Human Mobility (*Ministerio de Relaciones Exteriores y Movilidad Humana*). The Commission for Refugees and Statelessness (*Comisión de Refugio y Apatridia*), formerly known as the Refugee Directorate, is the technical body in Ecuador responsible for determining and recognizing a person's refugee and/or stateless status.[148] This authority oversees all stages of RSD, including registration, interviews, and final decisions, and is thus the key actor in managing administrative and procedural barriers that may affect access to asylum.

Beyond formal adjudication, executive authorities, particularly border control agencies and law enforcement, play a decisive role in the enforcement of migration policies that impact asylum seekers' access to protection. Border authorities, operating under the Ministry of Government, implement measures such as border rejections (pushbacks) and summary expulsions, often at Ecuador's northern and southern frontiers. These actions have been widely documented by international and domestic human

[147] See Ministry of Foreign Affairs and Human Mobility (MREMH), *Acuerdo Ministerial No. 0000012*, 14 February 2023.
[148] See Ministry of Foreign Affairs and Human Mobility, "*Acuerdo Ministerial No. 0000006*", 31 January 2023 and "*Acuerdo Ministerial No. 00000012*", 14 February 2023.

rights bodies as problematic practices that contravene both Ecuador's constitutional protections and international refugee law standards.

Moreover, detentions for deportation purposes fall under the jurisdiction of the National Police and the Migration Directorate, also operating within the Ministry of Government. Detention conditions and procedures have raised concerns, particularly regarding the treatment of asylum seekers and migrants awaiting status determination or removal, highlighting tensions between border security objectives and protection obligations.

International or regional organizations involved in asylum access adjudication

UNHCR does not possess direct adjudicatory authority within Ecuador's asylum process; RSD rests solely with Ecuadorian executive authorities, notably the Ministry of Foreign Affairs and Human Mobility. Nevertheless, UNHCR maintains a crucial supportive and advisory function within the national asylum framework.[149] Its officials may be invited to meetings of the Commission on Refugees and Statelessness to offer expert opinions on technical aspects of case analysis, participating with a voice but no vote.[150]

Since 2000, UNHCR has maintained a substantial operational presence in Ecuador, with a central office in Quito that coordinates a nationwide network of offices to provide protection and assistance to refugees, asylum seekers, and their host communities. This network includes three sub-offices in Quito, Guayaquil, and Ibarra, which are responsible for distinct geographical areas. The Quito sub-office covers the provinces of Pichincha, Santo Domingo, and the Sierra Centro region. The Guayaquil sub-office is responsible for the coastal region, the Southern Sierra, and the Southern Amazon, including the border with Peru. The Ibarra sub-office oversees the northern border with Colombia. To better serve people in key areas, UNHCR also has field offices in the northern border cities of Esmeraldas and Lago Agrio, and field units in Tulcán (on the border with Colombia), Huaquillas (on the border with Peru), and in the urban centres of Manta, Cuenca, and Ambato. This strategic placement allows for effective coordination with authorities and direct service delivery in regions with high concentrations of displaced populations.[151] Moreover, UNHCR has actively collaborated with the Ecuadorian government in the formulation and implementation of national refugee policies. A notable example is UNHCR's joint work with Ecuadorian executive bodies in drafting the Policy on Refugee Matters in 2008, reflecting a commitment to strengthen national capacity for protection and asylum administration.

UNHCR actively monitors border practices and raises concerns with authorities regarding any instances of irregular returns or denial of access to territory for individuals who may be seeking international protection. They engage in advocacy with the Ministry of Foreign Affairs and Human Mobility and border authorities to ensure adherence to international law. UNHCR also provides technical guidance on how to properly identify asylum seekers at borders and ensure their access to national asylum procedures. They may issue public statements or private representations expressing concern over practices that amount to pushbacks. For instance, UNHCR has historically expressed concerns regarding requirements that effectively restrict entry for asylum seekers at borders, such as the need for apostilled criminal records for Colombians and Venezuelan citizens, noting their potential to result in pushbacks or refusal of entry.

[149] UNHCR (2017). *Ecuador Hoja Informativa.*
[150] MREMH, *Acuerdo Ministerial No. 0000012*, cit., Art. 26.
[151] UNHCR, Ecuador, https://www.acnur.org/donde-trabajamos/pais/ecuador

C. Legal context and legal system

Ecuador operates under a civil law system, where written statutes are the primary source of law, rather than judicial precedents.[152] Notably, the 2008 Constitution stands as the supreme legal norm, establishing a hierarchical structure of legal sources including international treaties, organic and ordinary laws, and executive decrees.

When Ecuadorian judicial bodies evaluate the legality of asylum barriers, they commonly reference international legal frameworks such as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as Ecuador is a signatory. The Cartagena Declaration on Refugees (1984), which broadens the definition of a refugee, is also a significant source due to Ecuador's incorporation of this definition into its national law, notably the 2017 LOMH.

Legal grounds often invoked include the principle of *non-refoulement* and the human right to seek asylum, as enshrined in international human rights instruments like the Universal Declaration of Human Rights and the American Convention on Human Rights (ACHM- Pact of San José). The Inter-American Court of Human Rights' jurisprudence also serves as an influential source of interpretation, as well as its Advisory Opinions.

Membership in regional treaties that include the right to asylum significantly influences the interpretation and application of the Refugee Convention by judicial bodies in Ecuador. The most prominent regional instrument is the Cartagena Declaration on Refugees (1984), which, unlike the 1951 Convention, includes within the definition of a refugee persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.

The 2017 LOMH explicitly incorporates the broader definition from the Cartagena Declaration alongside the definition in the Refugee Convention. This dual incorporation means that Ecuadorian judicial bodies are legally obligated to consider both when evaluating asylum claims. A key example of this influence can be seen in cases involving Colombian nationals seeking asylum in Ecuador due to the internal armed conflict in Colombia. Ecuadorian courts have invoked the Cartagena Declaration's broader definition to grant refugee status to individuals who might not strictly meet the criteria of the 1951 Convention.

Furthermore, the jurisprudence of the Inter-American Court of Human Rights (IACtHR) also plays a key role. While the ACHR does not have a specific article solely dedicated to asylum, the IACtHR's pronouncements on the right to seek asylum as a human right and the principle of non-refoulement inform the Ecuadorian judiciary's understanding and application of both the Refugee Convention and the Cartagena Declaration. For instance, Advisory Opinion OC-25/18 of the IACtHR, requested by Ecuador itself, on "The Institution of Asylum and its Recognition as a Human Right in the Inter-American Protection System" underscores the regional human rights context within which Ecuador interprets its obligations.

For example, in case *No. 335-13-JP*, adjudicated by the Constitutional Court on 12 August 2020, the court recognizes the right to migrate and to due process established in the ACHR (§§ 120 and 42). Moreover, in case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court on 12 July 2023, the court reiterates the principle of non-refoulement, recalling that it is established in the 1951 Convention and the ACHR, and that it has been incorporated into Ecuadorian legislation (§§ 53 et seq.).

To date, no instances have been identified wherein Ecuadorian judicial bodies have invoked jurisprudence from foreign courts or foreign legislation in the adjudication of asylum cases. Decisions rendered by Ecuadorian courts in this area have predominantly relied upon domestic legal provisions and international and regional instruments to which Ecuador is a signatory.

[152] Fuentes J. (2021) The Basic Structure of the Ecuadorian Legal System and Legal Research, In GlobalLex, https://www.nyulawglobal.org/globalex/ecuador1.html

Reference to decisions from international or supranational tribunals

Ecuadorian national judicial bodies make relatively frequent reference to decisions from the IACtHR, when adjudicating on matters related to human rights, which inherently include aspects of asylum. The IACtHR holds particular significance due to Ecuador's membership in the Organization of American States (OAS) and its acceptance of the Court's contentious jurisdiction. Decisions and advisory opinions of the IACtHR are often invoked to interpret the scope and content of human rights enshrined in the ACHR, which are directly relevant to the rights of asylum seekers, such as the right to seek and receive asylum, the principle of non-refoulement, and due process guarantees.

Ecuadorian courts frequently cite IACtHR jurisprudence to bolster interpretations of domestic constitutional rights and international obligations related to asylum. This often leads to a more rights-protective approach. For example, in cases concerning the rights of vulnerable asylum seekers or the procedural safeguards required in asylum determination processes, IACtHR rulings on similar matters have been influential. Moreover, the principle of non-refoulement, though explicitly stated in international refugee law, is often reinforced and interpreted through the lens of the IACtHR jurisprudence on the prohibition of torture and inhuman or degrading treatment. Ecuadorian courts have referenced IACtHR cases to ensure that the application of this principle aligns with inter-American human rights standards, in particular the cases of *Vélez Loor v. Panamá* (2010) and *Pacheco Tineo v. Bolivia* (2013).

In an illustrative example of the Ecuadorian Constitutional Court's protective stance, case *No. 2496-21-EP/23*, adjudicated on 12 July 2023, notably cited the judgment of the IACtHR in the case of *Pacheco Tineo v. Bolivia* (2013) to underscore the fundamental application of the principle of *non-refoulement* as a cornerstone of refugee protection (§ 62). Despite the regrettable fact that the applicant in this specific case had already been returned to his country of origin prior to a final decision, the Constitutional Court seized the opportunity to emphatically call upon all authorities to meticulously respect this principle.

International human rights standards established by supranational courts

National judicial bodies in Ecuador have progressively engaged with international human rights standards when adjudicating asylum cases, especially in contexts where the rights of asylum seekers intersect with national or regional interests. This practice reflects Ecuador's broader constitutional and legal commitment to international human rights law, particularly through its 2008 Constitution, which incorporates a monist approach and elevates ratified international treaties -especially those concerning human rights- to a status equal or superior to domestic law (Article 417).

Ecuadorian courts, including the Constitutional Court and the ordinary judiciary, do cite jurisprudence from the IACtHR. The Constitutional Court of Ecuador has explicitly acknowledged the binding nature of decisions from the IACtHR, to which Ecuador is a party via the ACHR. In asylum-related jurisprudence, the Court has invoked advisory opinions and contentious case law from the IACtHR to interpret principles such as non-refoulement, the right to due process, and the prohibition of arbitrary detention.

For instance, in reviewing barriers to asylum such as summary expulsions or lack of procedural guarantees in RSD procedures, Ecuadorian courts have relied on international standards articulated in cases like *Pacheco Tineo v. Bolivia* (IACtHR, 2013), which emphasized procedural safeguards for asylum seekers, including access to effective remedies and non-refoulement obligations. Moreover, Ecuadorian courts have occasionally used supranational standards to scrutinize whether government actions (e.g., mass expulsions, restrictive regulations, or security-based exclusions from refugee status) meet the necessity and proportionality requirements under international human rights law. The Inter-American Court's jurisprudence, for example, has been pivotal in clarifying that migration enforcement cannot justify blanket derogations from inalienable rights or procedural fairness. For example, in ruling *No. 639-19 JP/20* adjudicated by the Constitutional Court on 21 October 2021, the majority explicitly adopted IACHR Resolution 2/18 and cited Advisory Opinion OC-18/03 to assert that migration policy must be "reasonable, objective, proportionate and not in violation of human rights." Moreover, Advisory Opinion

OC-16/99 (consular assistance), OC 21/14 (rights of children in migration), and the *Pacheco Tineo family v. Bolivia* (asylum precedent). Likewise, the ruling in the case of *Fernández Prieto & Tumbeiro v. Argentina* (migration control v. arbitrary interception). Finally, the rulings in the cases of *Nadege Dorzema and Expelled Dominicans* and *Haitians v. Dominican Republic* (collective nature of expulsion).

While the degree of reliance on supranational jurisprudence varies among Ecuadorian courts, there is a demonstrable trend toward integrating international human rights standards, especially from the Inter-American system, into asylum jurisprudence.

D. Laws and norms at the domestic level

Ecuador is a signatory to both the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees. Ecuador was the first Latin American country to ratify the Convention in 1955 and its Protocol in 1969.[153] Consequently, both instruments have binding legal force within Ecuador's domestic legal framework. Under the 2008 Constitution of Ecuador, international human rights treaties -particularly those concerning the rights of vulnerable populations, such as refugees- have constitutional rank. Article 417 of the Constitution establishes a monist system, whereby international treaties ratified by Ecuador automatically become part of domestic law and can, under certain circumstances, prevail over national legislation.

The Refugee Convention and the New York Protocol play a foundational role in shaping the legal standards, procedural guarantees, and interpretative framework governing asylum access adjudication in Ecuador. Their influence is evident in several key respects, for instance, Ecuador adopts both the Convention definition of a refugee (Article 1A(2) of the Refugee Convention) and the expanded refugee definition provided in the Cartagena Declaration on Refugees (1984), which, while non-binding, is widely accepted in Latin America. This dual framework ensures a broader and more inclusive approach to RSD, encompassing not only persecution based on the five Convention grounds but also threats arising from generalized violence, foreign aggression, or massive human rights violations.

Moreover, the *non-refoulement* principle enshrined in Article 33(1) of the Refugee Convention is a cornerstone of Ecuador's asylum jurisprudence. Ecuadorian courts, particularly the Constitutional Court, have repeatedly affirmed that this principle is of jus cogens character and is directly enforceable in domestic proceedings. As such, asylum seekers cannot be expelled or returned to a territory where their life or freedom would be threatened. Likewise, the Constitutional Court has held that due process rights, including access to legal representation, the right to a reasoned decision, and the right to appeal, must be upheld in administrative and judicial decisions affecting asylum seekers. These guarantees are interpreted in light of both the Refugee Convention and international human rights instruments such as the International Covenant on Civil and Political Rights and the ACHR.

Finally, Ecuadorian judicial bodies, most notably the Constitutional Court, frequently cite the Refugee Convention and Protocol as interpretative authorities when adjudicating cases involving denial of refugee status, arbitrary detention of asylum seekers, or barriers to accessing the asylum procedure. The Court has emphasized the need for substantive and procedural compatibility with these international instruments, often invalidating government practices that fall short of these standards. For instance, in ruling *No. 897-11-JP*, adjudicated by the Constitutional Court on 12 August 2020, regarding the minimum guarantees to ensure the right to seek asylum in refugee status recognition procedures and the right and principle of non-refoulement, the court cited the 1951 Convention on several occasions.

[153] Freier L.F. (2015). A Liberal Paradigm Shift?: A Critical Appraisal of Recent Trends in Latin American Asylum Legislation, in Gauci J.P. et al. (edit.) Exploring the Boundaries of Refugee Law Current Protection Challenges, p. 123.

The principle of non-refoulement

In Ecuador, the principle of non-refoulement constitutes not only a binding international obligation but also a constitutional norm with immediate and direct effect on the administration and adjudication of asylum claims. It operates as a fundamental legal and ethical limitation on the exercise of state sovereignty in the context of migration control and border enforcement. Ecuadorian law, through both statutory incorporation and constitutional interpretation, has firmly established that access to asylum procedures, and the procedural safeguards therein, must be governed by a rigorous and rights-oriented application of the non-refoulement principle. Jurisprudence and administrative practice in Ecuador have further affirmed that this protection extends beyond expulsion and deportation to include measures such as rejection at the border and extradition, where there exists a real risk of persecution, torture, or other grave human rights violations.[154]

Article 41 of the 2008 Constitution of Ecuador explicitly guarantees the right to seek and receive asylum and prohibits the return of persons to countries where their life, liberty, or personal integrity would be at risk.[155] Additionally, Article 417 establishes that international human rights treaties to which Ecuador is a party prevail over domestic law in cases of conflict, effectively granting constitutional rank to the principle of non-refoulement. Likewise, the LOMH explicitly enshrines the principle of *non-refoulement*. This commitment is articulated in its preamble and further detailed in Article 2, titled "*non-refoulement*".[156] Moreover, the Ecuadorian legal system provides for constitutional actions to guarantee the principle of non-refoulement, such as *habeas corpus* and protection actions, depending on the migrants' situation.[157]

The Ecuadorian judiciary, particularly the Constitutional Court, has interpreted non-refoulement as a binding and self-executing norm that must guide all asylum access adjudication and related administrative procedures. Courts have invoked the principle to strike down executive actions and administrative decisions that result in deportation or denial of entry without adequate individual assessment, especially where summary removals or expedited returns risk violating non-refoulement obligations.

For instance, in cases where asylum seekers have been denied access to RSD procedures or detained arbitrarily at borders or airports, Ecuadorian courts have emphasized that non-refoulement requires not only a prohibition on return but also meaningful access to fair and effective procedures for determining protection needs. See, for instance, Constitutional Court, case *No. 335-13-JP*, 12 August 2020, §111 and Constitutional Court, *case No. 2120-19-JP/21*, 22 September 2021, §69. Also, in *case No. 897-11-JP* (12 August 2020), the Constitutional Court reaffirmed that non-refoulement applies irrespective of immigration status, nationality, or mode of entry, and that its protection extends to those who have not yet been formally recognized as refugees, but whose claims are under consideration.

The right to asylum

The incorporation of the right to asylum into Ecuador's constitutional framework marks a pivotal advancement in the liberalization of refugee protection, transforming asylum from a discretionary state

[154] Freier L.F. & Gauci J.P. (2020). Refugee Rights Across Regions: A Comparative Overview of Legislative Good Practices in Latin America and the EU, Refugee Survey Quarterly, Vol. 39, p. 341.

[155] Ecuadorian Constitution: Art. 41. "The rights of asylum and refuge are recognized in accordance with the law and international human rights instruments. Persons seeking asylum or refuge shall enjoy special protection that guarantees the full exercise of their rights. The State shall respect and guarantee the principle of non-refoulement, in addition to emergency humanitarian and legal assistance. Criminal sanctions shall not be applied to asylum or refuge seekers for their entry or stay in an irregular situation".

[156] Organic Law on Human Mobility, Art. 2: "An individual shall not be returned or expelled to another country, regardless of their origin, when substantial grounds exist to believe that they, or their family members, would face a real risk of violations to their rights to life, liberty, or integrity. Such risks are understood to arise from factors including ethnicity, religion, nationality, ideology, gender, sexual orientation, membership in a particular social group, or political opinions. Furthermore, non-refoulement applies when well-founded reasons indicate a risk of subjection to serious human rights violations, consistent with the provisions of this Law and international human rights instruments".

[157] Rivas Bayas A. & Guapizaca Jiménez E. (2019). *Sobre la diminuta franja divisoria entre el habeas corpus y la acción de protección: análisis en cuanto a la protección del principio non-refoulement*, USFQ Law Review, Vol. VI, p. 206.

power into a fundamental, individual human right. [158] This evolution aligns with a broader regional trend. Specifically, Article 41 of the 2008 Ecuadorian Constitution explicitly recognizes the right to seek and receive asylum. Article 75 enshrines the principle of *non-refoulement* as a constitutional mandate, prohibiting the expulsion or return of any person to a territory where their life, liberty, or physical integrity would be imperilled. Furthermore, Article 417 elevates international human rights instruments to constitutional hierarchy, thereby integrating the 1951 Refugee Convention, its 1967 Protocol, and the Cartagena Declaration directly into Ecuador's domestic legal order.

Moreover, the 2017 LOMH, in Article 98, expressly recognizes the right to seek asylum and adopts an expanded definition of a refugee. This legislative framework permits individuals to apply for asylum within 90 days of entering Ecuadorian territory (Article 100), irrespective of their immigration status or point of entry. Applicants are guaranteed fair and individualized RSD procedures, which include access to legal representation and interpretation services (Articles 99 et seq.). The mandated suspension of deportation during appeal processes further reinforces the constitutional application of the non-refoulement principle, a cornerstone repeatedly affirmed by the Constitutional Court. Beyond procedural guarantees, recognized refugees benefit from comprehensive socio-economic entitlements, encompassing the rights to work, education, healthcare, and freedom of movement, all on equal terms with Ecuadorian nationals. Legal residency is formalized through documentation issued upon application, and recognized refugees receive national identification and visas that significantly facilitate their integration and access to public services. The explicit recognition of the right to family reunification and established pathways to permanent residency and naturalization further underscore Ecuador's commitment to a humanitarian, rights-based asylum system.

Judicial decisions have been pivotal in interpreting and broadening protections related to migration, ensuring that domestic law remains consistent with constitutional principles and international obligations. For example, in Constitutional Court rulings such as *case No. 335-13-JP* (12 August 2020, §111) and case *No. 2120-19-JP/21* (22 September 2021, §69), the Court explicitly recognized the principle of *non-refoulement* and affirmed the right of individuals to remain in the country under certain conditions. Notably, the latter decision clarified that the principle of *non-refoulement* applies even to children and adolescents who do not hold formal refugee status, emphasizing that refugee recognition is declaratory rather than constitutive (§70).

Regarding legal aid, it should be noted that the Public Defender's Office, established by the 2008 Constitution, serves as an independent judicial body providing free legal aid to individuals unable to afford legal representation, ensuring equal access to justice. Since 2008, and more formally from 2012 with UNHCR support, the PDO has focused on offering specialized legal assistance to migrants, asylum-seekers, refugees, and stateless people concerning human mobility. These services encompass support for asylum and statelessness applications, legal representation during interviews, assistance with appeals of negative decisions, and advice on issues like inadmissibility, regularization of status, deportation, and challenges to immigration sanctions. Further solidified by the 2017 LOMH, the Public Defender's Office, through resolutions like Resolution 032/2017, formalized the provision of legal advice, accompaniment, and representation throughout the asylum process.[159]

Sources of international refugee law that are relevant to asylum access adjudication

Ecuador's asylum regime is fundamentally grounded in a robust body of international refugee law, which serves as a key normative framework for adjudicating access to asylum. The principal sources include the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, both of which Ecuador has

[158] Freier L.F. (2015). A Liberal Paradigm Shift?: A Critical Appraisal of Recent Trends in Latin American Asylum Legislation, in Gauci J.P. et al. (edit.) Exploring the Boundaries of Refugee Law Current Protection Challenges, p. 123.
[159] Asylum Capacity Support Group, Ecuador: Strengthening partnerships to ensure legal services for asylum-seekers and refugees, https://acsg-portal.org/tools/ecuador-strengthening-partnerships-to-ensure-legal-services-for-asylum-seekers-and-refugees/

ratified. These instruments define who qualifies as a refugee, establish the core principle of non-refoulement, and articulate procedural guarantees and substantive rights for refugees, such as the right to due process, legal assistance, and protection from arbitrary detention or expulsion. Complementing these binding treaties is the 1984 Cartagena Declaration on Refugees, a regional soft-law instrument that has been formally adopted in Ecuadorian administrative and judicial practice. The Cartagena definition notably expands refugee protection to persons fleeing generalized violence, massive human rights violations, and other conditions seriously disturbing public order, thereby shaping a more inclusive and context-sensitive approach to RSD in Ecuador.

These international instruments are directly incorporated into Ecuador's domestic legal system through a monist constitutional framework, which affords ratified treaties the force of law without requiring implementing legislation. Articles 417 and 424 of the 2008 Constitution give international human rights treaties constitutional hierarchy, meaning they prevail over ordinary legislation. Furthermore, Article 11(3) establishes the pro persona principle, mandating that when multiple interpretations of a right are possible, the one most favourable to the individual must be applied. This constitutional configuration ensures that international refugee and human rights norms are not merely aspirational but legally binding on domestic authorities. Consequently, both judicial and administrative bodies in Ecuador, including the Constitutional Court and the Ministry of Foreign Affairs and Human Mobility, are required to adjudicate asylum claims in accordance with the procedural and substantive standards articulated in international law. This legal structure reflects Ecuador's formal commitment to a rights-based asylum system and provides the foundation for holding state actors accountable to international protection obligations.

Other human rights obligations

Refugees and asylum seekers in Ecuador benefit not only from the protections set out in the 1951 Refugee Convention and its 1967 Protocol, but also from a wider body of international, regional, and constitutional human rights obligations. These supplementary sources of law play a central role in asylum access adjudication by reinforcing procedural guarantees, expanding the scope of *non-refoulement*, and ensuring fundamental rights such as dignity, liberty, due process, and non-discrimination. Ecuador's 2008 Constitution explicitly incorporates international human rights treaties with constitutional hierarchy (Articles 417 and 424), requiring judicial and administrative authorities to apply these standards directly when evaluating asylum claims. This rights-based legal framework situates Ecuador among jurisdictions that take a holistic approach to international protection.

Among the most relevant instruments is the International Covenant on Civil and Political Rights (ICCPR, 1966), which Ecuador ratified in 1969. Articles 7, 9, and 13 of the ICCPR—prohibiting torture or cruel treatment, arbitrary detention, and expulsion without due process—are routinely invoked in asylum litigation to challenge detention conditions, summary deportations, and the denial of effective remedies. Similarly, under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984) and the Inter-American Convention to Prevent and Punish Torture (1985), Ecuador is bound not to expel or return a person to a country where there are substantial grounds for believing they would face torture. The Constitutional Court of Ecuador has consistently interpreted this provision as creating an absolute, inalienable protection, which applies even before refugee status is formally granted. This expansive reading of non-refoulement complements the Refugee Convention and strengthens the procedural obligations of the state during RSD.

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) also plays a significant, though less frequently cited, role in asylum access by supporting claims related to healthcare, education, housing, and the right to work. These socio-economic rights become especially relevant during the RSD process and the post-recognition phase, where the principle of integration is critical to the realization of refugee rights. Additionally, Ecuador's obligations under the ACHR—particularly Articles 22(7) (right to seek asylum) and 22(8) (prohibition of collective or arbitrary expulsion)—have been interpreted by the IACtHR to require individualized assessments, procedural fairness, and effective judicial

remedies. Ecuadorian courts have adopted these interpretations, integrating regional human rights standards into their refugee jurisprudence.

The Cartagena Declaration on Refugees (1984), while formally a non-binding regional instrument, has been incorporated into Ecuadorian domestic refugee law[160] and administrative practice. It provides a broader definition of refugee, essential to understanding Ecuador's regional leadership in refugee protection and has a concrete impact on eligibility determinations and access to procedures.

Moreover, in cases involving children and adolescents, the Constitutional Court of Ecuador has grounded its reasoning in the Convention on the Rights of the Child (1989), particularly with respect to the principles of the best interests of the child, the evaluation of vulnerability and risk situation, as well as the right to be heard.[161] Regarding the right to be heard, Article 12 of the Convention obliges States Parties to guarantee that every child capable of forming their own views is afforded the right to express those views freely in all matters affecting them, and to ensure that such views are given due weight in accordance with the child's age and maturity. The Court has interpreted this provision as requiring that children and adolescents be meaningfully heard in any judicial or administrative proceedings that directly or indirectly affect them, including asylum and migration procedures. It has further emphasized that the weight according to the child's opinion must consider both their cognitive development and evolving capacities. Ecuadorian jurisprudence thus reflects a rights-based approach that integrates international human rights standards into domestic asylum adjudication, reinforcing the procedural guarantees owed to minors and mandating that authorities prioritize their expressed preferences and best interests when resolving international protection claims.

The practical application of these human rights obligations in Ecuador is facilitated by the Constitution's pro persona principle (Article 11(5)), which requires that, in the event of multiple applicable norms, the interpretation most favourable to the individual must prevail. This principle ensures that asylum adjudication is guided not only by refugee law but also by the full spectrum of human rights protections. In administrative and judicial practice, this translates into access to asylum procedures regardless of mode of entry; suspension of expulsion while appeals are pending; and protection from discrimination and arbitrary treatment.

Other obligations stemming from general public law, criminal law, humanitarian law, civil law

In Ecuador, asylum seekers are protected not only under the 1951 Refugee Convention and its 1967 Protocol but also under a comprehensive and multi-layered domestic legal framework encompassing constitutional law, administrative law, criminal law, civil law, and international humanitarian law. These overlapping legal regimes function complementarily to regulate the treatment of asylum seekers, safeguard procedural fairness, uphold fundamental rights, and limit the powers of public authorities. This integrated framework plays an essential role in asylum access adjudication by defining state obligations, ensuring due process, and reinforcing substantive protections. For instance, Article 11.5 from the national Constitution establishes the pro persona principle, requiring that in cases of multiple legal interpretations, the option most favourable to the individual shall prevail. Additionally, Articles 66 and 76 guarantee equality, non-discrimination, personal liberty, and judicial protection, which are routinely invoked in asylum adjudication to challenge arbitrary detention or discriminatory treatment.

Administrative law is central to Ecuador's RSD process, which is governed by the Ministry of Foreign Affairs and Human Mobility pursuant to the Regulations for the Application of the Right to Asylum and Refugee Status. The Constitution provides key due process guarantees applicable in administrative proceedings, including the right to be heard, the right to a reasoned decision, and the right to appeal (Article 76 of the 2008 Constitution). Moreover, administrative decisions must comply with the principles of legality, proportionality, and non-arbitrariness (Articles 82 and 83). The Ecuadorian judiciary, including

[160] Constitutional Court of Ecuador, case No. 2496-21-EP/23, 12 July 2023, §§ 49-51.
[161] For instance, Constitutional Court of Ecuador, case No. Nº 639-19-JP/20 and accumulated (case 794-19-JP), 21 October 2020, §§81, 82; and case No. 2496-21-EP/23, 12 July 2023, §§ 93, 94.

the Constitutional Court, permits judicial review of administrative decisions denying asylum or authorizing deportation, frequently utilizing a protective action "*acción de protección*" (Article 88) and habeas corpus (Article 89) to remedy unlawful detention or expulsions.

Ecuadorian criminal law does not criminalize irregular entry, consistent with Article 31 of the 1951 Refugee Convention, which protects asylum seekers from penal sanctions for unauthorized border crossings made in good faith. Criminal procedural safeguards under the *Código Orgánico Integral Penal* (COIP) include the presumption of innocence (Article 76) and the right to legal defence (Article 77). The judiciary has consistently ruled that criminal prosecution, or detention, must not be used to obstruct or deter asylum claims, and that procedural guarantees must be respected in any criminal proceedings involving asylum seekers.

Civil law protections extend to refugees under the Código Civil and other applicable laws, particularly regarding family law provisions on family unity and child custody (Articles 103–123 of the *Código de la Niñez y Adolescencia*). Refugees have the right to acquire identity documents, enter into contracts, and exercise property rights on an equal footing with nationals. Labor protections derive from the Labor Act (*Código del Trabajo)* and related regulations, ensuring recognized refugees—and in some instances asylum seekers—can work legally, benefit from minimum wage protections (Article 45), occupational safety standards (Article 45), and protections against discrimination (Article 67). These legal guarantees support the socioeconomic integration of refugees.

While not directly codified in Ecuadorian domestic law, principles of International Humanitarian Law, particularly those concerning the protection of civilians in armed conflict, inform asylum adjudication, especially under the expanded refugee definition of the Cartagena Declaration (1984). Ecuadorian authorities could consider evidence of serious violations of human rights, such as attacks on civilians or forced recruitment, as grounds for granting asylum consistent with regional refugee protection standards.

Collectively, these diverse legal frameworks operate to ensure that asylum seekers have lawful and fair access to asylum procedures, including effective remedies where access is denied or compromised. They constrain the discretionary powers of state actors, ensuring compliance with procedural fairness and respect for fundamental rights throughout the asylum process.

Membership in a regional or other international organization

Ecuador's full membership in the OAS subjects it to the binding human rights system of the Inter-American Human Rights System. The ratification of the ACHR in 1977 and the acceptance of the contentious jurisdiction of the IACtHR are particularly significant. ACHR's provisions, including the right to seek asylum (Article 22(7)), the prohibition on expulsion without due process (Article 22(8)), and guarantees of humane treatment and fair hearings (Articles 5 and 8), have been expansively interpreted by the IACtHR to mandate individualized assessments and robust protection against refoulement. In this regard, Ecuadorian courts, especially the Constitutional Court, frequently cite Inter-American jurisprudence to affirm international obligations and invalidate domestic practices that contravene human rights. The Cartagena Declaration on Refugees (1984), while a non-binding instrument of the OAS, holds quasi-binding status in Ecuador, having influenced the incorporation of an expanded refugee definition into domestic law and administrative practice, critical for the protection of large groups fleeing generalized violence or human rights violations. This comprehensive engagement with international and regional legal frameworks underscores Ecuador's commitment to aligning its national asylum system with international protection standards and principles of human dignity, due process, and non-refoulement.

The role of soft law in asylum access adjudication

The use of UNHCR or IACtHR soft law in Ecuador is grounded in constitutional provisions, specifically Article 41, which affirms the right to seek asylum in accordance with international instruments, and Article 417, which incorporates international treaties and related instruments into the domestic legal framework. Furthermore, Ecuador's status as a State Party to the 1951 Refugee Convention and 1967 Protocol,

wherein UNHCR is recognized under Article 35 as the supervisory authority for implementation, reinforces the legitimacy of these guidelines. Consequently, interpretative materials are frequently utilized to address legislative gaps, guide RSD, and inform judicial decision-making, particularly when detailed or updated domestic legislation is lacking.

Ecuador's Constitutional Court has demonstrated a commitment to protecting vulnerable migrant populations by integrating international human rights standards into its jurisprudence. For example, in case *No. 335-13-JP* (12 August 2020), the Court recognized the vulnerable condition of migrants, necessitating a differentiated perspective and special protection measures. This decision notably drew upon soft law instruments from the IACtHR and the IACHR, specifically referencing the IACtHR Advisory Opinion 18/03 concerning the Legal Status and Rights of Undocumented Migrants, and the IACHR Resolution 2/18 on the Forced Migration of Venezuelans.[162] Moreover, the Court also used principles outlined in other soft law instruments to address the issue of the responsibility of national authorities in relation to persons detained in airport transit areas, in particular UNHCR, Legal Considerations on the Responsibility of States with Respect to Persons Seeking International Protection in Transit Zones or "International Zones" of Airports (2019), and the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons. Likewise, the Court emphasized that States must allow entry into their territory and access to individualized, fair, and efficient procedures to determine international protection needs, using the conclusions of the UNHCR Executive Committee.[163]

Furthermore, in case *No. 2120-19-JP/21* (22 September 2021), the Constitutional Court cited soft law instruments to support a rights-based approach to the protection of migrant children. Drawing on IACtHR Advisory Opinion OC-21/14, the court emphasized that states must not block the entry of foreign children, even if unaccompanied, or require documentation they cannot reasonably provide, and must instead promptly assess their protection needs. It also referenced IACHR Resolution 2/18 on the Forced Migration of Venezuelans, which highlights the vulnerability of children fleeing systemic rights violations. These references reinforced the court's rejection of formalistic migration barriers and its commitment to international standards of child protection and non-refoulement. The court also referenced Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, which emphasize the heightened protections owed to migrant children in international migration contexts. These comments stress that states, particularly transit and destination countries, must give special attention to undocumented children—including unaccompanied, separated, asylum-seeking, and stateless children—as well as those vulnerable to transnational crimes such as trafficking, sexual exploitation, and child marriage. The guidance further highlights the need to consider intersecting vulnerabilities linked to gender, poverty, ethnicity, disability, religion, sexual orientation, or gender identity, which may increase risks of abuse and rights violations throughout the migration process. This reinforces the obligation of states to adopt a comprehensive, rights-based approach to protecting migrant children.

Likewise, in case *No. 2496-21-EP/23* (12 July 2023), the Constitutional Court underscored the critical link between due process and the principle of non-refoulement, stating that "the flagrant violation of minimum due process guarantees may lead to a violation of the principle of *non-refoulement*" (§ 59). This ruling cited

[162] IACHR, Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, § 9; IACtHR, Legal Status and Rights of Undocumented Migrants. Advisory Opinion 18/03, 17 September 2003; and IACHR, Resolution 2/18 Forced Migration of Venezuelans, 2nd March 2018.

[163] UNHCR Executive Committee, Conclusion No. 15 (XXX) Refugees without a country of asylum, 1979; Conclusion No. 22 (XXXII) Protection of persons seeking asylum in situations of large-scale influx, 1981; Conclusion No. 58 (XL) Problems of refugees and asylum-seekers leaving irregularly a country where they had already found protection, 1989.

the IACtHR Advisory Opinion 21/14, which addresses the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.[164]

However, in other instances, soft law instruments issued by UNHCR and the Inter-American human rights system have been invoked with a narrow interpretation that effectively restricts access to asylum. For example, in case Nº 17151-2016-00549, adjudicated by First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the court referred to General Comment No. 27 of the United Nations Human Rights Committee (§6), the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (§15), and Advisory Opinion No. 18 of the IACtHR (§§7, 10). Despite citing these international sources, the court interpreted them in a manner that reinforced the primacy of domestic immigration regulations, ultimately limiting the right to seek asylum of individuals in an irregular migratory situation. The judgment emphasized non-compliance with national entry requirements and asserted that strict adherence to such domestic norms should take precedence.

E. Legal standing

In Ecuador, there is a multifaceted system of legal procedures and remedies available to individuals to challenge barriers to access to asylum before judicial bodies. These mechanisms are primarily based on the constitutional framework, which recognizes the right to human mobility and the right to seek asylum. The Ecuadorian judiciary, in turn, has developed solid jurisprudence supporting access to asylum, primarily through the effective use of constitutional and administrative remedies. Asylum, being a right recognized in the Ecuadorian Constitution.

- Protection Action (*Acción de Protección*) stands as a swift and effective constitutional remedy, enshrined in Article 88 of Ecuador's Constitution[165] and regulated by the Organic Code of Constitutional Guarantees. There are notable differences between the old writ of amparo and the current protection action. While the writ of amparo could lead to urgent measures, the protection action allows for precautionary measures to be requested as part of an independent judicial guarantee. A key distinction lies in their nature: the writ of amparo was a preventive action designed to issue an urgent suspension of a rights violation, but the final resolution was determined by the Constitutional Tribunal. In contrast, the protection action is a plenary action (*acción de conocimiento*) that requires a judge to resolve the core issue and provide a reasoned decision on the merits of the case. This is intended to provide a comprehensive remedy, including a declaration that a right has been violated and a full, integral reparation, which may be both material and non-material depending on the case. The primary goal of the protection action is the protection of fundamental rights through a thorough and conclusive judicial process.[166]

  This mechanism is frequently invoked by asylum seekers or their representatives to challenge denials of access to asylum procedures, summary deportations, illegal detentions, and administrative delays in RSD processes.

[164] IACtHR (2014) Advisory Opinion OC-21/14: Rights and guarantees of children in the context of migration and/or in need of international protection, 19th August 2014, § 230.
[165] Constitution, Art. 88: The purpose of the protective action shall be the direct and effective protection of the rights recognized in the Constitution, and may be filed when there is a violation of constitutional rights, by acts or omissions of any non-judicial public authority; against public policies when they entail the deprivation of the enjoyment or exercise of constitutional rights; and when the violation comes from a private individual, if the violation of the right causes serious harm, if the individual provides improper public services, if the individual acts by delegation or concession, or if the affected individual is in a state of subordination, defenselessness, or discrimination.
[166] Pozo Pesántez E.V. & Vallejo Cárdenas P.P. (2025) "*La acción de protección en el Ecuador, entre la garantía de derechos y abuso procesal*", Religación, Vol. 10, No. 46, Quito, Ecuador, p. 4.

- Writ of Habeas Corpus, specifically regulated by Article 89 of the Constitution[167] and Article 43 of the Organic Code of Constitutional Guarantees (LOGJCC), is available for asylum seekers facing unlawful detention or arbitrary deprivation of liberty, safeguarding the right to liberty throughout the asylum process.

- Action for non-compliance (*Acción por Incumplimiento*), regulated by Article 93 of the Constitution, to ensure the application of the norms that comprise the legal system, as well as compliance with judgments or reports from international human rights organizations, when the norm or decision whose compliance is being sought contains a clear, express, and enforceable obligation to do or not to do something. The action will be brought before the Constitutional Court.

- Extraordinary Action for Protection (*Acción Extraordinaria de Protección*), regulated by Article 94 of the Constitution, shall apply against judgments or final decisions in which rights recognized in the Constitution have been violated by action or omission, and shall be filed before the Constitutional Court. The appeal shall be admissible when ordinary and extraordinary remedies have been exhausted within the legal term, unless the failure to file these remedies was not attributable to the negligence of the person holding the violated constitutional right.

  It is not an additional judicial instance but a specialized mechanism for the Constitutional Court to analyse potential constitutional violations, not legal matters. This action differs from the traditional judicial system by focusing on the protection of fundamental rights rather than re-evaluating the facts or evidence of the original case. The purpose of this action is to ensure the effectiveness of fundamental rights and guarantees, preventing irreparable harm by correcting judicial errors that violate the Constitution. The Constitutional Court may either order the correction of errors or, in some cases, correct them directly.[168]

- In addition to these constitutional avenues, Administrative Appeals (*Recursos Administrativos*) allow for reconsideration requests against decisions by the Ministry of Foreign Affairs or other RSD bodies, focusing on procedural fairness and factual or legal errors.

- Furthermore, Judicial Review of Administrative Acts before Administrative Courts can annul arbitrary decisions and mandate compliance with international law.

While domestic remedies are paramount, litigants may also approach International Human Rights bodies like the IACHR for precautionary measures or to petition for alleged violations, influencing domestic adjudication through jurisprudential developments.

F. The influence of international Courts

Supranational judicial bodies, primarily the IACtHR and, to a lesser extent, the United Nations human rights treaty bodies, have significantly shaped the normative and jurisprudential landscape for asylum access adjudication in Ecuador. Although Ecuador operates under a monist legal system where international treaties are directly applicable, the rulings from these supranational courts possess binding or highly persuasive authority, progressively influencing domestic jurisprudence, particularly concerning barriers to asylum access.

Ecuador's adherence to the ACHR and its recognition of the IACtHR jurisdiction mean that the court's decisions are legally binding. The IACtHR has established robust standards on the right to seek asylum, due process guarantees, and the principle of non-refoulement, which directly address common

[167] Constitution, Art. 89: The purpose of the writ of habeas corpus is to restore the liberty of anyone who has been illegally, arbitrarily, or illegitimately deprived of it by order of a public authority or any other person, as well as to protect the life and physical integrity of persons deprived of liberty.

[168] Torres Castillo T., Rivera Velasco L.A., Ronquillo Rier O.I. (2021) "*La acción extraordinaria de protección analizada desde la jurisprudencia de la Corte Constitucional del Ecuador*". Revista Dilemas Contemporáneos: Educación, Política y Valores. Vol. IX, N. 1, pp. 5-8.

impediments faced by asylum seekers. Ecuadorian courts, notably the Constitutional Court, frequently cite IACtHR jurisprudence to nullify arbitrary administrative denials of asylum access, ensure individualized assessment of protection needs, prohibit summary deportations lacking judicial oversight, and reinforce procedural guarantees and respect for human dignity. This influence extends to specific areas such as due process and non-refoulement, where IACtHR clarifications have led Ecuadorian courts to mandate judicial control over expulsions and emphasize the protection of asylum seekers against refoulement. While decisions from UN treaty bodies are not formally binding, their General Comments and views are referenced by Ecuadorian judicial bodies as influential interpretative guides, complementing the Inter-American system by reinforcing obligations related to procedural fairness, detention conditions, and non-refoulement. This combined authority of supranational courts has fostered a jurisprudential dialogue, encouraging Ecuadorian courts to harmonize domestic asylum adjudication with international human rights norms, solidifying Ecuador's commitment to upholding international and regional human rights within its domestic asylum framework.

Jurisprudence of supranational courts shaping procedural protections or interpretation

The jurisprudence of supranational courts, particularly the IACtHR, has played a decisive role in shaping procedural protections and the interpretation of asylum rights within Ecuador's legal system. Ecuadorian judicial bodies, especially the Constitutional Court, have systematically incorporated IACtHR rulings to elevate domestic procedural safeguards, reinforcing due process guarantees in asylum and migration proceedings. This incorporation has not only clarified fundamental rights such as the right to a fair hearing, access to legal aid, and the right to appeal, but has also underscored the indivisibility of procedural and substantive asylum protections.

The IACtHR jurisprudence has emphasized that asylum seekers must be afforded effective judicial remedies and access to legal counsel, with Ecuador's Constitutional Court relying on these standards to invalidate administrative decisions that deny these rights. For example, in a 2018 ruling involving Venezuelan asylum seekers, the Court explicitly cited IACtHR principles to establish that denying access to an appeal constitutes a structural barrier to the right to seek asylum, mandating reforms to ensure procedural fairness. Furthermore, the Constitutional Court's Decision *No. 335-13-JP-20* (12 August 2020) extensively references key IACtHR cases such as *Vélez Loor v. Panama* (2010),[169] as well as *Baena Ricardo and Others v. Panama* (2001),[170] to assert that due process protections extend beyond judicial trials to administrative actions affecting asylum seekers, including prohibitions against arbitrary detention and requirements for individualized assessments.

Significantly, the IACtHR has clarified that the principle of non-refoulement requires not only substantive guarantees against return to harm but also procedural protections such as timely and impartial examinations of claims prior to deportation. Ecuador's Constitutional Court, drawing on Advisory Opinion OC-21/14, has stressed the critical need for special procedural safeguards for vulnerable groups, including children and adolescents in migration contexts, recognizing that violations of minimum due process guarantees can amount to breaches of non-refoulement obligations. This is reflected in the 2023 ruling No. *2496-21-EP/23* (12 July 2023), where the Constitutional Court referred to the rulings in the cases of *Ximenes Lopes v. Brazil* (2006)[171] and *Guachalá Chimbo and Others v. Ecuador* (2021)[172] to reinforce protections for individuals with mental health conditions, emphasizing the obligation to provide specialized care and prevent asylum barriers grounded in health vulnerabilities.

Moreover, the IACtHR has influenced the evidentiary standards applied by Ecuadorian courts in asylum and migration cases. In ruling *No. 1214-18-EP/22* (27 January 2022), the Constitutional Court cited the

[169] IACtHR, Case Vélez Loor v. Panama, Judgement November 23, 2010 (Preliminary Objections, Merits, Reparations and Costs).
[170] IACtHR, Case of Baena-Ricardo et al. v. Panama, Judgment of February 2, 2001 (Merits, Reparations and Costs).
[171] IACtHR, Case Ximenes-Lopes v. Brazil, Judgment of July 4, 2006. (Merits, Reparations and Costs).
[172] IACtHR, Case Guachalá Chimbo et al. v. Ecuador, Judgment of March 26, 2021 (Merits, Reparations and Costs)

ruling in the case of *Nadege Dorzema et al. v. Dominican Republic* (2012)[173] to underline that victims' testimonies must be assessed in the context of the totality of evidence, thus shaping procedural approaches to credibility and evidentiary evaluation in asylum claims.

The Court has also drawn upon IACtHR jurisprudence to address collective expulsion and discrimination concerns, as seen in ruling *No. 639-19-JP/20* (21 October 2020). Referencing Advisory Opinion 18/03 and the rulings in the cases of *Pacheco Tineo Family v. Bolivia* (2013)[174] and *Dominicans and Haitians expelled v. Dominican Republic* (2014),[175] the Court underscored the requirement for individualized assessments in expulsion proceedings and the prohibition of discriminatory or disproportionate measures, thereby reinforcing procedural protections consistent with international human rights standards.

G. Comparative insights

Divergences among judicial bodies

In Ecuador, there are some divergences among judicial bodies regarding the legality of specific asylum barriers. These divergences are rooted in variations in legal interpretation, procedural approaches, institutional mandates, and competing priorities between human rights protection and state interests in migration control. While the country's Constitutional Court has progressively aligned its asylum jurisprudence with international standards, administrative and lower judicial bodies have not always followed suit, creating inconsistencies in the application of refugee law and protections.

For instance, the Constitutional Court has struck down overly formalistic or procedurally restrictive barriers to asylum—for example, rejecting denials based on missed deadlines or improper documentation when applicants were demonstrably vulnerable. A prominent example is case *No. 090-15-SEP-CC* (25 March 2015), where the Constitutional Court overturned a rejection based on the rigid enforcement of a 15-day deadline to apply for asylum. The Court recognized that this time limit, when applied without consideration of the applicant's vulnerable circumstances, violated the principles of due process and non-refoulement. In contrast, administrative authorities have at times applied narrow interpretations of refugee status or rigid procedural rules, often prioritizing migration control over protection, and in some cases, have resisted compliance with the Court's broader rights-based directives.

Similar divergences are found among judicial bodies themselves. While the Constitutional Court has adopted an expansive and protective approach, ordinary courts often take a more restrictive view. In case *No. 2533-16-EP/21* (28 July 2021), for example, the Constitutional Court condemned the detention of an asylum seeker in the "Hotel Carrión" facility despite a pending asylum application. The lower courts had upheld the detention, relying on the existence of a deportation order and interpreting national legislation in a manner that prioritized state security over individual rights. The Constitutional Court, however, found this detention arbitrary and a violation of due process, reaffirming that the right to seek asylum must be protected even in cases involving administrative orders of removal.

The divergences are not limited to courts and administrative authorities. The Ombudsman's Office, a quasi-judicial institution, issues non-binding recommendations in defence of asylum seekers and has advocated for the removal of procedural obstacles such as limited access to legal aid or due process guarantees. However, the practical impact of these recommendations is uneven, as government agencies frequently fail to implement them. This contributes to a gap between rights promotion at the normative level and actual administrative practice on the ground.

[173] IACtHR, *Case Nadege Dorzema et al. v. Dominican Republic*. Judgment of October 24, 2012 (Merits, reparations and costs), C No. 251.
[174] IACtHR, *Case Pacheco Tineo family v. Plurinational State of Bolivia*, Judgment of November 25, 2013 (Preliminary objections, merits, reparations and costs).
[175] IACtHR, *Case Expelled Dominicans and Haitians v. Dominican Republic*, Judgment of August 28, 2014 (Preliminary Objections, Merits, Reparations, and Costs).

Underlying these differences are several factors, likewise institutional roles and mandates (protection-oriented versus enforcement-oriented), differing levels of expertise in refugee and human rights law, resource constraints, and shifting political contexts, especially amid increasing regional displacement from Venezuela and elsewhere. The Constitutional Court's use of the *pro homine* principle and emphasis on the declarative nature of refugee status, for instance, reflects a clear commitment to human dignity and international protection standards. However, this is not always mirrored by institutions that operate with a stronger emphasis on national sovereignty or border control.

Divergences between national courts and supranational rulings

A notable instance of divergence between Ecuadorian national courts and the IACtHR on the issue of access to asylum is found in the decision of the First Criminal Judicial Unit for Contraventions of the Canton of Quito, Province of Pichincha, case *No. 17151-2016-00549*, dated 9 July 2016. In this ruling, the court grounded its reasoning primarily in domestic immigration legislation but also cited Inter-American jurisprudence, specifically *Vélez Loor v. Panama* and Advisory Opinion No. 18 of the IACtHR. These precedents were invoked to justify the detention of individuals for deportation purposes, emphasizing compliance with procedural due process standards under international law. However, the court failed to acknowledge that both *Vélez Loor v. Panama* and Advisory Opinion No. 18 explicitly affirm the obligation of states to guarantee all human rights to migrants, including those with irregular status, and to ensure the full and effective exercise of those rights. Recent interpretations of these Inter-American instruments emphasize a rights-based approach that prioritizes the protection of the right to seek asylum over the strict enforcement of immigration controls. However, this limited interpretation of inter-American precedents in favour of migrants may be due to a political position in the country to restrict access to asylum for certain nationalities, in this case Cuban.

Broader principles established by international bodies

Ecuadorian national jurisprudence demonstrates a consistent alignment with broader international legal principles governing the right to asylum, frequently referencing and incorporating standards from international bodies such as UNHCR, the IACtHR, and the Committee Against Torture (CAT). This alignment is particularly evident in the reinforcement of due process guarantees, the absolute nature of the principle of non-refoulement, and the requirement of individualized assessments in all asylum-related procedures.

For instance, in case *No. 897-11-JP/20* (12 August 2020), concerning the recognition of refugee status, the Constitutional Court underscored the necessity of guaranteeing essential procedural safeguards for asylum seekers, including access to competent interpretation services and legal assistance. The Court found a violation of these guarantees where the Ministry of Foreign Affairs and Human Mobility failed to provide a qualified interpreter during the asylum interview, thereby obstructing the applicant's effective communication. In this case, the Court reaffirmed that the principle of *non-refoulement*, recognized as *jus cogens*, protects not only formally recognized refugees but all individuals who may face persecution or serious harm upon return. This interpretation is consistent with UNHCR's guidelines, which emphasize the application of non-refoulement to any person at risk, regardless of formal legal status.

Similarly, in case *No. 639-19-JP/20* (21 October 2020), addressing the legality of collective expulsions, the Constitutional Court ruled that expulsion procedures must be based on individualized assessments of each person's protection needs. The Court condemned the practice of mass removals without adequate procedural guarantees, citing violations of due process rights. This reasoning closely mirrors the IACtHR jurisprudence and UNHCR's position that collective expulsions inherently risk breaching the principle of non-refoulement due to their failure to consider the specific circumstances of each individual.[176]

The principle of non-criminalization of irregular migration has also been solidly reinforced by Ecuadorian courts. In *case No. 335-13-JP/20* (12 August 2020), the Constitutional Court affirmed that migrants should

[176] For instance, OHCHR (2006). Expulsions of aliens in international human rights law. Discussion paper.

not be subjected to punitive or custodial measures solely due to their migratory status. The Court deemed the detention of individuals in airport transit zones for more than 24 hours without judicial oversight as arbitrary and unlawful, constituting a deprivation of liberty incompatible with constitutional and international norms. This position aligns with the UNHCR's advocacy against the prolonged or arbitrary detention of asylum seekers[177] and reflects evolving international human rights standards.

In case *No. 002-14-SIN-CC* (14 August 2014), the Court addressed the constitutionality of restrictive procedural deadlines for submitting asylum applications, ultimately striking down a rigid 15-day filing period and extending it to three months. The Court also lengthened appeal deadlines and established that deportations must be suspended while administrative appeals are pending. This decision reflects a departure from inflexible executive norms and instead aligns with the *pro persona* principle and UNHCR's guidance advocating reasonable and flexible deadlines that accommodate the realities faced by asylum seekers.[178] The Court's reasoning ensured that procedural requirements do not unjustly preclude access to international protection.

Importantly, Ecuadorian jurisprudence also reflects the influence of international norms concerning the prohibition of torture and ill-treatment. In case *No. 1214-18-EP/22* (27 January 2022), the Constitutional Court explicitly invoked the Convention Against Torture (CAT) and emphasized that the return of individuals to territories where they face a real risk of torture or cruel, inhuman, or degrading treatment is absolutely prohibited under international law. This ruling affirmed that the prohibition of torture constitutes a jus cogens norm and that compliance with the principle of non-refoulement must be absolute in such cases. The Court evaluated the detention conditions in airport transit zones and concluded that prolonged confinement without judicial authorization could amount to inhuman or degrading treatment, particularly in the absence of basic services. It further highlighted the crucial oversight role of the Ombudsman's Office in monitoring places of detention to prevent torture and ill-treatment, in accordance with international standards.

Taken together, these decisions illustrate the Constitutional Court of Ecuador's proactive integration of international human rights norms into domestic asylum jurisprudence. Through direct citation and substantive reliance on the jurisprudence of supranational bodies and international conventions, Ecuadorian courts have contributed to the progressive development of legal standards that safeguard the rights of asylum seekers and ensure compliance with the State's international obligations.

Best practices or lessons learned from the adjudication of asylum barriers

Ecuador's evolving jurisprudence in asylum adjudication offers valuable insights and potential best practices applicable to other jurisdictions grappling with similar challenges in refugee protection. A cornerstone of Ecuador's approach, particularly relevant as a best practice, is the constitutional supremacy afforded to human rights treaties, as enshrined in Article 424 of its Constitution. This explicit constitutional directive ensures that ratified international human rights instruments prevail over other domestic laws, providing a clear legal foundation for national courts to align their asylum adjudications with international standards. Other jurisdictions could emulate this by embedding similar constitutional or legislative provisions, thereby fostering greater consistency and protection-oriented outcomes in asylum decisions.

Furthermore, Ecuador's historical openness to broader refugee definitions, particularly its incorporation of the Cartagena Declaration's expanded criteria to include individuals fleeing generalized violence, offers a significant lesson in fostering more inclusive protection frameworks. This approach acknowledges the

[177] UNHCR (1999). Revised Guidelines on applicable criteria and standards relating to the detention of asylum seekers; UNHCR, (2024). Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees, HCR/GIP/24/14.

[178] See UNHCR (2017). A guide to international refugee protection and building state asylum systems. Handbook for Parliamentarians N° 27, p. 67.

complex realities of displacement beyond the narrower 1951 Refugee Convention criteria, potentially extending protection to a larger population in need. Another commendable practice is the constitutional commitment to granting refugees and asylum seekers the same rights as Ecuadorian nationals, including the right to work, which aims to facilitate their socio-economic integration.

H. Role of expert testimony

In Ecuador, expert testimony from human rights specialists and medical professionals plays a crucial role in judicial adjudication concerning asylum claims, particularly in addressing and overcoming procedural and substantive barriers to asylum access. Judicial bodies increasingly recognize the probative and interpretative value of such expert evidence in illuminating the complex socio-political, psychological, and medical realities faced by asylum seekers, thereby shaping legal reasoning and influencing case outcomes. For example, Ecuador's Constitutional Court has relied on expert reports documenting human rights abuses in countries such as Venezuela and Colombia to substantiate the heightened risks faced by asylum seekers, reinforcing protections against summary deportations and improper denial of refugee status. A notable illustration of this dynamic is the amicus curiae brief submitted by Human Rights Watch and Ecuadorian civil society organizations to the Constitutional Court, which highlighted concerns regarding the restrictive entry measures to Ecuadorian territory and the humanitarian situation in Venezuela.[179] Although the direct impact of this brief on the Court's ruling remains unspecified, it underscores the role of expert input in shaping judicial perspectives on asylum procedures in line with international standards articulated by UNHCR and the IACtHR.

Further, the 2020 Constitutional Court ruling condemning the Ministry of Government and National Police for violating the prohibition on collective expulsion of Venezuelan nationals exemplifies the judiciary's commitment to due process and individualized risk assessments—principles consistently advocated by human rights experts, even if not explicitly cited in the decision.[180] Medical expert testimony has also significantly influenced judicial decisions. In a case involving an adolescent asylum seeker[181] with severe mental health conditions documented by hospital reports ("acute polymorphic psychotic disorder" and "unspecified behavioural disorder"), the trial judge initially justified repatriation to Venezuela, considering family reunification and the lack of adequate treatment facilities in Ecuador. However, upon review, the Constitutional Court critically assessed this medical evidence, concluding that the adolescent's condition was manageable through ambulatory care and that judicial authorities had overstepped by assuming the Ministry of Foreign Affairs and Human Mobility's exclusive competence to evaluate asylum risk. The Court's insistence on deferring to the competent administrative authority reaffirmed the non-refoulement principle and highlighted the dangers of misinterpreting expert testimony to justify premature deportation. Similarly, a psychosocial report by UNICEF detailing the adolescent's history of violence and his expressed refusal to return to his country was disregarded by lower courts as subjective, reflecting a problematic undervaluation of expert and victim perspectives.

Collectively, these instances demonstrate that expert testimony and human rights organizations in Ecuador function not only as evidentiary supports but also as critical interpretative tools that enhance judicial understanding of asylum seekers' realities. This has contributed to more nuanced adjudications, greater recognition of barriers to asylum, and improved alignment with international protection norms.

I. Future Directions

Emerging trends or evolving issues in asylum law

In April 2024, Ecuador held a constitutional referendum that approved several security-related measures, including granting the military expanded powers to combat organized crime and allowing for the

[179] Constitutional Court of Ecuador, No. 14-19-IN/23, adjudicated on 7 June 2023.
[180] Constitutional Court of Ecuador, No. 639-19-JP/20 and accumulated (case 794-19-JP), adjudicated on 21 October 2020.
[181] Constitutional Court of Ecuador, No. 2496-21-EP/23, adjudicated on 12 July 2023.

expropriation of seized property.[182] While these reforms primarily focus on national security, their implications for asylum seekers and migrants are significant. The increased militarization of security operations may affect the safety and rights of individuals in border areas and detention facilities, potentially leading to challenges in accessing asylum procedures and legal protections.

Simultaneously, escalating violence in various parts of the country, including targeted threats from organized criminal groups, has triggered new internal displacement and outward migration flows.[183] This changing context is creating additional demands on Ecuador's asylum system, as both nationals and foreign individuals seek protection.

II. IDENTIFICATION OF LEADING DECISIONS

Pushbacks:

1) Constitutional Court of Ecuador, No. 639-19-JP/20 and accumulated (case 794-19-JP), adjudicated on 21 October 2020.
2) Summary expulsion: First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha, No. 17151-2016-00549, adjudicated on 9 July 2016.

Detention:

1) Administrative detention: Constitutional Court of Ecuador, No. 2533-16-EP/21, adjudicated on 28 July 2021.
2) Detention at the airport: Constitutional Court of Ecuador, No. 1214-18-EP/22, adjudicated on 27 January 2022.

Procedural barriers: Deadlines:[184]

1) Multicompetent Single Chamber of the Provincial Court of Esmeraldas, No. 08301-2012-0769, adjudicated on 21 January 2015.
2) Constitutional Court of Ecuador, No. 090-15-SEP-CC, adjudicated on 25 March 2015.

Procedural barriers: Administrative failures:

1) Constitutional Court of Ecuador, case No. 2120-19-JP/21, adjudicated on 22 September 2021.[185]
2) Constitutional Court of Ecuador, case No. 2496-21-EP/23, adjudicated on 12 July 2023.[186]

[182] See National Electoral Council, *Resolución PLE-CNE-1-8-5-2024*, https://www.cne.gob.ec/wp-content/uploads/2024/05/RESOLUCION-PLE-CNE-1-8-5-2024-signed.pdf

[183] Norwegian Refugee Council. (2025). Ecuador: ongoing violence displacing thousands. https://www.nrc.no/news/2025/january/ecuador-ongoing-violence-displacing-thousands?utm_source=chatgpt.com

[184] As established in Part I of this report, the procedural barrier indicated as "deadline" is intrinsically linked to the pre-admissibility stage of the asylum process. The subsequent analysis of two distinct judicial decisions will illustrate scenarios where asylum applications, despite formal submission, were summarily rejected due to non-compliance with the stipulated deadline.

[185] While this case could be logically situated within the "pushback" section, its primary focus on unaccompanied minors and family reunification necessitates its inclusion in the section addressing procedural barriers related to administrative failures. This categorization allows for a more focused analysis of the specific administrative shortcomings that impact vulnerable populations and processes integral to their protection, rather than solely focusing on the act of denial at the border.

[186] As in the previously case, this matter is addressed under the category of "procedural barriers" due to its focus on an unaccompanied minor who was repatriated to his country of origin despite having an asylum application pending. The Constitutional Court determined that the procedure leading to the repatriation was marked by multiple administrative irregularities that collectively undermined the minor's right to international protection.

A. Description of the barriers in the selected decisions

Formality or informality of the barrier

Pushbacks: 1) In ruling No. 639-19-JP/20 and accumulated (case 794-19-JP), adjudicated by the Constitutional Court of Ecuador on 21 October 2020, the court's analysis firmly establishes that the barriers to migration were formally implemented by the Ecuadorian authorities. The court points specific governmental actions, such as the Ministry of Interior's institution of mandatory requirements for entry, including passport and certified criminal record presentation, and the reinforcement of border controls at the Rumichaca International Bridge, involving lane closures and the imposition of a control filter. The key actors involved in the establishment of these barriers were the Ecuadorian Government, through the Ministry of Interior, which is responsible for immigration policies and their enforcement. As well as the Police Nacional, they were directly involved in enforcing these measures at the border, including denying entry and expelling individuals who did not meet the requirements.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the barrier was a formally enacted legal and administrative framework enforced by judicial and migration authorities. The primary basis for the detention and subsequent deportation order was the evasion of migratory controls, as evidenced by the absence of entry records in the Ecuadorian migration system. This legal barrier was explicitly articulated in Article 19, numeral I, and Article 11, numeral III, of the Ecuadorian Migration Law (before the LOMH from 2017), which stipulate that foreigners who enter the country without undergoing inspection by migration officials, or who do so through unauthorized locations or outside of permitted hours, are subject to deportation. Although the applicant expressly requested international protection during the deportation hearing, the court prioritized the application of national immigration laws and emphasized that the applicant did not enter through regular channels and therefore did not meet the eligibility criteria for asylum.

Several actors were involved in establishing and enforcing this barrier: the Provincial Head of Migration of Pichincha (*Jefatura Provincial de Migración de Pichincha*), which initiated deportation proceedings due to the applicant's irregular status; the First Judicial Unit for Contraventions of the Canton of Quito, which formally processed the case, ratified the provisional arrest to ensure the applicant's appearance, and ultimately issued the deportation order; and the Prosecutor's Office of Pichincha, which participated in the proceedings and argued for deportation based on the applicable legal framework.

Detention: Administrative detention: In case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, the court highlights that the barrier to free movement was established through a judicial decision, but its enforcement involved various actors. Formally, the barrier was instituted by the judge of the Unidad Judicial Penal, who ordered the deportation of the individual and directed his detention in the "Hotel Carrión" under the responsibility of the Police of Migration. However, the implementation and maintenance of this barrier involved the actions of the Police of Migration, who were tasked with overseeing the detention. Additionally, the Ministry of Government played a role in the administration of the "Hotel Carrión" as a temporary holding centre. While the judicial order provided the legal framework, the barrier's practical existence relied on the collaborative actions of the judiciary, the police, and the Ministry of Government.

Detention at the airport: In ruling *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, the court explicitly recognized that the individuals in question were "unadmitted to national territory" on specific legal grounds, in particular the absence of valid travel documentation or the failure to substantiate their migratory status pursuant to Article 137 of the LOMH. This administrative determination resulted in their immediate placement in the airport's designated inadmissible persons'

room. The Ministry of Government argued that its actions represented a lawful and strict application of LOMH.

However, notwithstanding this formal legal framework, the court identified a series of informal actions and omissions that materially contributed to the construction of a *de facto* barrier to rights. These practices, taken collectively, transformed what may have initially appeared to be a lawful administrative procedure into an arbitrary and unlawful deprivation of liberty, in clear violation of both constitutional guarantees and international human rights norms.

Significantly, the court held that the retention of individuals in a transit zone for a period exceeding 24 hours, absent judicial oversight or a specific legal basis, constitutes arbitrary detention. It further concluded that the conditions of such *de facto* detention amounted to cruel, inhuman, and degrading treatment, thereby breaching fundamental rights protected under domestic and international law. The Court also found that state agents actively impeded the access of both the Ombudsman's Office (*Defensoría del Pueblo*) and the Public Defender's Office (*Defensoría Pública*) to the individuals held in the inadmissible persons' room. This obstruction hindered independent oversight and the provision of legal assistance, amounting to a violation of the Ombudsman's constitutional mandate to prevent inhumane treatment. The Court determined that these restrictions constituted a form of incommunicado detention, further exacerbating the unlawfulness of the individuals' confinement. Finally, the Court emphasized that the authorities' failure to initiate an assessment of the individuals' potential need for international protection, as mandated under Article 100 of the LOMH, constituted not only a breach of domestic legal obligations but also a violation of the principle of non-refoulement under international refugee law.

The principal actors implicated in the establishment and maintenance of the barriers to migrant rights included the Ministry of Government, which, as the primary governmental authority responsible for migration control, played a direct role in the inadmissibility procedures, the custody of migrants, and the perpetration of associated rights violations. Additionally, National Police Agents were actively involved in the guarding and supervision of inadmissible persons within the airport's designated holding facilities. Other actors contributed to the practical enforcement of these barriers, notably the airlines, which, although formally entrusted with the custody of inadmissible persons and charged with their return and associated costs, effectively facilitated the de facto retention of migrants. Moreover, both the first instance and appellate courts played a significant role in sustaining these barriers. Their failure to adhere to due procedural standards in the issuance of precautionary measures constituted an obstruction of justice. This procedural omission resulted in undue delays in the judicial review of the alleged rights violations, thereby erecting an effective barrier to the timely protection of fundamental rights.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, the central issue revolves around the rejection of an asylum application due to a missed deadline for submission. According to the court, the procedural barrier was formally established in Article 27 of the "Regulation for the Application in Ecuador of the Right to Asylum Established in Article 41 of the Constitution of the Republic, the Norms Contained in the United Nations Convention of 1951 on the Status of Refugees and its 1967 Protocol." This regulation, implemented via Executive Decree 1182 of 19 June 2012, mandates that "every request for recognition of refugee status shall be submitted within a period of 15 days after entering Ecuadorian territory." The court's reasoning consistently upholds this regulatory deadline as a legally binding requirement under the principle of legal certainty (Art. 82 of the Constitution). The initial rejection of the asylum application by the Refugee Directorate in Esmeraldas, and the subsequent refusal to accept an appeal against that administrative rejection were based on the application's submission being outside this formally prescribed 15-day period. The court further clarified that the Refugee Directorate's refusal to accept the appeal was not itself an "administrative act" subject to appeal, as it did not alter the applicant's legal status; rather, it was a consequence of the prior administrative decision of inadmissibility of the application based on the missed deadline.

The primary actor involved in the establishment of this procedural barrier was the Executive Branch of the Ecuadorian government. The specific deadline was enshrined in a Regulation for the Application of the Right to Asylum, which was issued by Executive Decree 1182 of 19 June 2012. The Ministry of Foreign Affairs and Human Mobility, through its Refugee Directorate, was the implementing body responsible for enforcing this regulation. And finally, the court, which ultimately upheld the administrative decision to reject the action, reinforced the formal barrier.

2) In the Constitutional Court of Ecuador's ruling *No. 090-15-SEP-CC* (25 March 2015), the procedural barrier was formally established by the legislation. The applicant's request for refugee status was rejected because it was submitted beyond the 15-day period after entry into Ecuadorian territory. As mentioned before, this deadline was explicitly mandated by Article 27 of Executive Decree No. 1182, which governs the application of the right to asylum in Ecuador. The Constitutional Court references this Decree as the legal basis for the inadmissibility of untimely applications, thereby affirming its formal establishment and legal validity.

The establishment of this formal barrier was primarily driven by the President of the Republic, whose signature on the Decree No. 1182 brought the regulation into force. The Ministry of Foreign Affairs and Human Mobility, specifically its Refugee Directorate, was tasked with the implementation of this policy. Subsequently, both the first and second-instance courts played a crucial role in reinforcing this barrier by upholding the administrative decision to reject the legal challenge, thereby validating the regulation's enforcement.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, the barrier at issue arose from the application of Executive Decree No. 826 and a misinterpretation by immigration authorities regarding the legal standards applicable to minors. The central obstacle stemmed from the absence of documentation typically required for regular entry into Ecuador—specifically, the lack of a valid identification document for one of the minor applicants and the absence of formal parental authorization for departure from Venezuela. These formal requirements, which the applicants were unable to fulfil due to their circumstances, led immigration control agents at the Binational Border Assistance Centre (CEBAF) to deny them regular entry into Ecuador. The Ministry of Government, acting as the legitimate respondent in the proceedings, justified the conduct of its officials on the grounds that the measures complied with the LOMH and the provisions of Executive Decree No. 826, which imposed additional entry requirements on Venezuelan nationals.

Despite these administrative justifications, the refusal to admit the three brothers—two of whom were minors—for the purpose of family reunification with their mother, already residing in Ecuador, persisted even after the Cantonal Council for the Protection of Rights (quasi-judicial body) granted protective measures. These measures ordered the applicants' entry into the country. Additionally, the authorities issued a humanitarian visa, recognizing that the three siblings' asylum applications had been formally accepted for processing. Nevertheless, the authorities failed to comply with the judicial order and did not recognize the humanitarian visa. This situation not only prolonged the applicants' precarious condition at the border but also constituted a breach of due process and the principles enshrined in both domestic and international human rights law, particularly regarding the best interests of the child and the right to family unity.

The establishment of this barrier involved several key actors. The Executive Branch of the Ecuadorian Government played a central role, particularly through the Ministry of Government, which oversees migratory control, and the Ministry of Foreign Affairs and Human Mobility (MREMH), responsible for migratory policy. Executive Decree 826, which introduced the new documentation prerequisites for Venezuelan nationals, was a direct product of the Executive's authority. Furthermore, migration control agents from the Service of Migratory Support of the Ministry of the Interior (now Ministry of Government) were the immediate enforcers of these regulations at the border, directly impeding the applicants' entry. Although a "Protocol for the Special Protection of Children, Girls and Adolescents in Human Mobility" existed at the time, its informal adoption initially meant it did not automatically facilitate

regular admission without a specific measure from the Cantonal Council for the Protection of Rights. The Constitutional Court's subsequent ruling in this case, however, critically mandated the formal adoption of this Protocol as a binding legal instrument, thereby influencing its future establishment as a formal mechanism within the migratory framework.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the court found that a violation of the right to effective access to asylum had occurred due to procedural and substantive irregularities committed by both judicial and administrative authorities. Specifically, the first and second instance judges determined that an unaccompanied minor's life or physical integrity was not at risk, notwithstanding the existence of a pending asylum application. In doing so, they not only pre-empted the outcome of the RSD procedure but also encroached upon the exclusive competence of the Ministry of Foreign Affairs and Human Mobility (MREMH), the administrative body legally mandated to assess such claims. Consequently, the judiciary ordered the minor's immediate repatriation to his country of origin without ensuring the procedural guarantees inherent in the asylum process.

The obstruction to effective access to asylum was attributable to multiple actors: the MREMH, which initiated repatriation proceedings prior to the conclusion of the RSD; the first instance judge, who ordered immediate repatriation without due consideration of the ongoing asylum process; and the appellate judge, who upheld the repatriation order, thereby endorsing the premature and potentially unlawful return of the minor.

Administrative obstacles faced by the applicant(s)

Pushbacks: 1) Case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador, 21 October 2020, reveal that Venezuelan migrants faced significant administrative obstacles, primarily in the form of stringent entry requirements imposed by Ecuadorian authorities. A key impediment was the demand for a certified criminal record, a stipulation that the court itself acknowledged as "impossible" for some to meet, thereby creating a substantial barrier to legal entry. This administrative hurdle not only complicated the process of regular migration but also inadvertently fuelled irregular entry, as migrants, confronted with insurmountable bureaucratic demands, resorted to unauthorized border crossings.

These administrative limitations had a profound impact on the migrants' ability to access asylum. The emphasis on strict entry requirements and the subsequent expulsion of those who failed to comply effectively precluded any individualized assessment of potential asylum claims. Instead of being allowed to present their case for protection under international refugee law, migrants were summarily removed from the territory. The lack of due process in these expulsions, as highlighted by the court, underscores how administrative obstacles at the entry point operated to systematically deny access to asylum procedures.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the applicant faced administrative obstacles that impacted his ability to access asylum. The primary procedural limitation was the court's prioritization of national migration laws over the asylum claim, particularly the requirement for regular entry into the country. Despite the explicit request for asylum during the deportation hearing, the court deemed his request inadmissible due to his irregular entry into Ecuador, having evaded migratory controls. The court repeatedly emphasized that his undocumented entry, rather than coming through official channels, nullified his immediate access to the asylum process. While the court acknowledged the principle of non-refoulement and the right to seek asylum, it effectively created a procedural hurdle by linking asylum eligibility to the legality of entry, thus precluding a full and independent adjudication of his asylum claim prior to the deportation order.

Detention: Administrative detention: Case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, reveals a series of administrative obstacles that impeded the straightforward processing of his case, illustrating systemic challenges faced by individuals within the migration framework.

Initially, after being ordered to be deported, the applicant was placed in the "Hotel Carrión", a situation that extended into a prolonged and indefinite detention under the guise of "temporary accommodation". This ambiguous designation of the facility, neither a formal detention centre nor a free accommodation, exemplifies an administrative obfuscation that contributed to the arbitrary nature of his confinement. Moreover, the absence of clear procedural rules governing such confinement, as pointed out by observations from civil society organizations, compounded the arbitrariness, effectively creating a legal vacuum that prevented the detained migrant from effectively exercising his rights and contesting the legality of his detention.

Detention at the airport: In case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, the applicants faced significant administrative obstacles that profoundly impeded their ability to access asylum and severely impacted the adjudication process. A primary barrier was the prolonged and arbitrary detention in the airport's inadmissible persons' room, lasting more than 24 hours, which the Court explicitly deemed both illegal and arbitrary. This extended retention, lacking a proper legal basis for its duration in migration law, effectively became a de facto denial of liberty that undermined their ability to seek protection effectively.

Furthermore, a critical administrative failure was the lack of immediate referral to the competent authority for international protection assessment, despite applicants expressing fears for their lives and persecution. Article 100 of the LOMH mandates that any public servant aware of a potential need for international protection must immediately refer the individual to the human mobility authority. The migration agents' failure to do so, instead attempting immediate return, directly obstructed the asylum application process at its most critical initial stage. This omission not only violated procedural norms but also placed the applicants at direct risk of refoulement.

Another significant administrative obstacle was restricted access to legal and humanitarian assistance. The Ombudsman's Office (*Defensoría del Pueblo*) was denied entry to verify the conditions of detention, and direct contact with the Public Defender's Office (*Defensoría Pública*) was only permitted at the habeas corpus hearing. This administrative impediment to legal and humanitarian oversight severely compromised the applicants' right to defence and their capacity to articulate and pursue their asylum claims effectively. The court underscored that this denial of access constituted a measure of incommunicado detention.

These administrative limitations profoundly impacted the adjudication process by leading to initial judicial decisions that failed to adequately address the alleged rights violations. The first-instance court's failure to promptly rule on precautionary measures, meant to immediately cease rights violations, "denaturalized the object" of the habeas corpus. This procedural delay, coupled with the appellate court's "incongruent by omission" ruling that ignored key arguments on non-refoulement and detention conditions, allowed the administrative shortcomings to persist and exacerbate the rights violations. Consequently, the applicants' ability to access asylum was severely curtailed by administrative actions that delayed, obstructed, and fundamentally undermined the principles of non-refoulement and due process, forcing a higher judicial intervention to rectify systemic failures.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, the primary administrative impediment encountered by the applicant was the strict statutory deadline for submitting asylum applications (15 days). In this case, the applicant's submission 21 days post-entry led to the immediate issuance of a "resolution of inadmissibility to the procedure" by the Refugee Directorate. This procedural formalization meant that the substantive merits of her asylum claim, including compelling evidence of persecution, were never considered. A compounding administrative obstacle was the rejection of her administrative appeal at the counter, followed by a formal justification from the Refugee Directorate that such resolution was "not susceptible to appeal" because the initial inadmissibility was deemed a "notification to process" rather than a definitive "resolution or administrative act". This administrative interpretation, upheld by the court, effectively closed off the administrative appeals mechanism. These limitations fundamentally impacted the adjudication process by rendering it a procedural hurdle rather

than a substantive inquiry into international protection needs. Furthermore, the administrative refusal to even formally receive the appeal forced the applicant to resort to a constitutional "Protection Action" (*Acción de Protección*), a mechanism designed for direct constitutional rights violations, rather than a more direct administrative review.

2) In case *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, the applicant encountered substantial administrative obstacles that directly impeded the asylum adjudication process and access to protection. The primary barrier was the strict 15-day deadline for submitting an asylum application following entry into Ecuadorian territory. The application for refugee status was summarily rejected because it was filed 44 days after the individual's arrival. Consequently, the applicant was compelled to initiate a Protection Action (*Acción de Protección*), a constitutional remedy, after the administrative channels proved ineffective. Initially, both the lower and provincial courts upheld the administrative decision, deeming the Protection Action an inappropriate mechanism for challenging a matter considered to be one of "mere legality" where the right to appeal had ostensibly expired due to non-compliance with the legal term. This initial judicial stance prolonged the legal proceedings from September 2012 to the Constitutional Court's final decision in March 2015.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, the court addressed a series of administrative obstacles that prevented access to international protection for three siblings (two of them minors) seeking to enter Ecuador to reunite with their mother. The case centred on border control agents' refusal to allow regular entry to two minors due to their lack of the required documentation: a valid identity document for one of them and authorization from their parents for their departure from Venezuela. This denial prevented their access to Ecuadorian territory and, consequently, the asylum process. Although the "Protocol for the Special Protection of Children, Girls, and Adolescents in Human Mobility" was nominally activated, its implementation did not lead to immediate regular admission. Instead, entry was contingent upon the issuance of protective measures by the Cantonal Council for the Protection of Rights, introducing significant delays and procedural complexity. During this time, the children were forced to remain in precarious and unsafe conditions outside the border control facility, physically separated from their mothers, thereby intensifying their vulnerability.

The Constitutional Court identified the denial of entry on formalistic grounds as a serious violation of constitutional and international norms. It criticized the rigid administrative interpretation of entry requirements, particularly in cases involving minors, and highlighted the failure to give effect to the principle of the best interests of the child and the right to family unity. The court further emphasized that the lack of institutional clarity regarding the binding nature and scope of the child protection protocol contributed to the arbitrary conduct of immigration authorities, who refused to register the siblings' entry even after protection measures had been issued and their refugee applications had been admitted for processing by the competent authorities.

The judgment illustrates the multifaceted nature of the barriers encountered by the applicants, like the obstruction of regular entry based on documentation deficiencies; the inadequacy of protection procedures due to bureaucratic inertia and institutional fragmentation; and the absence of timely, child-sensitive responses. The court ultimately affirmed the need for judicial intervention after the failure of administrative remedies, upholding the protection action filed by the Ombudsman's Office.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the applicant, an unaccompanied minor, faced a series of administrative and institutional failures that significantly impaired the adjudication of his asylum claim and curtailed his effective access to international protection. Although the applicant submitted an asylum request on 1 March 2021, the competent authorities failed to resolve it in a timely manner. Despite the pending application, a judicial decision ordered his urgent repatriation to Venezuela. This repatriation occurred before the conclusion of the RSD procedure, resulting in the premature termination of the administrative process and the absence of a substantive assessment of the applicant's protection needs.

Compounding this procedural deficiency was a jurisdictional overreach by the judiciary. Both the first and second instance judges assumed authority to evaluate whether the applicant's life or physical integrity would be at risk upon return to his country of origin, a competence reserved exclusively for the Ministry of Foreign Affairs and Human Mobility (MREMH), which holds the statutory mandate to assess refugee status claims. By intervening in this capacity, the judiciary bypassed the established asylum process and prevented the MREMH from conducting the necessary eligibility interview and evaluation of the applicant's claim. Further complicating the case was a lack of institutional coordination within the MREMH itself. One division of the Ministry pursued the applicant's repatriation, while another continued to process his pending asylum request. This internal disarray led to conflicting actions that undermined the integrity of the asylum system and directly contributed to the applicant's unlawful removal from the country. The absence of coherent interdepartmental communication within the Ministry reflects systemic weaknesses in the administration of international protection procedures, particularly in cases involving vulnerable individuals.

These procedural and institutional failures had the combined effect of depriving the applicant of a full and fair examination of his asylum claim by the competent authority. The decision to repatriate him prior to the completion of the RSD process constituted a serious breach of due process and violated the principle of non-refoulement. The court noted that, had the MREMH properly fulfilled its mandate and conducted the requisite interview, the applicant's need for international protection might have been identified. Instead, the judiciary's intervention circumvented the proper administrative mechanisms, resulting in an outcome that contravened both national and international legal obligations concerning the protection of asylum seekers and unaccompanied minors.

Challenges related to their legal standing or capacity

Pushbacks: 1) In case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020, the primary challenge did not revolve around the applicants' legal standing or capacity to initiate the actions of protection. Rather, the core legal complexities stemmed from their migratory status and the state's response to it. The applicants, being foreign nationals who entered Ecuador through irregular channels, faced vulnerabilities arising from their lack of proper documentation. This situation, however, did not impede their ability to access the judicial system, as the Public Defender's Office exercised its mandate to file actions of protection on their behalf. The legal challenge was less about who could bring the case and more about the legal consequences of their irregular entry and the state's obligation to respect their fundamental rights.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the applicant did not appear to face direct challenges concerning his legal standing or capacity to participate in the proceedings, as he was the subject of the deportation order and was present, represented by counsel, and able to articulate his defence and request for asylum during the hearing. The proceedings clearly recognized him as the individual whose migratory status was under adjudication, and his procedural rights, including access to legal representation, were observed. However, the substantive obstacle he encountered related more to the perceived merits and procedural admissibility of his defence arguments within the existing legal framework than to any deficiency in standing. This created a de facto limitation on his ability to effectively exercise that stands to influence the outcome of the deportation case. His asylum claim was not treated as a distinct and antecedent process capable of suspending the deportation order, but rather as an argument dependent on a form of lawful entry that he lacked. Thus, while the applicant possessed both legal standing and capacity, the court's strict interpretation of immigration regulations governing lawful entry effectively rendered his principal defence argument legally insufficient within the scope of the deportation hearing.

Detention: Administrative detention: In case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, the applicant faced challenges primarily related to their immigration status, which directly affected the judicial process concerning their detention. The LOMH and its application became a central point of contention, as the authorities' actions and the judicial interpretations of these

legal frameworks significantly determined the applicant's rights and access to justice. The LOMH, specifically, was cited regarding the obligation to guarantee and respect the rights of people in human mobility, ensuring access to justice without discrimination. This intersection of immigration law and human rights law created a complex legal battleground, where the applicant's lack of regular status was weighed against their entitlement to due process and fundamental freedoms. The core issue revolved around whether the applicant's irregular immigration status could justify limitations on their rights, and how legal procedures should be applied in such cases.

Detention at the airport: In case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, the applicants did not face challenges related to their legal standing or capacity to bring the case. The action was brought by the Public Defender's Office, which is legally authorized to represent individuals, particularly vulnerable groups like migrants. The challenges encountered were related to the substantive issues of arbitrary detention and rights violations, and the procedural handling by the lower courts, rather than the initial legal standing of the applicant's representative.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, the applicant did not face explicit challenges related to her legal standing or capacity to bring the case in the sense of being denied the right to initiate legal proceedings. Indeed, the Court's ruling explicitly acknowledges her as the "active legitimator" (*legitimada activa*) and proceeds to examine her appeal on its merits.

2) In case *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, the applicant did not encounter explicit challenges to their legal standing or capacity to bring the case. The Constitutional Court's decision acknowledges the individual as the "active legitimator", indicating a formal recognition of their right to initiate the legal proceedings.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, as unaccompanied minors, the applicants' legal representation was assumed by a public defender, indicating the absence of an independent capacity to navigate the legal system. The Constitutional Court's review of the legal action initiated by the Public Defender's Office on behalf of the siblings implicitly confirms that the body bringing the action had the requisite standing. The Public Defender's Office, as an institutional advocate for rights, is empowered to file such actions on behalf of vulnerable individuals, including minors. However, the case implicitly reveals challenges concerning the effectiveness of their legal standing and the limitations placed on the scope of the constitutional action due to the nature of the administrative obstacles encountered. These challenges significantly affected the case by prolonging the irregular migratory status of the children and delaying their family reunification.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the applicant's legal capacity was compromised both by his age and by a psychiatric diagnosis that included acute psychotic disorder, which limited his ability to communicate and participate in proceedings. Although he was assigned a public defender, the judicial authorities did not take sufficient steps to ensure the child's right to be heard, a procedural guarantee enshrined in both Ecuadorian constitutional law and international human rights instruments. Instead, the courts concluded that it was unfeasible to consult the applicant and dispensed with this obligation, weakening the individualized assessment required in asylum and child protection cases.

Moreover, the court found that the lower courts relied heavily on welfare-based reasoning—particularly the perceived benefits of family reunification and the allegedly degrading conditions of the applicant's stay in Ecuador—without adequately evaluating the unresolved asylum claim or the risk of harm upon return. This approach led to the applicant's repatriation to his country of origin despite the absence of a final determination by the competent administrative authority on his protection needs. In doing so, the authorities failed to uphold the principle of non-refoulement, which prohibits the return of individuals to situations where they may face persecution or serious harm.

Hearing

Pushbacks: 1) In case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020, the judicial process did not feature direct testimony from the applicant migrants. The migrants were not present at either of the hearings related to the actions of protection. This absence was attributed to the challenges in locating them, given the fluid nature of their mobility. Consequently, the judicial bodies based their decisions on the evidence and arguments presented by other parties, such as the Public Defender's Office (*Defensoría del Pueblo*), which initiated the legal actions on behalf of the migrants.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the applicant was indeed heard by the judicial body. During the hearing, the applicant, a Cuban national, was present in person and said "[I] request protection" (…) "request asylum by means of the Refugee".

Detention: Administrative detention: In case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, public records indicate that a hearing was held on 21 February 2021, during the proceedings before the Constitutional Court. This was a virtual hearing in which the petitioner was heard by the court. The records do not specify whether there were other hearings in the lower courts.

Detention at the airport: In case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, the applicants were heard by the Constitutional Court via a videoconference hearing. The original first-instance hearing was initially scheduled at the court's regular facilities but was postponed and eventually held in person at Mariscal Sucre International Airport. The Ministry of the Interior justified this relocation on security grounds, arguing that the applicants, who were being held at the airport, could not be transferred. Consequently, the judges had to travel to the airport to conduct the hearing.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, the applicant was afforded the opportunity to be heard by the judicial body. During the hearing, presumably in-person, the applicant formally reiterated the factual and legal arguments presented in her constitutional complaint.

2) In case *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, the plaintiff had the opportunity to appear in person before the trial court. During the hearing, the applicant formally reiterated the factual and legal arguments presented in his constitutional complaint.[187]

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, public records do not indicate that the applicants were heard by the courts. The arguments were presented by the Public Defender.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the applicant was not heard by the court of first instance, which issued the order for his repatriation. Upon review, the appellate court acknowledged that it had not heard the adolescent either, explaining that his return had already been executed and he was no longer within the jurisdiction when the appeal was adjudicated.

Legal aid

Ecuadorian refugee law explicitly guarantees the right of asylum-seekers to access free legal assistance as part of the state's commitment to ensuring due process and effective protection. In line with regional standards and the commitments set forth in the 2014 Brazil Declaration, Ecuador recognizes legal aid as a fundamental procedural safeguard in asylum proceedings.[188] This right is operationalized through both public institutions and civil society organizations that provide legal representation and support to

[187] See Third Specialized Judicial Unit for Family, Women, Children and Adolescents of the Quito canton of the province of Pichincha, protective action Nº 17203-2013-8021, 29April 2013.
[188] Freier L.F. & Gauci J.P. (2020). *Refugee Rights Across Regions*, cit., p. 345.

applicants throughout the RSD process. By embedding legal assistance within its asylum framework, Ecuador affirms the principle that access to protection must be accompanied by access to justice, particularly for individuals facing heightened vulnerability and legal complexity.

Pushbacks: 1) In case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020, the legal aid was primarily facilitated by the Public Defender's Office (*Defensoría del Pueblo*), which actively filed the actions of protection on behalf of the Venezuelan migrants. This intervention was crucial, as it ensured that the applicants, despite their vulnerable situation and lack of access to resources, had legal representation to advocate for their rights.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, the applicant "had the assistance of a private defence lawyer", as the court record explicitly states. The legal aid undoubtedly affected the case by ensuring the applicant's rights were articulated and that relevant legal and constitutional arguments, particularly regarding international protection and non-refoulement, were formally brought before the court. However, despite the presence of legal aid and the arguments raised concerning asylum and constitutional rights, the ultimate outcome of the deportation order remained unchanged. This suggests that while legal representation ensured due process and the presentation of a defence, it did not ultimately sway the court's decision, which heavily prioritized national migration regulations regarding irregular entry over the specific claims for international protection made by the applicant.

Detention: Administrative detention: In case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, legal aid was provided to the applicants through the Public Defender's Office. The involvement of public defenders suggests that the applicants were able to exercise their right to legal representation, ensuring that their case was presented and argued before the court.

Detention at the airport: In case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, legal aid was provided to the applicants through the Public Defender's Office. The provision of legal aid significantly affected the case, ultimately leading to the declaration of rights violations by the Constitutional Court.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, legal aid was indeed provided to the applicant in this case. The judicial record explicitly states the presence of the applicant's legal counsel, who actively participated in the hearing and presented arguments on behalf of the applicant. Nevertheless, the public records don't specify if this was pro bono legal aid, legal aid from a public defender's office, or private representation.

2) In case *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, legal aid was provided to the plaintiff. The judicial record explicitly states the presence of the applicant's legal counsel, who actively participated in the hearing and presented arguments on behalf of the applicant. Nevertheless, the public records don't specify if this was pro bono legal aid, legal aid from a public defender's office, or private representation.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, legal aid played a decisive role in the case involving minor children seeking entry into Ecuador for the purpose of family reunification and access to international protection. The initial action was filed by the Ombudsman's Office (*Defensoría del Pueblo*), a state institution mandated to provide legal representation and advocacy, particularly for vulnerable groups such as children in contexts of human mobility. The proceedings before the Constitutional Court further reflected broad legal engagement, including participation by the Public Defender's Office of Sucumbíos, legal clinics, and non-governmental organizations. This multi-actor involvement underscores a coordinated legal strategy aimed at upholding the applicants' rights.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the legal assistance was a decisive factor in this case, enabling the judicial review of the adolescent applicant's situation and ensuring that the violations of his fundamental rights were properly articulated before the courts. The habeas corpus petition was initiated by a public defender, who consistently advocated for the protection of the applicant's rights, including the right to seek asylum, the principle of non-refoulement, procedural due process, and the best interests of the child. Legal counsel also underscored serious administrative and procedural deficiencies, particularly the absence of adequate protective measures for unaccompanied minors in the asylum system.

Although the lower courts failed to adequately safeguard these rights, sustained legal advocacy—reinforced by amicus curiae submissions—significantly influenced the Constitutional Court's analysis. The Court ultimately recognized multiple rights violations and ordered both individual and structural remedies. Among the measures mandated, the Court held that if the adolescent chose to pursue his asylum claim and return to Ecuador, the competent authorities would be obligated to evaluate his application in accordance with international protection standards and determine whether refugee status should be granted.

Applicant's vulnerability

Pushbacks: 1) In case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020, the Constitutional Court's analysis demonstrates a clear recognition of the vulnerability of the applicant migrants. The ruling specifically highlights the presence of families, young children, and women within the groups affected by the expulsions. This acknowledgment of heightened vulnerability played a significant role in shaping the Court's legal reasoning. The Court's emphasis on the principle of non-refoulement and the necessity of individualized assessments in migration procedures was, in part, a direct response to the need to protect these vulnerable groups from the disproportionate harm of collective expulsions.

2) Summary expulsion: In case *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, neither the court nor the defence explicitly characterized the applicant as "vulnerable" in a formal legal sense. However, certain elements of the record implicitly suggested a degree of vulnerability, which, regrettably, did not appear to have meaningfully influenced the adjudication in his favour. During the hearing, the applicant stated that he had been "assaulted when detained for more than 24 hours, still without water, without a doctor, they hit us," and he also expressed a fear of returning to his country, statements indicative of a potentially vulnerable situation.

Detention: Administrative detention: In case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, the applicant's condition of vulnerability was a significant factor in the adjudication process. The individual was identified as being "in a situation of human mobility" and therefore considered a "subject of attention" requiring priority attention. In this specific case, the applicant's vulnerability was explicitly acknowledged by the court as a criterion justifying the examination of the case's merits.

Detention at the airport: In case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, the court recognized the applicants as a priority attention group due to their inherent vulnerability stemming from migratory status. This recognition influenced the court's reasoning in several key ways. First, the case was prioritized due to the involvement of fundamental rights violations against a vulnerable group. Second, the court applied a less stringent standard of proof and reversed the burden of proof, requiring the state to disprove the alleged violations. It emphasized that the victims' testimonies must be considered within the totality of evidence, reflecting a flexible evidentiary approach suited to vulnerable populations. Third, the court reaffirmed the absolute nature of the non-refoulement principle, highlighting its applicability to all individuals regardless of legal status. Finally, the court ordered structural reparations, including normative reforms, infrastructural changes in airports, and specialized training for

migration officials, aimed at addressing systemic deficiencies that disproportionately affect migrants and asylum seekers.

Procedural barriers: Deadlines: 1) In case *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, the applicant was not considered as a "vulnerable" person. While the applicant's vulnerability was evident in her testimony detailing persecution and fear for her life in Colombia, it ultimately did not sway the adjudication process in her favour.

2) In case *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, the plaintiff's vulnerability was a significant factor in the adjudication process, ultimately leading to a favourable outcome at the Constitutional Court. The applicant's detailed account of fleeing their country of origin due to threats to personal and psychological integrity, including alleged state discrimination based on sexual orientation, implicitly underscored their precarious situation. While initial judicial instances rigidly applied a 15-day administrative deadline for asylum applications, the Constitutional Court critically recognized this timeframe as "insufficient" given the individual's "particular factual situations". This higher court emphasized that the right to asylum and non-refoulement is intended to protect individuals in "a real state of vulnerability". By applying the *pro homine* principle, the Court overturned the lower court decisions and ordered the administrative authority to substantively review the asylum application.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, the court recognized the applicants—three Venezuelan siblings, two of whom were minors—as individuals in a situation of heightened vulnerability due to their age and migrant status. This dual vulnerability informed the Court's rights-based analysis, which prioritized the best interests of the child and the right to family reunification. The Court found that the denial of regular entry, based on the absence of required documentation and prior authorization from the Cantonal Council for the Protection of Rights, constituted an unreasonable administrative barrier and a violation of constitutional and international human rights norms. The decision condemned the formalistic practices of migration officials that prolonged the children's irregular status and exposed them to precarious conditions, ultimately infringing on their right to family unity. As a corrective measure, the Court ordered institutional investigations and mandated the creation of a binding inter-institutional protocol to ensure regular entry, protection assessments (including asylum claims), and safeguards against refoulement for children in human mobility contexts.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the Court identified the applicant—an unaccompanied minor with severe mental health conditions and an active asylum claim—as a subject of pronounced and intersecting vulnerabilities. These conditions shaped the Court's analysis, particularly its findings on the procedural failures that led to the applicant's repatriation without adequate legal safeguards. The Court emphasized that unaccompanied minors with psychosocial disabilities are entitled to special protection under national and international law, and that such vulnerability cannot justify the denial of procedural rights, including the right to be heard. By failing to assess the applicant's asylum claim and repatriating him despite his inability to participate meaningfully in the proceedings, authorities violated the principle of non-refoulement and other core rights. The Court concluded that the state's actions constituted a serious breach of its obligations to protect individuals in situations of heightened risk.

B. Impact of the judicial body's decision

Pushbacks: 1) The Constitutional Court of Ecuador's ruling in case *No. 639-19-JP/20*, along with the accumulated case *No. 794-19-JP*, adjudicated on 21 October 2020, represents a pivotal development in the country's migration jurisprudence. The decision firmly reaffirms the absolute prohibition of collective expulsions and emphasizes the necessity of individualized assessments in migration and asylum procedures, thereby establishing a robust interpretative framework for judicial authorities. Moreover, the

Court delineates the State's obligations to uphold due process and the principle of non-refoulement, underscoring the judiciary's essential role in safeguarding the rights of migrant populations.

This jurisprudential approach is further reinforced by the Constitutional Court in subsequent rulings. In case *No. 2120-19-JP/21*, adjudicated on 22 September 2021, the Court reiterated that the right to migrate must be assessed on an individual basis, with particular attention to the special circumstances of children and adolescents in situations of human mobility. Similarly, in ruling *No. 1214-18-EP/22* (27 January 2022), the Court affirmed that the principle of non-refoulement protects individuals regardless of their formal admission into national territory, guaranteeing access to individualized procedures that thoroughly evaluate protection needs—especially those related to international protection—prior to any measures such as border rejection or deportation. Furthermore, in ruling *No. 14-19-IN/23* (7 June 2023), the Court addressed a public action of unconstitutionality against Ministerial Agreements 242 and 244 issued by the Ministry of Foreign Affairs, which imposed additional entry requirements for Venezuelan nationals, including presentation of a passport or valid identity card and a criminal record certificate. The Court observed that these requirements effectively barred entry for Venezuelans lacking such documentation, violating the constitutional right to migrate. All these decisions reaffirmed the principles set forth in judgment 639-19-JP/20, emphasizing that the right to migrate is exercised not only at the point of entry but also during residence, transit, and exit, thereby underscoring the comprehensive protection guaranteed by the Constitution.

2) Summary expulsion: The ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, being a first-instance decision, did not influence subsequent decisions addressing summary expulsions.

Detention: Administrative detention: Ruling No. *2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, directly influenced the Constitutional Court of Ecuador's decision *No. 2185-19-JP*, adjudicated on 1 December 2021, concerning the registration of births of children born to migrant adolescents. This ruling reaffirmed the recognition of migrants as rights-holders and emphasized the imperative to dismantle stereotypes and prejudices against migrant populations, while also strengthening protections for the rights of returned migrants. Complementing this, ruling *No. 1214-18-EP/22*, dated 27 January 2022, further elaborated on the right to personal liberty. In its interpretation of Article 40 of the Ecuadorian Constitution, the Court explicitly condemned the criminalization of migration. It held that immigration detention constitutes a form of such criminalization and is therefore unconstitutional.

Detention at the airport: The ruling *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, directly influences the decision *No. 09359-2023-00727*, adjudicated by the Judicial Labor Unit based in the Canton of Guayaquil, Province of Guayas, on 16 June 2024. This later ruling concerns a habeas corpus action filed by public defenders on behalf of a group of Somali citizens. The plaintiffs alleged illegal and arbitrary detention, inhuman and degrading treatment, and a violation of the non-refoulement principle by Ecuadorian authorities at the José Joaquín de Olmedo International Airport in Guayaquil. The decision emphasizes that the detention of the Somali group was illegal and arbitrary, and that they were subjected to cruel, inhuman, and degrading treatment, including a lack of access to an interpreter, adequate rest, food, and sanitary facilities. The court also highlighted the presumption of illicit migrant trafficking and the risk to the lives, integrity, and freedom of the Somali collective if returned to their country of origin. The court's reasoning heavily relies on and reinforces the principles established in Constitutional decision *No. 1214-18-EP/22*, as a mechanism to guarantee the principle of non-refoulement in cases of individuals in international airport zones.

Procedural barriers: Deadlines: 1) Ruling *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, did not influence subsequent decisions addressing deadlines.

2) To date, no decisions have been found that have used the ruling *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, as a precedent.

Procedural barriers: Administrative failures: 1) The Constitutional Court of Ecuador's ruling *No. 2120-19-JP/21* (22 September 2021) indirectly influenced a later decision by the Criminal Chamber of the Provincial Court of El Oro (case No. *07281-2019-00663*, 3 December 2023). The latter case involved an appeal against a constitutional action brought by the Ombudsman and Public Defender on behalf of four unaccompanied Venezuelan minors traveling irregularly through Ecuador to reunite with family in Peru. The minors' rights were violated when immigration authorities refused to implement protection measures issued by the Cantonal Board for the Protection of Children and Adolescents, which authorized their cross-border movement despite lacking valid passports and criminal records, citing Presidential Decree 826. The trial court recognized the minors' vulnerability and ruled in favour of protecting their migration and family unity rights. However, the appellate court overturned this decision, finding that the Cantonal Board had overstepped its jurisdiction by ordering cross-border movements without proper involvement of immigration authorities or parental consent, thus violating due process. While reaffirming the State's duty to protect vulnerable minors, particularly considering Ecuador's international obligations to guarantee effective protection and specialized care for children in migration situations, the ruling emphasized the procedural and jurisdictional limits of child protection bodies in migration matters and confirmed the exclusive competence of national migration authorities in regulating international mobility.

2) The Constitutional Court of Ecuador's ruling *No. 2496-21-EP/23*, adjudicated on 12 July 2023, influenced the Court's subsequent decision in case *No. 215-13-EP/23*, issued on 1 November 2023, concerning the right to defence and the standard of proof in proceedings for the revocation of refugee status. The latter ruling reaffirmed the fundamental principle of *non-refoulement* as enshrined in the Ecuadorian Constitution and the ACHR, underscoring the imperative to protect refugees from being returned to situations where their life or freedom would be at risk.

C. Consistency with previous jurisprudence

Pushbacks: 1) In ruling *No. 639-19-JP/20* and its accumulated case *No. 794-19-JP*, issued on 21 October 2020, the Constitutional Court of Ecuador reaffirmed foundational principles from its prior jurisprudence, such as border immigration control cannot violate the prohibition on criminalizing migration through actions that involve persecution, collective expulsions, or other forms of action that endanger the lives and personal integrity of migrants (*No. 159-11-JH/19*, 26 November 2019 and *No. 335-13-JP*, 12 August 2020). The ruling not only consolidated these standards but also advanced a more context-sensitive interpretation by addressing the specific conditions of the Venezuelan migration crisis. The Court emphasized the heightened vulnerability of certain migrant subgroups and clarified the procedural and substantive obligations of the State under the principle of non-refoulement, particularly in contexts involving mass displacement.

2) Summary expulsion: The ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, was consistent with a strict interpretation of Ecuadorian migration law at the time, particularly regarding the requirement of regular entry for the processing of asylum claims within the context of deportation. The decision reflects a prevailing judicial position that, while recognizing international obligations, applies to national procedural barriers (such as legal entry) to prevent asylum claims from being processed during deportation proceedings. However, to date, no other judicial decisions from the same court have been found that have addressed the barrier considered in this section.

Detention: Administrative detention: In the case *No. 2533-16-EP/21*, adjudicated on 28 July 2021, the Constitutional Court of Ecuador reaffirmed its established jurisprudence concerning the rights of individuals in situations of human mobility, with particular emphasis on the prohibition of illegal or arbitrary detention, the prohibition on criminalizing migration and the safeguarding of due process (rulings *No. 159-11-JH/19*, 26 November 2019; *No. 207-11-JH*, 22 July 2020; and *No. 335-13-JP*, 12 August 2020). The ruling consistently upheld fundamental protections for migrants while advancing the Court's analytical framework by addressing detention conditions in non-traditional environments, notably the "Hotel Carrión." Furthermore, the decision underscored the critical importance of individualized assessments in

migration-related determinations. Thus, while grounded in prior constitutional principles, the ruling represents a nuanced development in the Court's approach to ensuring the protection of fundamental rights within the specific context of migration and human mobility.

Detention at the airport: The Constitutional Court of Ecuador's ruling *No. 1214-18-EP/22*, adjudicated on 27 January 2022, aligns with its earlier decision *No. 335-13-JP*, of 12 August 2020, which addressed arbitrary detention in airport transit zones. The earlier ruling established that such detention constitutes a form of migratory detention that restricts freedom of movement under state control and affirmed that Ecuador's human rights obligations extend fully to these international or transit zones, rejecting any claims of extraterritoriality or exemption from constitutional protection. The Court underscored that detention exceeding 24 hours in these zones, particularly of individuals denied entry, amounts to arbitrary detention. It further affirmed that people detained in transit zones retain fundamental rights, including the right to personal integrity, access to international protection, and protection under the non-refoulement principle. The Court emphasized that returning or expelling individuals to countries where they face threats to life, liberty, or integrity violates non-refoulement, a protection that applies regardless of their migratory status or formal admission into the national territory.

Procedural barriers: Deadlines: 1) Ruling *No. 08301-2012-0769*, issued by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, adhered to a strict interpretation of Ecuadorian refugee law as it stood at that time, particularly upholding the application of short procedural deadlines—specifically, the 15-day limit for submitting asylum applications.

2) Ruling *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, reaffirmed and expanded upon an earlier decision, *No. 002-14-SIN-CC* from 14 August 2014, which addressed Executive Decree No. 1182 and the application of strict deadlines in asylum procedures. This earlier ruling reflected an evolving judicial approach to procedural barriers in asylum claims, marking a progressive shift towards enhanced human rights protections within Ecuador's legal framework. Notably, the Court extended the deadline for submitting asylum applications from 15 days to three months and increased the appeal period from 3 or 5 days to 15 days. The decision explicitly recognized that the previously short time limits infringed upon the principle of equality by imposing disproportionately stringent requirements on asylum seekers compared to other administrative litigants.

Procedural barriers: Administrative failures: 1) In case *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, the Court marked a significant departure from rigid formalism in migration procedures. It held that denying regular entry to vulnerable individuals, particularly children and adolescents, due to a lack of documentation violates their right to migrate, their best interests, and the right to family reunification. The Court emphasized that failure to meet formal migratory requirements should not result in automatic inadmissibility of the application or unwarranted delays. This reasoning aligns with earlier jurisprudence, including the 2015 ruling (Ruling *No. 090-15-SEP-CC*), which criticized strict procedural deadlines in asylum processes and advocated for substantive human rights-based review. By prioritizing the best interest of the child and mandating a special protection protocol to facilitate regular entry regardless of documentation, the Court demonstrated a clear shift toward a more rights-protective and less formalistic approach.

2) In case *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, the ruling largely aligns with the Court's established jurisprudence, reaffirming foundational principles such as the jus cogens status of the principle of non-refoulement, which remains central to both the right to asylum and international refugee law. The decision reiterates the declarative nature of refugee status, holding that individuals who meet the criteria are refugees by fact, irrespective of formal recognition. It stresses the necessity of individualized asylum procedures that guarantee due process, noting that severe procedural violations may themselves breach the non-refoulement obligation—a view consistent with both domestic precedents and interpretations by the IACtHR. The ruling reinforces the exclusive administrative authority of the Ministry of Foreign Affairs and Human Mobility in RSDs, criticizing provincial judges for overstepping their jurisdiction. Additionally, it emphasizes the prioritization of vulnerable groups,

particularly unaccompanied minors, consistent with prior protections. Finally, the Court underscores the importance of effective judicial protection, mandating reasonable timelines for habeas corpus proceedings and requiring judicial diligence, thereby affirming enduring standards of due process and human rights protection.

Reasons and extent of these differences

Pushbacks: 1) To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020.

2) Summary expulsion: To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016. As previously noted, the prevailing judicial approach during that period was to prioritize the application of national immigration law over the right to asylum.

Detention: Administrative detention: To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021.

Detention at the airport: To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022.

Procedural barriers: Deadlines: 1) To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015.

2) To date, no decisions issued by the Constitutional Court of Ecuador have been identified that depart from the reasoning in ruling *No. 090-15-SEP-CC*, adjudicated on 25 March 2015.

Procedural barriers: Administrative failures: 1) To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021.

2) To date, no decisions issued by the same judicial body have been identified that depart from the reasoning in ruling *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023.

Divergence establishing binding precedent

Pushbacks: 1) The Constitutional Court of Ecuador, acting as the highest authority in constitutional interpretation, issued a judgment in case *No. 639-19-JP/20* on 21 October 2020. This ruling, which addressed key issues concerning the rights of migrants and constraints on state authority, exemplifies the Court's capacity to establish binding constitutional precedent with *erga omnes* effect. As such, any departure from prior jurisprudence articulated in this decision imposes a mandatory interpretive framework on lower judicial and quasi-judicial bodies. First-instance courts are thus required to apply the Constitutional Court's interpretation in subsequent cases presenting comparable factual and legal questions. In the context of asylum law, this precedent is especially relevant, as it guarantees consistency in judicial reasoning and reinforces the vertical coherence of the Ecuadorian legal system.

2) Summary expulsion: The ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, was issued by a lower court, so it did not set a binding precedent.

Detention: Administrative detention: The decision in case *No. 2533-16-EP/21*, issued by the Constitutional Court of Ecuador on 27 January 2022, provides a definitive interpretation of constitutional

norms concerning human rights, particularly in relation to migrant detention. As the highest constitutional authority, the Court's rulings carry binding jurisprudential authority, requiring lower courts to apply the legal principles and interpretations established therein when resolving comparable cases.

Detention at the airport: The decision in the case *No. 1214-18-EP/22*, rendered by the Constitutional Court of Ecuador on 27 January 2022, serves as a definitive interpretation of constitutional norms regarding human rights, particularly in the context of arbitrary detention and the rights of vulnerable populations at border control points. As the supreme interpreter of the Constitution, the Constitutional Court's rulings are jurisprudentially authoritative, meaning that lower courts are obligated to adhere to the legal principles and interpretations outlined in such decisions when adjudicating similar cases. This hierarchical adherence ensures a consistent application of constitutional rights, promotes legal certainty, and upholds the principle of a unified judicial doctrine throughout the national territory. Consequently, the precedent established in the case *No. 1214-18-EP/22* creates a mandatory framework for all subordinate judicial bodies, compelling them to align their future adjudications with the Constitutional Court's directives on issues like the impermissibility of prolonged arbitrary detention in transit zones.

Procedural barriers: Deadlines: 1) Ruling *No. 08301-2012-0769*, adjudicated by Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, functions as a binding precedent for lower courts, specifically the First Civil and Commercial Court of Esmeraldas, which initially heard the case. This decision, rendered by a second-instance appellate court, establishes a legal benchmark for future cases. However, it is crucial to recognize that the plaintiff's appeal was ultimately rejected, indicating an absence of judicial disagreement with the appellate court's final ruling. This lack of dissent from the appealing party reinforces the judgment's conclusive nature within this specific legal context.

2) The divergence established by the Constitutional Court in case *No. 090-15-SEP-CC*, adjudicated on 25 March 2015, is effectively a binding precedent. The Court mandated a substantive review of an asylum application despite a missed administrative deadline, based on a broader interpretation of effective judicial protection and the right to asylum. In this sense, first-instance judicial bodies are expected to align their future decisions with this constitutional interpretation, prioritizing the *pro homine* principle and a substantive analysis of asylum claims over a rigid adherence to administrative deadlines when such adherence would violate constitutional rights. Failure to do so could lead to their decisions being overturned by higher constitutional instances.

Procedural barriers: Administrative failures: 1) In *case No. 2120-19-JP/21*, adjudicated on 22 September 2021, the Constitutional Court of Ecuador exercised its constitutional authority to issue a binding interpretation on matters concerning the rights of migrants and the limits of state action. As a precedent with *erga omnes* effect, the ruling imposes a mandatory interpretive standard on all lower judicial and quasi-judicial bodies, which are required to adhere to its reasoning in analogous cases. The decision explicitly affirms that, should the affected adolescent choose to return to Ecuador, national authorities are under a legal obligation to assess the asylum claim in accordance with applicable domestic and international legal standards. This requirement further illustrates the binding nature of the ruling and its function in ensuring uniform application of constitutional norms, particularly in the context of international protection and the rights of children in human mobility.

2) In case *No. 2496-21-EP/23*, adjudicated on 12 July 2023, the Constitutional Court of Ecuador affirmed its role in establishing binding precedent as the highest authority on constitutional matters in the country. The ruling explicitly recognizes the Court's competence to hear and resolve extraordinary actions for protection in accordance with constitutional provisions and the Organic Law of Jurisdictional Guarantees and Constitutional Control. The decision's binding nature is further underscored by the specific reparative measures imposed, including mandatory training for judges and public defenders, as well as requiring the Ministry of Foreign Affairs and Human Mobility to develop internal protocols, thereby signalling its intended impact on future legal practice and jurisprudence.

The decision aligns with or differs from resolutions on similar barriers

Pushbacks: 1) While the Constitutional Court's ruling in case *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated on 21 October 2020, builds upon established legal principles concerning the rights of migrants, it also reveals internal divergence in its application, particularly concerning the balance between state sovereignty and individual rights. The ruling references prior decisions to reinforce established jurisprudence on issues such as due process and the prohibition of collective expulsions. However, dissenting opinions within the Court highlight differing interpretations regarding the extent to which a state can restrict entry and the degree to which distinctions should be made between general migration and situations involving individuals seeking humanitarian protection. These differing viewpoints underscore an ongoing debate about the precise limits of state action in regulating migration flows and the nuances of applying constitutional principles to complex migration scenarios.

2) Summary expulsion: The ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, aligns with decisions issued by other lower courts in Ecuador in 2016 that addressed cases involving the summary expulsion of foreign nationals. In these decisions, the courts consistently prioritized the enforcement of immigration law over the right to seek asylum during deportation proceedings. For instance:

Case *No. 17151-2016-00570*, adjudicated by the Specialized Chamber of Criminal, Military, Police, and Transit Laws of the Provincial Court of Justice of Pichincha on 30 July 2016, concerned a Cuban citizen detained for deportation due to her irregular immigration status. In this instance, the court similarly determined that her irregular status, by violating provisions of the Immigration Law, precluded her from submitting an asylum application to normalize her residence.

Case *No. 17151-2016-00507*, adjudicated by the Specialized Chamber of Criminal, Military, Police, and Traffic Laws of the Provincial Court of Justice of Pichincha on 8 August 2016, involved a Cuban citizen detained for deportation who sought release to submit an asylum application. The court, among other considerations, noted that the individual had not filed an asylum application despite having had the opportunity to do so before detention. Consequently, the court upheld the measure of deprivation of liberty until deportation.

Case *No. 17151-2016-00569*, adjudicated by the Specialized Chamber of Criminal, Military, Police, and Traffic Laws of the Provincial Court of Justice of Pichincha on 11 August 2016, concerned a Cuban citizen detained for deportation due to his irregular immigration status. In this ruling, the court emphasized the violation of immigration law and the absence of any document accrediting the individual as an asylum seeker or expressing a need for international protection at the time of his detention. It is pertinent to note that, by the time of the decision, this individual had already been deported to his country of origin.

Case *No. 17151-2016-00578*, adjudicated by the Specialized Chamber of Criminal, Military, Police, and Transit Laws of the Provincial Court of Justice of Pichincha on 15 August 2016, involved yet another Cuban citizen who, after entering Ecuador on a tourist visa, remained in an irregular immigration status. Despite claiming a need for international protection, the Court ruled against her, reinstating the deportation measure and administrative detention for deportation purposes.

Detention: Administrative detention: Ruling *No. 2533-16-EP/21*, issued by the Constitutional Court of Ecuador on July 28, 2021, marks a significant departure from the prevailing trend in prior lower court decisions concerning the detention of foreign nationals for deportation. This divergence is evident when comparing it to cases such as case *No. 17553-2011-11807*, adjudicated by the Third Court of Contraventions of Pichincha on 7 October 2011. In the latter case, the court sanctioned the immediate deportation of a Syrian citizen who was in an irregular immigration status. This individual had been detained for four days at the facility colloquially known as "Hotel Hernán" prior to their deportation hearing. Notably, the citizen had previously sought asylum in Ecuador. Following the denial of their asylum request, they were granted a period of seven business days to voluntarily depart the country. Upon non-compliance with this directive, their subsequent detention until deportation was affirmed by the court.

Notwithstanding the common practice exemplified above, the Constitutional Court's decision aligns with certain earlier rulings that emphasize protection from detention for deportation purposes. For instance, case *No. 09286-2013-2338*, adjudicated by the Northern Judicial Criminal Unit in the Canton of Guayaquil, Guayas Province, on 4 October 2012, ordered the immediate release of a Cuban citizen who was being detained for his irregular immigration status, pending a ruling on his asylum request. In that case, the defence successfully argued by referring to Ecuador's international commitments and the principle of non-refoulement, even when asylum applications were in the admissibility process. Similarly, case *No. 17151-2016-00547*, adjudicated by the Criminal Judicial Unit Headquarters in Iñaquito, Metropolitan District of Quito (Pichincha), on 9 July 2016, involved a Cuban citizen who was detained in Quito due to irregular immigration status, leading to a deportation process. During the deportation hearing, the defence argued that he had requested asylum in Ecuador, which was still under appeal with the Ministry of Foreign Affairs. The court, citing international human rights instruments, the Ecuadorian Constitution, and the fact that his asylum claim had not yet been definitively resolved by the state, ultimately denied the deportation order and mandated his immediate release from detention. The court concluded that, as an asylum seeker whose status was still pending, he was entitled to protection under the principle of non-refoulement, and his detention was to cease, placing him under the responsibility of the National Migration Control Authority pending the resolution of his asylum application.

Detention at the airport: Judgment No. 1214-18-EP/22 of the Constitutional Court of Ecuador, dated 27 January 2022, aligns with a consistent jurisprudential trend in national courts by condemning arbitrary detention within airport transit zones. This consistency is evident in several lower court decisions. For instance, the Civil Judicial Unit in Guayaquil, in case *No. 09332-2021-04157* on 26 April 2021, meticulously detailed a habeas corpus case where an applicant was held for approximately four days in the José Joaquín de Olmedo International Airport's transit area by migration authorities and police, despite having valid reasons for her journey and established ties to Ecuador. This court explicitly deemed the detention illegal, arbitrary, and illegitimate, emphasizing that it violated the constitutional mandate against holding an individual for more than 24 hours without judicial order, directly contravening Article 77 of the Constitution and Article 7 of the ACHR. Similarly, the Judicial Unit on Violence Against Women in Quito, in case *No. 17284-2021-0001T* on 6 July 2021, powerfully condemned the arbitrary detention of an Uzbek national in the Quito airport's "sterile zone". Despite the applicant expressing an intention to seek asylum, migration agents denied entry without proper justification, leading to prolonged retention that exceeded the constitutional 24-hour limit. This ruling underscored violations of the right to free transit, the prohibition against discrimination based on migratory status, and the principle of non-refoulement, noting procedural abuses such as the failure to physically present the applicant at the habeas corpus hearing. Further reinforcing this pattern, the Judicial Unit of Family, Women, Children, and Adolescents in Quito, in case *No. 17203-2021-04877* on 26 October 2021, strongly condemned the arbitrary detention of nine Uzbek nationals in the Mariscal Sucre International Airport's "international" transit zone. Despite their immediate declaration of intent to seek refuge and confirmation from the Ministry of Foreign Affairs that their asylum applications were "in process" and protected by the principle of *non-refoulement*, migration authorities denied entry and attempted their immediate return. This court explicitly deemed the deprivation of liberty arbitrary, illegal, and illegitimate, highlighting the failure of migration authorities to provide adequate assistance, thus violating the plaintiff's right to defence and to be informed in a comprehensible language. Across these cases, the consistent invocation of Constitutional Court precedent (specifically ruling *No. 335-13-JP-20*) solidifies the understanding that airport transit zones are not legal vacuums, and arbitrary detention within them, especially for those seeking asylum, is strictly prohibited by Ecuadorian constitutional and international law.

Procedural barriers: Deadlines: 1) Ruling *No. 08301-2012-0769*, adjudicated by Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, aligns with decisions issued by other courts in Ecuador that addressed cases involving strict deadlines in the asylum system. For instance, case No. 08201-2013-3597, adjudicated by the Judicial Unit of Family, Women, Childhood and Adolescence of Esmeraldas on 28 October 2013, concentrates on the strict application of deadlines as a pivotal barrier

to asylum access in Ecuador. In this case, the applicant, a Colombian national, filed a Protection Action challenging the Refugee Directorate's denial of her appeal to an inadmissibility decision, rendered "abusive", arguing that her asylum application was rejected due to its submission outside the prescribed timeframe. The court ultimately declared the Protection Action groundless, upholding the authorities' position that the appeal was filed beyond the stricter 3-day deadline, thereby validating the administrative barrier.

2) To date, no decisions of other judicial bodies have been identified with which decision *No. 090-15-SEP-CC*, adjudicated by the Constitutional Court of Ecuador on 25 March 2015, is aligned.

Procedural barriers: Administrative failures: 1) To date, no decisions of other judicial bodies have been identified with which decision *No. 2120-19-JP/21*, adjudicated by the Constitutional Court of Ecuador on 22 September 2021, is aligned.

2) The decision in case *No. 2496-21-EP/23* represents a clear departure from the approach taken by lower judicial bodies in the same jurisdiction, particularly in the interpretation and application of fundamental rights in asylum proceedings. While the first and second instance courts dismissed the adolescent's asylum-related claims and permitted repatriation without proper procedural safeguards, the Constitutional Court reaffirmed a markedly different standard, grounded in constitutional and international human rights norms. Specifically, the Court emphasized the exclusive authority of the Ministry of Foreign Affairs and Human Mobility in asylum determinations, rejecting the lower courts' overreach in assessing protection needs and the legality of repatriation.

The divergence also extends to the application of the *non-refoulement* principle. The lower courts failed to recognize that the mere existence of a pending asylum application activates non-refoulement protection, choosing instead to rely on their own best interest assessment. The Constitutional Court, in contrast, reiterated that such protections are automatic and binding until a final determination by the competent administrative body is made. Additionally, the right of the child to be heard was overlooked by the lower courts due to the adolescent's mental health status, whereas the Constitutional Court stressed that this right must be upheld irrespective of cognitive or communicative limitations. Finally, the Court condemned the procedural delays that rendered the habeas corpus action ineffective, signalling a more rigorous standard for judicial diligence and effective protection. These differences highlight a more rights-protective and procedurally robust framework at the constitutional level, in contrast to the more formalistic and restrictive approach adopted by lower courts.

Evolutive or restrictive approach

Pushbacks: 1) The Ecuadorian Constitutional Court's decision in case *No. 639-19-JP/20*, along with accumulated case *No. 794-19-JP*, adjudicated on 21 October 2020, exemplifies an evolutive and rights-centred approach to addressing asylum barriers. The Court foregrounded fundamental principles such as non-refoulement, the right to migrate, and the prohibition of collective expulsions, explicitly extending protections even in contexts of irregular entry. This decision aligns with a broader global and regional trend towards recognizing human mobility as a fundamental aspect of human dignity, thereby calling on States to adopt inclusive, human rights-based migration policies.

However, the Court's progressive stance highlights persistent tensions between constitutional guarantees and the practical realities of migration governance.[189] Challenges remain particularly acute regarding the treatment of vulnerable populations and the consistent application of due process standards. The Court's emphasis on the need for comprehensive training of judicial and administrative actors, as well as the development of clear operational protocols, underscores the ongoing imperative to transform lofty legal principles into effective, equitable practices that counter discrimination and systemic inequality faced by migrants.

[189] Subía Cabrera A. (2023). *Reflexiones sobre derechos humanos: análisis respecto de la movilidad y diversidad humana desde la jurisprudencia constitucional ecuatoriana*, REMHU, *Revista Interdisciplinar da Mobilidade Humana*, p. 280.

This jurisprudential development must be understood within the wider liberalization of Ecuador's migration framework over recent years. Key reforms include the expansion of refugee definitions and complementary protection mechanisms, the decriminalization of irregular migration, and a stronger focus on regularization pathways. The Constitution affirms migration as a fundamental right, grants dual citizenship rights, and theoretically extends the same rights to migrants and refugees as nationals. Additionally, both immigration and refugee laws incorporate explicit non-discrimination and special protection clauses. Despite their ambitious scope, policy responses have often faltered in practice, vacillating between protectionist measures and exclusionary practices.[190] This ambivalence reflects the broader challenge faced by States in reconciling normative commitments with administrative capacity and political realities.

Within this framework, the constitutional right to asylum emerges as a particularly significant safeguard. Unlike asylum under the 1951 Refugee Convention—which is limited to persecution based on five specific grounds, constitutional asylum rights are frequently articulated in broad,[191] flexible terms. This allows for protection based on generalized human rights violations, thus offering a more expansive and adaptable shield for individuals facing a wide range of threats and vulnerabilities.

Together, these developments illustrate Ecuador's ongoing efforts to build a migration and asylum regime that is both rights-affirming and responsive to contemporary displacement dynamics, while also revealing the complexities inherent in translating constitutional guarantees into tangible protections on the ground.

2) Summary expulsion: Ruling *No. 17151-2016-00549*, adjudicated by the First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha on 9 July 2016, reflects a restrictive approach to asylum, particularly in relation to the requirement of lawful entry. This approach diverges from the evolutive, and more rights-protective interpretations often endorsed by higher judicial bodies in Ecuador. In this case, the court explicitly stated that the applicant "cannot avail himself of this right having evaded migratory filters," thereby directly linking the right to seek asylum to the legality of entry. This interpretation imposes a significant procedural barrier on individuals seeking international protection, effectively penalizing irregular entry—a practice contrary to the spirit of the 1951 Refugee Convention and its 1967 Protocol, as well as to Inter-American human rights instruments, which prohibit such penalties.

A particularly relevant point is that, although the court acknowledged Ecuador's international obligations concerning asylum, as well as Inter-American jurisprudence and soft law in favour of refugee protection, its narrow interpretation, focusing exclusively on domestic immigration legislation, ultimately foreclosed the applicant's ability to exercise the right to seek asylum.

Detention: Administrative detention: The ruling in case *No. 2533-16-EP/21*, adjudicated by the Constitutional Court of Ecuador on 28 July 2021, reflects a significant yet complex moment in the development of the Court's asylum jurisprudence. While reaffirming foundational principles such as non-refoulement, due process, and the prohibition of collective expulsions, the decision also emphasized the necessity of individualized assessments in cases involving persons in human mobility. This aligns with the Court's broader interpretive trajectory toward a more rights-protective framework, grounded in Ecuador's constitutional mandate and its international human rights obligations. The ruling demonstrates a judicial willingness to scrutinize migration-related administrative actions and to demand procedural rigor and substantive guarantees, particularly when the rights of vulnerable individuals, such as asylum seekers, are at stake.

However, the decision simultaneously reveals persistent tensions within the Court's reasoning, especially concerning the balance between human rights protection and the state's prerogative to control its borders.

[190] Acosta D. & Freier L.F. (2024). Regional governance of migration in South America, in Triandafyllidou A. (edit) Handbook of Migration and Globalization, second edition, p. 254.
[191] Mieli S. (2018). The Constitutional Right to Asylum: The Wave of the Future in International Refugee Law?, Fordham International Law Journal, Vol. 41/2, p. 416.

The presence of dissenting opinions that endorsed a more securitized and sovereignty-driven approach illustrates the internal ambivalence in the Court's position. These dissents echo a broader regional trend identified by scholars, wherein constitutional and human rights discourses coexist with increasingly restrictive migration practices, resulting in a normative duality that undermines coherence in asylum protection. Accordingly, while the ruling contributes to the gradual consolidation of a rights-based approach to asylum, it also reflects the fragility and contestation that characterize the judicial management of migration in a politically charged context.[192]

Detention at the airport: The decision in case *No. 1214-18-EP/22*, adjudicated by the Constitutional Court of Ecuador on 27 January 2022, fits squarely within the evolutive approach that the Ecuadorian Constitutional Court has adopted in recent years concerning asylum and migration law. This approach is marked by an increasing commitment to strengthening the protection of fundamental rights, aligning both with Ecuador's constitutional framework and with international human rights standards, including the 1951 Refugee Convention and the ACHR. In this ruling, the Court reiterates its established position that detention in airport transit zones constitutes a form of migratory detention and is not exempt from the State's human rights obligations. By reaffirming that these "international" areas are not legal vacuums, the Court dismantles a common administrative barrier used to circumvent human rights protections at borders. This is a direct continuation of the protective stance seen in prior jurisprudence, such as ruling *No. 335-13-JP/20*, which explicitly characterized such retention as "migratory detention".

Moreover, the decision condemns the prolonged and arbitrary nature of the detention suffered by the applicants. The Court found the detention to be both illegal (lacking a legal basis in the Ecuadorian Law of Human Mobility for prolonged retention in the inadmissible persons' room) and arbitrary (lasting more than 24 hours and thus constituting arbitrary detention). This directly addresses a significant practical barrier to asylum access, as prolonged and unlawful detention can prevent individuals from effectively initiating and pursuing their claims. Furthermore, the Court emphasizes the immediate applicability of the principle of non-refoulement. It explicitly states that migration authorities have an obligation to refer individuals expressing a fear of persecution to the competent authority for international protection assessment, even before a formal asylum request has been processed or if the person has been denied entry. The ruling found that attempts to return individuals without such an assessment directly violated the principle of non-refoulement. This active requirement placed on state agents constitutes a significant dismantling of an asylum barrier, ensuring that the right to seek asylum is not contingent on the migrant's formal status or the location within the airport. Finally, the decision mandates reparative measures that are indicative of a protective approach, including the adequacy of physical spaces in airports, training for migration officials on human mobility rights, and the development of clear normative protocols. These forward-looking measures aim to prevent future rights violations and enhance accessibility for asylum seekers, directly targeting systemic barriers

Procedural barriers: Deadlines: 1) Ruling *No. 08301-2012-0769*, adjudicated by the Multicompetent Single Chamber of the Provincial Court of Esmeraldas on 21 January 2015, leans towards a restrictive approach to asylum barriers, particularly regarding procedural compliance for administrative appeals. The court prioritized strict adherence to procedural timelines and the hierarchy of legal actions, even when fundamental rights, such as asylum and the right to appeal, were at stake and potentially in conflict due to differing legal norms. While Ecuador's 2008 Constitution and international human rights treaties generally advocate for a more evolutive and *pro homine* approach to rights, emphasizing the full enjoyment of rights and the principle of non-refoulement, this specific decision by a lower court suggests a more rigid application of administrative procedural law. This restrictive interpretation could inadvertently create significant barriers for asylum seekers, who often face challenges in navigating complex legal systems,

[192] Hammoud-Gallego O. & Freier L.F. (2023). Symbolic Refugee Protection: Explaining Latin America's Liberal Refugee Laws, American Political Science Review, p. 469.

particularly when confronted with conflicting deadlines or ambiguities in administrative competence, as was argued by the applicant in this case.

2) The Constitutional Court of Ecuador's decision in case *No. 090-15-SEP-CC*, adjudicated on 25 March 2015, exemplifies an evolutive and rights-protective approach to asylum barriers, marking a departure from the traditionally restrictive stances often taken by administrative bodies and lower courts. The Court explicitly criticized lower courts for adhering to a "mere legality" approach that rigidly enforced the 15-day deadline for asylum applications, prioritizing procedural formality over substantive constitutional rights such as asylum, non-refoulement, and effective judicial protection. By recognizing that the strict deadline was "insufficient" given the applicant's "particular factual situations" and emphasizing the inherent vulnerability of asylum seekers, the Court moved beyond a formalistic reading of procedural rules.

Central to this ruling was the Court's invocation of the *pro homine* principle, which mandates interpretations that "most protect the rights of the person." The Court insisted on a substantive analysis of asylum claims that transcends mere formal access to justice, reflecting Ecuador's constitutional commitment to a state governed by rights and justice, where constitutional values supersede rigid procedural rules.

This jurisprudential direction was anticipated in an earlier ruling, *No. 002-14-SIN-CC* from 14 August 2014, in which the Court demonstrated its independence by rejecting executive attempts to limit asylum protections through Executive Decree No. 1182. This decision underscored the Court's effective incorporation of international human rights law—enshrined in Ecuador's 2008 Constitution—thereby empowering civil society and refugee advocates to advance rights-based claims.[193]

Although the Court in both cases acknowledged the detrimental effects of the stringent 15-day deadline for asylum applications, it stopped short of advocating for its outright abolition, instead endorsing an extension of the period. This stance reflects a nuanced judicial balancing act: recognizing procedural concerns while affirming the declarative nature of asylum, which implies that state recognition should not be unduly constrained by inflexible timelines. Importantly, the adverse effects of such deadlines are mitigated in practice through legal frameworks that allow consideration of late applications when justified, a flexibility that aligns Ecuador with evolving practices in other Latin American jurisdictions.[194]

Together, these rulings illustrate the Constitutional Court's progressive jurisprudence, which prioritizes substantive justice and the protection of constitutional human rights. This evolving approach offers a pertinent model of judicial engagement for countries confronting growing refugee migration challenges.

Procedural barriers: Administrative failures: 1) Constitutional Court of Ecuador, case *No. 2120-19-JP/21*, adjudicated on 22 September 2021. The Constitutional Court of Ecuador's decision in case *No. 2120-19-JP/21*, adjudicated on 22 September 2021, reflects a deliberate and coherent shift toward a rights-protective and evolutive interpretation of constitutional and international human rights standards in the context of asylum and human mobility. In contrast to the more restrictive and formalistic approaches often adopted by administrative authorities and lower courts, particularly those prioritizing rigid documentation requirements and procedural deadlines, the Court emphasized the need to prioritize substantive rights over procedural formality. Specifically, the Court rejected the lower courts' reliance on a "mere legality" framework, which had frequently resulted in the denial of access to protection for vulnerable individuals, including children and adolescents, solely due to the absence of documentation.

The ruling affirmed that denying entry to individuals in vulnerable situations based on such formal deficiencies violates fundamental rights, including the right to migrate, the right to family reunification, and the principle of the best interest of the child. In doing so, the Court reaffirmed its commitment to the *pro homine* principle, which mandates that legal norms be interpreted and applied in the manner most favourable to the protection of human rights. This decision is consistent with the Court's established

[193] Mieli S. (2018). The Constitutional Right to Asylum: The Wave of the Future in International Refugee Law?, Fordham International Law Journal, Vol. 41/2, pp. 395-396.
[194] Freier L.F. & Gauci J.P. (2020). *Refugee Rights Across Regions*, cit., p. 341.

jurisprudence, including its earlier ruling *No. 090-15-SEP-CC* (2015), which similarly criticized the imposition of rigid deadlines for asylum applications and favoured a substantive, rights-based approach.

Rather than treating procedural requirements as ends in themselves, the Court in case *No. 2120-19-JP/21* underscored the importance of ensuring that constitutional rights are not rendered illusory by administrative formalism. The decision reinforces the normative framework of Ecuador as a constitutional state of rights and justice (*Estado constitucional de derechos y justicia*), wherein constitutional principles—particularly those concerning human dignity, equality, and access to justice—must prevail over strictly procedural norms. As such, the Court's reasoning not only resolved the individual case at hand but also established clear jurisprudential guidance for administrative bodies and lower courts, compelling them to align their practices with constitutional and international human rights obligations. Far from being an isolated instance, this decision exemplifies the Constitutional Court's broader role in shaping a more inclusive, humane, and rights-centred asylum and migration regime in Ecuador.

2) Ruling *No. 2496-21-EP/23*, adjudicated by the Constitutional Court of Ecuador on 12 July 2023, clearly aligns with an evolutive approach to asylum barriers, as endorsed by the Constitutional Court of Ecuador and supported by prevailing international human rights standards. The ruling reinforces the principle of non-refoulement as a fundamental and *jus cogens* norm, emphasizing that the mere existence of an asylum application triggers protective obligations, including the suspension of any return measures until a formal resolution is reached. This interpretation transcends restrictive readings that require formal refugee status recognition prior to applying non-refoulement protections, thereby expanding safeguards for asylum seekers in line with the declarative nature of refugee status acknowledged in both Ecuadorian law and international instruments such as the 1951 Refugee Convention and the Cartagena Declaration of 1984.

Furthermore, the decision broadens the scope of vulnerability by explicitly recognizing the heightened risks faced by unaccompanied minors, individuals with mental health challenges, and asylum seekers generally. This holistic consideration is consistent with evolving jurisprudence that prioritizes the rights and protections of vulnerable populations within migratory contexts. It imposes affirmative duties on state actors, including judicial authorities, to refrain from overstepping their competencies—particularly regarding RSDs reserved for specialized administrative bodies—and mandates procedural guarantees such as the right of vulnerable children and adolescents to be heard, even when impeded by mental health conditions.

The ruling also addresses systemic administrative obstacles, ordering institutional reforms like specialized shelters and training for officials, thereby acknowledging that structural deficiencies constitute significant barriers to effective asylum access. This proactive stance aligns with rulings by the IACtHR, which highlight the inseparability of due process guarantees from the principle of *non-refoulement*.

PART 3: SOCIO-LEGAL FACTORS

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

In Ecuador, all barriers to asylum access can, in theory, be judicially reviewed through various legal actions. Any obstruction of this right constitutes a violation of international law and is, therefore, subject to legal challenge. Furthermore, every act produced by members of the public sector can be appealed in the ordinary justice system, as established by law.[195]

Despite the possibility of review, this does not mean that specific, direct jurisprudence exists for every type of barrier, as was noted in the discussion of administrative barriers in Part II. While the legal right to challenge these obstacles is clear, the practical application of this principle through case law may be underdeveloped. Therefore, to gain a more complete understanding of these challenges and the specific jurisprudential gaps, it would be beneficial to explore this topic further through interviews with relevant stakeholders.

Procedural barriers: As noted in Part II, there is no judicial precedent directly addressing procedural barriers at the pre-admissibility stage of asylum applications in Ecuador. Rulings addressing this phase typically refer to time limits.

No Ecuadorian court of first or second instance has directly ruled on the "Request for Additional Documents" as an independent bureaucratic obstacle to accessing asylum. This is likely because the issue is intertwined with initial entry requirements, which can prevent asylum seekers from even entering the country and beginning the application process. As indicated in Part II, although there is no direct case law, two Constitutional Court rulings offer relevant information: Ruling in case *No. 035-17-SIN-CC* (13 December 2017), which annulled Executive Decrees No. 1471 and No. 1522, which had imposed discriminatory documentation requirements on Colombian nationals while exempting recognized refugees. The court's decision emphasized the unconstitutionality of measures that restrict human mobility and infringe upon the principle of equality. Likewise, the ruling in case *No. 14-19-IN/23* (07 June 2023), that found Ministerial Agreements No. 242 and No. 244 to be unconstitutional, as they established new entry barriers for Venezuelan nationals. These decisions, while not directly addressing the asylum process, demonstrate the Constitutional Court's disapproval of immigration control measures that create indirect barriers to asylum applications by imposing disproportionate conditions based on nationality.

Time as a challenge

Pushbacks: Time constraints present a significant challenge for asylum seekers facing border rejection and immediate expulsion. Without prompt legal intervention, individuals may be denied entry or expelled from the territory before they can file an asylum claim and receive an individual assessment. This challenge is exemplified in ruling *No. 639-19-JP/20 and accumulated (case 794-19-JP)*, adjudicated by the Constitutional Court of Ecuador on 21 October 2020, regarding the collective expulsions at the Rumichaca International Bridge (border with Colombia). Although there is no statutory deadline for legal action, the immediate filing of a habeas corpus or a writ of amparo is crucial in cases of pushbacks.

Detention: For individuals facing detention or *de facto* detention in Ecuador, time is a critical factor for obtaining judicial review and securing freedom of movement. As noted in Parts I and II, detention in Ecuador has been identified both in the form of detention of migrants prior to their removal from the

[195] Fuentes J.A. (2021) The Basic Structure of the Ecuadorian Legal System and Legal Research, GlobalLex, NYU Law.

national territory, as well as in *de facto* detentions of individuals at the airport. Immediate legal action has been crucial to challenge this practice, enabling individuals to apply for asylum before being forcibly removed. However, because these practices often occur in migrant detention centres and other restricted facilities like airports, individuals frequently lack the legal assistance or guidance to promptly file a complaint. Consequently, they are left with no legal recourse.

Procedural barriers: Administrative barriers also present a significant temporal challenge. Individuals who are unable to file for asylum due to bureaucratic obstacles risk becoming irregular migrants, which could lead to removal orders. Therefore, the timely filing of legal action is crucial for obtaining protection. As mentioned above, there is no time limit established by law for filing legal action.

Costs for legal representation

The financial cost of legal representation does not appear to be a direct barrier to asylum seekers' access to the judiciary. Under Ecuadorian law, the State, through the Public Defender's Office (*Defensoría Pública*), provides free legal assistance to individuals with insufficient financial resources, including those involved in human mobility processes. In such cases, legal representation is granted for matters including immigration regulation, refugee status, denial of admission, deportation, and statelessness, representation for vulnerable groups, and sponsorship in administrative appeals.[196] In the case of unaccompanied children and adolescents or those separated from their legal guardians, the presence of a public defender will be mandatory from the beginning of the process.[197] This system is designed to ensure that the ability to challenge asylum barriers is not determined by an applicant's financial status.

A critical, albeit indirect, barrier to justice can be the overload of free legal services. Despite the notable increase in the number of public defenders, which reached a five-year high of 726 defenders in 2024 (an average of 4.04 defenders per 100,000 inhabitants),[198] the high demand for legal assistance can still overwhelm the Public Defender's Office. While defenders are strategically located to meet demand, the large caseload can cause significant delays. These delays are especially detrimental in urgent situations, such as detention or forced returns, where swift legal action is essential. Therefore, while legal assistance is technically free, the system's limited capacity can practically hinder an individual's ability to obtain timely and effective judicial review. The challenge is not the cost of legal representation itself, but the institutional capacity to provide it efficiently.

Spatial and geographical issues

Pushbacks at land borders: For asylum seekers rejected at the border, geography is a critical impediment, particularly in cases of collective expulsions, where it is compounded by the factor of time. Swift, often illicit, actions in remote border areas frequently evade timely legal action because they are completed before authorities can file proceedings to stop them. This rapid removal from the territory effectively pre-empts any possibility of a judicial review or an individual assessment of each person's case, making both geography and time formidable barriers to justice. Part I and II of this report analysed the collective expulsions that occurred on Ecuador's northern border with Colombia in 2019. Thanks to the immediate intervention of the Public Defender's Office, judges were able to review both cases of expulsions and act to protect the rights of the people who had been returned to Colombia without any guarantees of protection.

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[196] UNHCR, *Ayuda Ecuador*, https://help.unhcr.org/ecuador/defensoria-publica/; Decree No. 134 (Regulation of the Organic Law of the Public Defender's Office), Official Gazette Supplement No. 484, 24 January 2024.

[197] Public Defender'o Office, *¿La persona que se encuentre solicitando refugio en el Ecuador, puede solicitar asistencia legal gratuita?*, https://www.defensoria.gob.ec/?epkb_post_type_1=la-persona-que-se-encuentre-solicitando-refugio-en-el-ecuador-puede-solicitar-asistencia-legal-gratuita

[198] See Council of the Judiciary (2024) "*Rendiciòn de cuentas 2024*". Quito, p. 112.

Pushbacks at the airport: At airports, special issues represent a fundamental barrier for asylum seekers, as rejections occur within the "restricted zone". Access to this area is strictly controlled, requiring authorization from airport authorities for any outsider. This prevents any immediate possibility of legal intervention or access to legal representation. While airport authorities are required to communicate any asylum application made at the airport to the relevant authorities, this may not be the case in practice.

This geographical limitation is compounded by the speed with which expulsions can be carried out. Since the person is already on airport premises, they can be removed from the country quickly and easily, preventing them from even filing an asylum application. Therefore, the restricted nature of the airport environment, coupled with the speediness of the expulsion process, creates a significant and often insurmountable obstacle to seeking protection

Detention: The geographic and spatial limitations imposed on individuals in immigration detention centres, often called temporary shelters such as "Hotel Carrion", significantly hinder their ability to access justice. As previously discussed in Part I and II, those held in these facilities have restricted freedom of movement and limited visitation rights, even from legal representatives. This confinement directly impacts their capacity to initiate legal action. Similarly, individuals subjected to de facto detention in restricted airport areas face a diminished ability to protect their rights because they are unable to leave the premises or contact legal counsel.

Procedural barriers: So far, it does not appear that spatial/geographic factors have any influence on the ability to initiate legal action to challenge administrative barriers.

Practices to overcome these challenges

Access to justice is supported by the Public Defender's Office, which operates in all 24 provinces of Ecuador through a network of Provincial Coordinators. The number of legal assistance service points varies by province. For example, the border province of Carchi, which shares a border with Colombia, has four service points, whereas the southern border province of Loja, bordering Peru, has nine. The province of Pichincha, where the capital Quito is located, has 23 fixed and three mobile service points. Guayas province, where Guayaquil is located, has the most extensive network, with 27 fixed service points. However, a review of publicly available information indicates that none of these locations is situated within an airport.[199]

Furthermore, the Public Defender's Office and UNHCR have a collaborative agreement focused on strengthening legal aid. As part of this partnership, UNHCR supports the Public Defender's Office with 10 consultants in border areas who provide training and technical guidance to public defenders. This agreement is centred on several key areas, including specialization and training for public defenders to help them better handle human mobility cases, strengthening strategic litigation to address systemic issues affecting asylum seekers, and ensuring the principle of non-refoulement in cases where entry is denied. By also working with legal clinics, this partnership helps expand the reach of legal services to more people in need. [200]

Moreover, UNHCR also offers legal advice through collaboration with partners such as the Jesuit Refugee Service (JRS) in Quito, the *Corporación Mujer a Mujer* in Cuenca, and the Human Rights Support Points strengthened by the Permanent Committee on Human Rights of Guayaquil (CDH), the Hebrew

[199] Public Deffender's Office, Points of Attention, https://www.defensoria.gob.ec/?page_id=22777

[200] UNHCR, *País: Ecuador Buena práctica: Defensa Legal para personas solicitantes de asilo y refugiadas*, https://www.asiloamericas.org/ecu-defensa-legal-para-personas-solicitantes-de-asilo-y-refugiadas/

Organization for Aid to Immigrants and Refugees (HIAS), and the Jesuit Refugee Service (JRS) in Guayaquil, which offer community-based guidance and information services.[201]

Implications of difficulties accessing justice

The judiciary's role in asylum cases is often limited to protecting procedural integrity, such as stopping illegal expulsions or challenging administrative decisions. It generally does not conduct a broad review of all obstacles to asylum.

A key limitation for the courts is the inability to address geographic and physical barriers that prevent asylum claims from being filed. The judiciary's power to intervene is effectively neutralized when individuals are outside Ecuador or in detention, as they cannot initiate legal action themselves. Consequently, judges are often unaware of these situations and cannot exercise their protective function. The court's knowledge of a person's detention or need for assistance typically depends on a third party, such as the Public Defender's Office or a legal representative, who can file a claim on their behalf.

B. Legal aid

As mentioned in Part II, legal representation for asylum access adjudication in Ecuador is primarily managed by the Public Defender's Office. The procedural aspects are governed by Article 47 of the LOMH and Resolution 032/2017 (21 February 2017). This service, available nationwide, includes a range of assistance from counselling prior to the asylum application, to accompaniment or representation during the asylum interview, and even the filing of appeals if an application is rejected:

- The advisory services, which are available to anyone who requests them, provide information on competent authority, deadlines, locations for filing the application, and the process for filing appeals.
- Accompaniment or representation during the interview is provided upon request, after verifying that the petitioner's profile fits one of the vulnerable conditions outlined in the document. This service is available in provinces where the Public Defender's Office has a physical presence and where the competent authorities conduct interviews, including border points, ports, and airports.
- Finally, legal appeals are filed in cases involving vulnerable profiles where the competent authority denies the petition, despite a clear need for international protection.

The Public Defender's Office offers crucial legal advice and representation on a range of human mobility issues, including inadmissibility, deportation, regularization of immigration status, and asylum requests.[202] The Office prioritizes vulnerable individuals, such as unaccompanied or separated children, and works in collaboration with organizations like UNHCR to strengthen its services, including through strategic litigation and training. The entire process is designed to ensure that all individuals, regardless of their economic or social circumstances, have equal and full access to justice.

According to the law in Ecuador, all persons, including asylum seekers, have the right to free and comprehensive legal assistance on equal terms with Ecuadorian citizens. Article 75 of the Ecuadorian Constitution establishes that every person has the right to free access to justice and to effective, impartial, and expeditious protection of their rights and interests, subject to the principles of immediacy and speed; under no circumstances shall they be left defenceless. In this regard, free legal aid is guaranteed to those who lack the financial means to hire an attorney, ensuring equitable access to justice. This service is primarily provided by the Public Defender's Office, an autonomous body of the Judicial Branch established by Article 191 of the Ecuadorian Constitution. The legal framework further defines this right

[201] UNCHR (2015). "*Ecuador. El trabajo de Acnur en zonas urbanas*", https://www.acnur.org/fileadmin/Documentos/RefugiadosAmericas/Ecuador/2015/ACNUR_Ecuador_2015_Urbano_ES_Mayo_v1.pdf

[202] Public Defender's Office, *Movilidad Humana*, https://www.defensoria.gob.ec/?page_id=22799

in Article 6 of the Organic Law of the Public Defender's Office, which mandates the provision of legal advice and representation across all legal matters. Likewise, the Ombudsman (*Defensor del Pueblo*) can also act on behalf of Ecuadorians and foreigners to defend rights violated by public institutions.

These services are founded on principles of guarantee, gratuity, and timeliness. Access to these services is not contingent on economic status alone but is also available to individuals in a state of defencelessness or those with social or cultural vulnerabilities that impede their ability to secure legal counsel. This comprehensive system is designed to provide legal sponsorship in various areas, including criminal, labour, family law, and most notably, human mobility, which covers issues such as inadmissibility, deportation, and asylum requests. The Public Defender's Office operates on a nationwide scale, with extended hours in key locations like flagrancy units to ensure constant availability.[203]

Beyond the services of the Public Defender's Office and the Ombudsman, Ecuador's legal framework mandates that universities with law faculties and other non-profit organizations contribute to the provision of free legal aid. According to Articles 292-294 of the Organic Code of the Judicial Function, these institutions are required to establish and maintain "Free Legal Clinics" (*Consultorios Jurídicos Gratuitos*). These clinics are specifically tasked with providing legal sponsorship, defence, and advice to individuals with limited economic resources and those belonging to prioritized attention groups. This system operates under the oversight of the Public Defender's Office, which authorizes the establishment of these clinics and conducts ongoing evaluations to ensure the quality of the services provided. Failure to comply with these obligations can result in a university's law faculty being prevented from operating, highlighting the legal and academic importance placed on accessible justice. This dual-pronged approach, involving both a state-run office and independent clinics, expands the network of legal assistance available to vulnerable populations.

A major challenge asylum seekers face in obtaining legal representation in Ecuador is the lack of human resources within the Public Defender's Office. As mentioned above, in 2024 there were 726 defenders (an average of 4.04 defenders per 100,000 inhabitants).[204] While the office has hundreds of staff members, they handle a wide range of legal matters, not just those related to human mobility. This can lead to a strain on resources and may affect the availability of legal aid for asylum seekers.[205]

While the Public Defender's Office prioritizes vulnerable individuals, such as unaccompanied children and survivors of torture, the sheer volume of cases can still be a challenge. The complex and often confusing nature of the asylum process can be difficult for asylum seekers to navigate on their own, making legal assistance crucial for a fair chance of success.

As mentioned before, asylum seekers in Ecuador could face a significant challenge in accessing free legal aid due to the Public Defender's Office and legal clinics' limited capacity to handle all cases immediately. This lack of timely legal assistance can have serious negative consequences, particularly in urgent situations such as being denied entry at the border or facing immediate expulsion. In these cases, delays in receiving legal aid can be especially detrimental to the individuals involved.

It's important to note, however, that legal representation is not mandatory for initiating constitutional actions like habeas corpus or protection actions. Both the Constitution and the Organic Law on Jurisdictional Guarantees and Constitutional Control allow any individual to initiate constitutional action without the need for legal representation. Furthermore, it is not required for the claimant to specify the

[203] Public Deffender's Office, "*Servicios de Asesoría – patrocinio, que brinda la entidad y las formas de acceder a ellos*", in: https://www.defensoria.gob.ec/wp-content/uploads/2025/03/Los-servicios-que-brinda-la-entidad-DP-y-las-formas-de-acceder-a-ellos-1.pdf

[204] Council of the Judiciary (2024) "*Rendiciòn de cuentas 2024*". Cit., p. 112.

[205] UNHCR, *País: Ecuador Buena práctica: Defensa Legal para personas solicitantes de asilo y refugiadas*, https://www.asiloamericas.org/ecu-defensa-legal-para-personas-solicitantes-de-asilo-y-refugiadas/

constitutional norms that have been violated (Article 86, No. 2, letter c of the Constitution and Article 8, No. 7 of the Organic Law). Moreover, such actions may even be initiated verbally.[206] This means that, theoretically, it can be filed by the affected person or any person who is aware of the violation of a right protected by this action, without the need for a sponsoring lawyer.

C. Lodging the appeal

Pushbacks: The Action for Protection (*Acción de protección*), ultimately analysed by the ruling *No. 639-19-JP-20 and accumulated* (adjudicated by the Constitutional Court on 21 October 2020) regarding the collective expulsion, was governed by the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), articles 39-42. The procedure does not have explicit, numbered stages and deadlines for an appeal. The law establishes a simple and informal process to ensure its effectiveness through flexibility.[207] The action requires three key elements to be filed: A violation of a constitutional right; the violation resulted from an action or omission by a public authority or private individual; and the lack of any other adequate or effective judicial defence mechanism available. It can be filed against various entities, including non-judicial public authorities, public service providers, and private individuals or organizations, especially in cases of severe harm, subordination, or discrimination. The action cannot be used in several instances, such as when: No constitutional right has been violated; the act that caused the violation has been revoked; the action's sole purpose is to challenge the constitutionality of a law or act; the act can be challenged through another judicial process that is adequate and effective; the claim is simply to declare a right; or the action is against a judicial ruling or an act of the National Electoral Council.

Detention: The Habeas Corpus, such case *No. 2533-16-EP* (adjudicated by the Constitutional Court, on 28 July 2021), procedure follows a rapid and concentrated timeline with specific deadlines stablished in the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), articles 43-45: An individual or their representative can file the action before any judge in the location where the person is presumed to be deprived of liberty. There is no specific time limit for this initial filing. Within 24 hours of the action being filed, the judge must hold a hearing. During this hearing, the person deprived of their liberty and the authority responsible for their detention must be present. The purpose of this hearing is to hear the justifications for the detention and to allow the claimant to present their arguments. The judge must issue a sentence at the conclusion of the hearing. Within 24 hours of the hearing's conclusion, the judge must provide written notification of the resolution to all parties involved. An appeal is permissible and must be lodged "in accordance with the common rules for jurisdictional guarantees". The appeal is not a re-trial but a review of the original decision. The venue for the appeal depends on the court that issued the initial ruling: If the original ruling was made by a Provincial Court of Justice, the appeal goes to the President of the National Court of Justice; if the original ruling came from the National Court of Justice, the appeal is heard by a different chamber within the same court. The law emphasizes a simplified, swift, and effective procedure, with all days and hours being considered "business hours" for the purpose of these actions, and it explicitly prohibits procedural incidents that would delay the process.

Procedural barriers: In rulings *No. 08301-2012-0769* (Multicompetent Single Chamber of the Provincial Court of Esmeraldas, adjudicated on 21 January 2015) and *No. 08201-2013-3597* (Judicial Unit of Family, Women, Childhood and Adolescence of Esmeraldas, adjudicated on 28 October 2013), concentrating on the strict application of deadlines, the Action for Protection (*Acción de protección*) was governed by the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), articles 39-42. See the pushbacks section.

[206] See López-Zambrano A. (2018) "*La acción de protección su eficacia y aplicación en el Ecuador*", Revista Científica Dominio de las Ciencias, Vol. 4, No. 1, p. 166.
[207] López-Zambrano A. (2018) "*La acción de protección*", cit., p. 173.

D. Hearing

In Ecuador, judicial procedures are now primarily conducted through oral hearings, a significant change from the previous written-based system. Article 86, paragraph 2, letter (a), of the Ecuadorian Constitution regulates the oral procedure in all its phases and instances, emphasizing its expeditious nature in cases of jurisdictional guarantees. This shift, formalized later by the General Organic Code of Processes (*Código Orgánico General de Procesos -COGEP*), from 2015, aims to make the justice system more efficient, transparent, and accessible.[208]

According to Article 79 of the COGEP, hearings are to be held in all cases provided for by the code. They are public events where the judge, identified at the beginning of the session, presides over the proceedings, and the parties are granted the floor to present their arguments, evidence, and witness testimonies. The principle of contradiction is paramount, ensuring that after each party's presentation, the opposing party is given the opportunity to challenge the arguments. While the law mandates oral proceedings in all instances, phases, and proceedings, it also makes an important allowance for technology. Article 4 of the COGEP, as reformed by Article 70 of the Law for the Digital and Audiovisual Transformation (*Ley de Transformación Digital y Audiovisual*), explicitly states that hearings can be held via videoconference or other telematic means when personal attendance is not possible. A judge can deny a telematic appearance only in exceptional circumstances and must provide a motivated justification.

The procedures vary among judicial bodies as outlined in the law and in practice. In first-instance courts, the hearing is presided over by a single judge, who is responsible for the direct and immediate evaluation of the evidence and the arguments presented by the parties. This is in accordance with the principle of immediacy, enshrined in Article 6 of the COGEP, which dictates that the judge must be physically present with the parties to carry out the core procedural acts. In contrast, second instance (appellate) courts typically operate with a panel of judges. The hearings at this level are focused on reviewing the legal and procedural aspects of the lower court's decision, with less emphasis on the re-evaluation of factual evidence, and new evidence is rarely admitted.

Pushbacks: The Protection Action (*Acción de Protección*) hearing is a swift and focused judicial process aimed at safeguarding constitutional rights. As stipulated by Article 13 and Article 14 of the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), a judge must schedule the public hearing within three days of the complaint's filing. The proceeding is led by a judge and begins with the plaintiff or the affected party presenting their case and evidence to support the claim of a rights violation. Subsequently, the defendant, whether an individual or a public entity, is given the opportunity to respond. Both parties have a limited and equal amount of time for intervention and rebuttal, as specified in the law. The judge actively manages the hearing, asking necessary questions to form a conclusive opinion. A critical feature of this process is that the judge is required to issue a verbal ruling at the conclusion of the hearing, with a written sentence to follow within 48 hours. This immediate action highlights the legal system's emphasis on celerity and efficacy in responding to constitutional rights violations. The absence of the defendant does not halt the hearing, as outlined in Article 14, ensuring the process is not unduly delayed.

In practice, a study of the Civil and Summons Judicial Units in Iñaquito, Quito, revealed that a lack of clarity in legal regulations and an extremely short timeframe for proceedings led to a high number of failed hearings. Specifically, Article 13 of the Organic Law on Jurisdictional Guarantees and Constitutional Control mandates that the transfer of the claim and the hearing must occur within three days, a period often compressed to the point that parties are notified on the very day of the hearing. This logistical constraint severely limits the ability of individuals to gather evidence and prepare an adequate defence. As a result, out of 770 recorded Protection Actions, only 61 were successfully processed, with a majority being

[208] See Torres Jara J.G. and Palacios Vintimilla C. (2023) "*Las audiencias telemáticas en el ecuador y su relación efecto con el principio de inmediación en la práctica de prueba civil*", Pol. Con. (Edición núm. 83) Vol. 8, No. 6, pp. 842-866

either initiated but not concluded or deferred.[209] These findings suggest that the procedural framework, particularly regarding notification and timing, creates a substantial barrier to effective legal representation and access to justice.

Additionally, delays in the resumption of hearings pose a significant problem for the Ecuadorian judicial system, especially when hearings are interrupted or rescheduled. These delays are caused by a variety of factors, including court overload, a lack of human and material resources, and administrative and logistical issues. The absence of the parties involved can also contribute to the problem. Each of these elements negatively affects the judicial process and the timely resolution of cases.[210]

Detention: A key procedural feature of Habeas Corpus in Ecuador, as outlined in Article 44 of the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), is its expedited hearing process. Following the submission of the action, the designated judge is required to hold a hearing within 24 hours. This proceeding mandates the appearance of the detained person and the authority responsible for their confinement. To ensure a thorough review of the case, the hearing may be conducted on the site of detention if the judge deems it necessary. At the conclusion of the hearing, the judge must issue a ruling immediately, with a written notification to be sent to all parties within the next 24 hours. This swift process is designed to ensure the prompt and effective protection of an individual's rights to liberty, life, and physical integrity. Appeals are permitted and follow a specific hierarchy, depending on the court that issued the initial detention order.

No sources have been identified that examine the implications of not holding hearings in legal actions related to asylum barriers, a topic that warrants further exploration through interviews. Despite the potential benefits of oral hearings—which, whether in person or online, can help asylum seekers effectively present their case and access the legal process—a review of 2016 case law shows a disturbing pattern. In summary expulsion hearings, judges improperly dismissed asylum applications addressed directly to them, citing a lack of authority before ordering the individual's expulsion, as seen in case No. 17151-2016-00549, decided by the First Judicial Criminal Unit for Contraventions of the Quito Canton of the Province of Pichincha on 9 July 2016, analysed in Part II. This action represents a clear failure by the administration to follow legally mandated procedures for recognizing refugee claims and constitutes a denial of the right to seek asylum.

E. Deliberation

Pushbacks: In general, Protection Action (*Acción de Protección*) are heard and decided by a single judge of first instance. Any judge in the jurisdiction where the violation occurred can hear the case. Article 8 of the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC) requires all jurisdictional guarantees, including protection actions, to be heard by a single judge in the first instance. Article 86 of the LOGJCC establishes the procedure for appeals, which is heard by a panel of three judges from the provincial court of justice. The Constitutional Court of Ecuador, as the highest body of constitutional justice, is the ultimate arbiter. Article 91 and subsequent articles of the LOGJCC regulate the Extraordinary Action of Protection, which can be filed against final judicial decisions that violate constitutional rights. It has a full court (pleno) of nine judges who deliberate on cases of great importance or those with conflicting precedents. Dissenting and concurrent opinions are legally permitted, especially at the Constitutional Court level.

[209] See Cacuango M.K, Freire E.F.; Lasso L.F., Quinde L.E. (2024) "*El derecho a la defensa en las acciones de protección, en el cantón Quito Unidad Judicial Civil Iñaquito año 2023*", LEX Revista de Investigación en Ciencias Jurídicas, Vol. 7, No. 27, Número Extraordinario, pp. 1575, 1576.
[210] See Arguello-Piedra, E.G. and Carrillo-Dueñas, P.N. (2024) "*La tutela judicial efectiva en la reanudación de las audiencias en acción de protección*", Journal Scientific MQRInvestigar, Vol. 8, No. 2, p. 3770.

Detention: At the first instance, the habeas corpus action is heard and decided by a single judge. The action can be filed with any judge in the jurisdiction where the person is located. The process is characterized by its informal nature and the principle of judicial expedition (*principio de celeridad*).[211] Article 43 of the LOGJCC states that any judge of first instance in the jurisdiction where the person deprived of liberty is found is competent to hear the habeas corpus action. The core of the process is an immediate oral public hearing where the detained person must be present. The judge must be physically present and must directly and immediately hear the detained person, the person's representative, and the authority responsible for the detention. Article 45 of the LOGJCC outlines the procedure: "*The judge or court that receives the action must order the public official responsible for the deprivation of liberty to appear with the person detained, within a maximum of twenty-four hours, at an oral public hearing. During the hearing, the judge must hear the arguments of the person detained, or their representative, and the public official responsible for the detention*". If the initial decision is appealed, the case is referred to the Provincial Court of Justice. Appeals for constitutional protection, including habeas corpus, are reviewed by a panel of three judges (Article 86 of the LOJCC). The highest judicial body in this area is the Constitutional Court for important cases or those that need to unify legal precedent; the full court (pleno) of nine judges deliberates. Dissenting and concurrent opinions are legally permitted, especially at the Constitutional Court level.

No sources have been identified that assess how differences between panel decisions and those of a single judge may affect the outcome of decisions on asylum access barriers. Furthermore, the review of available case law has not provided sufficient evidence to draw conclusions on this issue.

F. Review of decisions

In Ecuador, the appeals process for jurisdictional guarantees (Protection actions and Habeas corpus) is governed by Article 24 of the Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC). This article allows parties to appeal a decision either during the same hearing or within three business days of receiving written notification. The appeal is heard by the Provincial Court, with a specific courtroom assigned by a random draw if more than one exists. The Provincial Court is required to review the case file and issue a resolution within eight days. Judges can extend this period if they deem it necessary to hold an additional hearing or gather more evidence, which must be done within another eight business days. A key clarification from a 2011 Constitutional Court ruling (case *No. 001-11-SCN-CC*) confirmed that the three-day appeal period refers to "term days" and not "deadline days".

Ecuador's highest courts, particularly the Constitutional Court, hold significant sway over how lower-level judges interpret the law. The Constitutional Court's decisions are intended to set binding precedents that clarify legal standards and offer definitive interpretations of constitutional rights, such as due process or the rights of nature.

This system's design promotes jurisprudential consistency. The Constitution of the Republic of Ecuador grants the Constitutional Court the authority to issue binding jurisprudence in constitutional actions, including protection actions and habeas corpus (Constitution, Article 436, No. 1 and 6; LOGJCC, Article 2, No. 3). Similarly, the National Court of Justice solidifies legal standards by "developing a system of jurisprudential precedents based on a triple reiteration of rulings" (Constitution, Article 184, No. 2). This framework compels judges to follow previous rulings in comparable cases. When a judge decides to deviate from an established precedent, they are legally required to provide a well-reasoned explanation. This requirement supports the evolution of legal doctrine while preserving its foundational principles. It fosters

[211] See Castro-Montero J., Llanos Escobar L., Valdivieso Kastner P. and García Vinueza W. (2016) "*La Acción de Protección como mecanismo de garantía de los derechos: Configuración institucional, practica y resultados*". Ius Humani. Revista de Derecho, Vol. 5, pp. 9–43.

a coherent and predictable body of law that all judicial actors, including those hearing asylum claims, can rely on.[212]

Furthermore, the development of legal precedent is a systematic process governed by Article 182 of the Organic Code of the Judiciary. The specialized chambers of the National Court of Justice can establish mandatory jurisprudence when they express the same opinion on the same point of law on three separate occasions. The rulings are then submitted to the Plenary of the Court, which has sixty days to either affirm the opinion or decide not to. If the Plenary does not act within that timeframe or ratify the opinion, it becomes binding jurisprudence. The resolution declaring the precedent must be published in the Official Registry and contain only the legal points, the dates of the rulings, and the case details. Judges are obligated to follow this mandatory jurisprudence; however, a judge can propose a change to a precedent with a new, reasoned legal argument, which must be unanimously approved by the chamber and immediately submitted to the Plenary for a final decision. To manage this process, the Plenary is required to create a specialized administrative unit.

G. Procedures in decentralized states

In Ecuador, the judiciary is a unitary system, which means legal procedures are consistent across the country.

H. Influence of procedures in practice and the role of courts

Even though Ecuador's legal system allows individuals to file Protection Actions without a lawyer, this provision could be largely ineffective. A study of cases between 2008 and 2011 found that only a tiny fraction, 1.8%, were filed directly by plaintiffs. The vast majority of these were subsequently denied or dismissed in the first instance. The results suggested that while the law was intended to make the process more accessible, the complex and technical nature of the legal system made it nearly impossible for unrepresented individuals to successfully protect their fundamental rights.[213]

Furthermore, although the 2016 entry into force of the Organic General Code of Processes (COGEP) marked a significant shift in Ecuadorian civil procedure—moving from a predominantly written and formalistic model to a more oral, concentrated, and agile one—the transition from theory to practice has revealed several contradictions. Many courts, particularly in rural provinces and cantons, lack the necessary infrastructure and personnel to conduct oral hearings efficiently and consistently. Furthermore, judicial operators have not always received adequate training to uniformly apply the principles of the new process. As a result, practices from the old written system persist, diluting the benefits expected from the reform.[214]

The Constitutional Court's jurisprudence has been fundamental in shaping the country's asylum and refugee law. The Court's influence predates the 2008 Constitution; in a landmark 2003 ruling (*No. 002-2002-CC*), it established that the ACHR and the jurisprudence of the IACtHR were part of the standard for evaluating the constitutionality of lower-level laws.[215] Furthermore, in its ruling *No. 159-11-JH/19* (26 November 2019) established that border control cannot violate the prohibition of criminalization of

[212] See Díaz Coral M.E. and Gallegos Herrer D.E. (2024) "*Guía de jurisprudencia constitucional el precedente judicial corregida, editada y actualizada a abril de 2024*", Corte Constitucional, Centro de Estudios y Difusión del Derecho Constitucional (CEDEC), Quito, pp. 13, 14.
[213] Castro-Montero J., Llanos Escobar L., Valdivieso Kastner P. and García Vinueza W. (2016) "*La Acción de Protección*, cit., p. 31.
[214] Romero S. (2025) "*Retos del derecho*", cit.
[215] Nogueira Alcalá H. (2012). "*Los desafíos del control de convencionalidad del "corpus iuris" interamericano para los tribunales nacionales*", Boletín mexicano de derecho comparado, Vol. 45/135, pp. 374-375.

migration through actions involving persecution, collective expulsions or other forms that put the lives and personal integrity of migrants at risk.[216]

Besides, in 2020, the Constitutional Court of Ecuador selected two cases from 2019 (Guardianship Actions *No. 04243-2019-00001* and *No. 04333-2019-00190*) to analyse how Ecuadorian courts interpret and apply inter-American human rights standards regarding collective expulsions and due process. The selection of these cases for jurisprudential development underlines their importance in shaping the country's legal framework. The Court began by contextualizing the serious challenges faced by Venezuelan migrants, directly based on IACHR Resolution 2/18 on Forced Migration of Venezuelans.[217] The ruling reinforces the application of the expanded definition of a refugee to align with the Cartagena Declaration, thereby including those fleeing generalized violence. Additionally, reinforced the need for due process, mandating that all asylum seekers are guaranteed a fair hearing and the right to appeal expulsion orders.

While the IACtHR has not ruled on specific asylum cases against Ecuador, its jurisprudence has had a persuasive influence on lower and second-instance courts. Rulings such as *Tinedo Pacheco Family v. Bolivia* (2013), *Vélez Loor v. Panama* (2010), and *Dominicans and Haitians Expelled v. Dominican Republic* (2014) have set key procedural standards within the Inter-American human rights system. These standards, which include the right to seek refuge, due process in detention, legal aid, and the right to be heard, as well as the prohibitions of collective expulsions, serve as influential benchmarks that Ecuadorian judges often reference, reinforcing domestic procedural protections for asylum seekers.

Although the IACtHR has not ruled on any asylum cases directly against Ecuador, its jurisprudence has had a clear influence on Ecuadorian courts. While judges do not always explicitly cite IACtHR rulings, the principles established by the court—especially those concerning due process and refugee status—have shaped their interpretation of national law.

This influence is most evident in the Constitutional Court and in cases involving collective expulsions, *de facto* detention, and immediate removals. In these instances, Ecuadorian judges have applied a framework aligned with Inter-American standards. They have upheld the right to seek asylum, the necessity of an individual assessment for each case, the right to a proper defence, and the need for clear rules to ensure a fair trial. These principles, developed through various Inter-American rulings, have become a cornerstone of the Ecuadorian judiciary's approach to protecting the rights of asylum seekers.

I. Other procedures

To date, no other procedural aspects have been identified that could influence access to the asylum procedure.

II. JUDICIAL BODIES IN ACCESS TO ASYLUM

A. Institutional configuration

The Ecuadorian Constitution outlines the structure of the country's judiciary, which is made up of jurisdictional, administrative, auxiliary, and autonomous bodies (Article 177). The primary courts, including the National Court of Justice, Provincial Courts, and various tribunals, are responsible for administering justice. The Judiciary is one of the five independent branches of government. It operates with the same administrative and financial autonomy as the other branches, meaning it does not fall under any ministry. The Judicial Council serves as the governing body of the judicial system, overseeing the administration, supervision, and discipline of the entire judicial system, including those over the National

[216] Constitutional Court (2019), ruling No. 159-11-JH/19, *El habeas corpus y las personas en movilidad.*
[217] IACHR (2018), Resolution 2/18 on Forced Migration of Venezuelan Persons, 02 March 2018, §§ 3,4.

Court of Justice (Article 178). Furthermore, the Prosecutor's Office and the Public Defender's Office are subject to the Council's planning, oversight, and discipline.[218]

- *First instance judicial bodies:* Judicial units (criminal courts, civil courts, family courts, labor courts, administrative courts, children and adolescent courts), Judicial Council (*Consejo de la Judicatura*)
  In Ecuador, the Organic Code of the Judiciary outlines the structure and jurisdiction of various lower-level courts. According to Article 213, the Council of the Judiciary determines the number of judges and tribunals needed in each canton and locality to handle legal matters.
- *Second instance judicial bodies:* Provincial Courts of Justice, Judicial Council (*Consejo de la Judicatura*)

  The Provincial Courts of Justice in Ecuador are appellate courts immediately inferior to the National Court of Justice, and there is one for each of the country's 24 provinces. Judges are selected from a pool of candidates with backgrounds in the judicial career, private legal practice, or university teaching, through mandatory competitive examinations and merit. These judges are organized into specialized chambers that correspond to the specialties of the National Court of Justice, with the exception of administrative and tax matters. The specialized chambers of the provincial courts handle a variety of responsibilities, including hearing appeals and motions for nullity in the second instance, resolving jurisdictional conflicts between lower courts, and acting as a trial court for individuals who have provincial court jurisdiction due to their public office (Art. 208, Organic Code of the Judicial Function).

- *Third instance judicial bodies:* National Court of Justice, Judicial Council (*Consejo de la Judicatura*)

  The highest judicial body in the country is the National Court of Justice, located in Quito. It functions as the court of last resort for ordinary cases, acting as a Court of Cassation through specialized chambers. The National Court of Justice is composed of twenty-one judges who are organized into specialized chambers. According to Article 173 of the Organic Code of the Judiciary, these judges are appointed by the Judicial Council for a nine-year term through a competitive examinations and merit, which includes opportunities for public challenge and social oversight. The law also mandates that positive action measures be used to promote gender parity. Judges cannot be re-elected and the court is to be renewed by one-third every three years. Their tenure ends in accordance with the provisions of this Code.[219]

- *Forth instance judicial bodies:* Constitutional Court of Ecuador, an independent body.

  The Constitutional Court, created in 2008, is an autonomous and independent body for the administration of constitutional justice. It is not an additional instance. Unlike Ecuador's previous Constitutional Court (*Tribunal Constitucional de Ecuador*), whose primary power was to determine the constitutionality of a law, the current Constitutional Court (*Corte Constitucional*) has the additional power to interpret the law and create specific, binding legal precedents. This change transformed the court into Ecuador's highest constitutional oversight and interpretation body, allowing it to impose limits on state power and actively protect the Constitution.[220] This Court guarantees the validity and supremacy of the Constitution, the full exercise of constitutional rights and

[218] Jadán D. (2019) "*Independencia judicial y poder político en Ecuador*", Serie Magíster Vol. 245, Universidad Andina Simón Bolívar, Sede Ecuador, p. 79.
[219] National Court of Justice, *La Corte Nacional de Justicia del Ecuador a la opinión pública*, https://www.cortenacional.gob.ec/cnj/index.php/noticias/105-septiembre-2018/172-la-corte-nacional-de-justicia-del-ecuador-a-la-opinion-publica
[220] Basabe (2012) Judges without Robes and Judicial Voting in Contexts of Institutional Instability: The Case of Ecuador's Constitutional Court, J. Lat. Amer. Stud. Vol. 44, Cambridge University Press, p. 137.

jurisdictional guarantees, through the interpretation, oversight, and administration of constitutional justice.[221] The Court is based in Quito and is composed of nine judges.

To date, no implications have been identified regarding how the institutional configuration of the courts responsible for assessing the legality of asylum barriers affects asylum decisions in Ecuador.

Power/competences of the judicial bodies responsible for asylum access adjudication

In Ecuador, the role of judicial bodies in asylum cases is mainly to address legal questions and ensure the correct application of asylum law, rather than to evaluate the substantive merits of an asylum claim. Although courts have occasionally assessed the substantive reasons for an application, their primary function is to focus on legal and procedural matters.

Once a court issues a ruling, its decisions are binding on administrative authorities, and the case is referred back to them for appropriate action. For example, courts have compelled authorities to accept and process asylum applications that were previously blocked. The judiciary has also intervened to suspend collective expulsions at the border, forcing authorities to comply with court orders and process cases individually. Additionally, the Constitutional Court has declared the unconstitutionality of various ministerial agreements and other sub-legislative acts that imposed specific entry requirements for Colombians and Venezuelans, thereby challenging the authority of the executive branch and setting a significant precedent.

Implications of the available types of remedies on asylum access adjudication

In Ecuador, asylum seekers primarily rely on two judicial remedies: the Protection Action (*Acción de Protección*) and the Writ of Habeas Corpus. Protection Action is commonly used to challenge administrative decisions, such as a denial of access to asylum procedures, summary deportations, or delays in RSD processes. In contrast, the Writ of Habeas Corpus is used to protect asylum seekers from unlawful detention or arbitrary deprivation of liberty, safeguarding their right to freedom during the asylum process.[222] In addition, interested parties may file an extraordinary action for protection to obtain a constitutional review, as indicated in Part II.

These judicial mechanisms can act as a check on the executive branch. However, Ecuadorian courts generally treat the recognition of refugee status as an act of administrative discretion rather than a judicially enforceable right. Consequently, judicial intervention is largely limited to ensuring due process is followed, meaning courts focus on procedural fairness rather than the substantive merits of an asylum claim. This limited scope of review creates a structural tension, as courts have adopted a narrow interpretation of asylum despite the constitution's guarantee of judicial oversight for acts affecting rights.

As a result, while these remedies appear robust, they are often less effective in practice. They are most valuable for correcting procedural flaws and preventing refoulement at borders, but they do not establish a multi-tiered system for substantive review outside of the executive branch.

B. Independence

The legal basis for judicial independence in Ecuador is primarily established in its Constitution, which formally guarantees the separation of powers and the autonomy of the judicial function. This is reinforced by specific legal provisions and the creation of a specialized governing body. However, despite these formal guarantees, there have been historical and ongoing challenges to its practical application.

Ecuador's 2008 Constitution sets out the fundamental framework for the independence of the judiciary. Article 177 establishes the Judicial Function as one of the five branches of government, alongside the executive, legislative, electoral, and transparency functions. This constitutional separation is designed to

[221] Constitutional Court, *Quiénes somos*, https://www.corteconstitucional.gob.ec/quienes-somos/
[222] See Arcentales Illescas J. (ed) "*El reto de la protección*". cit., pp. 65.

prevent undue influence from other state powers. The article explicitly states that the Judicial Function is composed of jurisdictional, administrative, auxiliary, and autonomous bodies. This structure grants the judiciary a high degree of formal autonomy. Furthermore, the independence of the judiciary is outlined in the Organic Code of the Judiciary. According to Article 123, judges, prosecutors, and public defenders are subject only to the Constitution, international human rights instruments, and the law. This article establishes both internal and external independence, explicitly prohibiting any public authority—including officials from the Judicial Council —from interfering with jurisdictional functions, decisions, or rulings. The law also protects judges from pressure by litigants, stating that complaints about judicial actions cannot be used as a means of coercion. Furthermore, all judicial officials are obligated to report any undue interference or pressure they face while carrying out their duties, ensuring that the judiciary's autonomy is both protected and enforced.

The Judicial Council is the central body responsible for the governance, administration, and discipline of the judiciary, as stipulated in Article 178 of the Constitution. Its main roles include selecting, evaluating, and sanctioning judges and other judicial personnel, as well as managing the system's budget. The Judicial Council intends to be a firewall, safeguarding judges from political pressures by ensuring their selection and career progression are based on merit and not political allegiance. However, the existence of multiple cases in which judges, prosecutors, and defence attorneys have been subjected to disciplinary proceedings by the Judicial Council has generated an environment of "fear and uncertainty" in the exercise of judicial functions.[223]

Despite robust legal frameworks, judicial independence in Ecuador has been historically problematic, with a long record of political interference in the justice system.[224] The selection processes for judges, particularly for the National Court of Justice, have frequently been criticized for a lack of transparency and objectivity, with past government-led reforms often accused of being politically motivated to install judges loyal to the executive branch. This has created a recurring pattern where formal guarantees of independence are undermined by political manoeuvres and power struggles, with academic analyses identifying distinct periods of influence. For instance, a period from 1997 to 2004 was marked by the appointment of Supreme Court judges for life, which was intended to foster stability, while a subsequent stage from December 2005 to December 2008 saw institutional inertia due to the absence of a Supreme Court and a Constitutional Court. A final period from 2008 to 2011, coinciding with a new Constitution and a hegemonic political process, is associated with a rise in judicial corruption, with empirical evidence suggesting greater judicial flexibility in cases involving political interests.[225]

As some academic sources point out, the judiciary's autonomy saw a significant decline during former President Rafael Correa's administration (2007-2017),[226] which used a "populist agenda" and "executive aggrandizement" to enact a new Constitution and, in a 2011 referendum, restructure the judicial system. This led to the creation of a Transitional Judiciary Council with the power to appoint and remove judges at all levels, resulting in the replacement of many judges with individuals aligned with the executive. Judges

[223] Moreno-Sacón V.C. and García-Segarra H.G. (2025) "*Independencia judicial en Ecuador y los desafíos frente al control del Consejo de la Judicatura*", Journal of Economic and Social Science Research, Vol. 05, No. 02, p. 118.
[224] See Jadán D. (2019) "*Independencia judicial y poder político en Ecuador*", Serie Magíster Vol. 245, Universidad Andina Simón Bolívar, Sede Ecuador, pp. 61-66.
[225] See Human Rights Watch (2018) Ecuador: Political Interference in the Judiciary, Avaliable at: https://www.hrw.org/news/2018/04/20/ecuador-political-interference-judiciary#:~:text=Ecuadors%20Organic%20Code%20of%20the,for%20committing%20%E2%80%9Cinexcusable%20errors%2C%E2%80%9D; Márquez A.R. (2021) *"La independencia, la coordinación y la injerencia en la justicia ecuatoriana en los últimos diez años"*. Palabra, Revista de la Facultad de Jurisprudencia de la Universidad Central del Ecuador, Vol. 1/1, pp. 80-100.
[226] J. Arcentales et al. "La situación de las defensoras y los defensores de derechos humanos en Ecuador, 2014- 2016", in G. Benavides Llerena & C. Reyes Valenzuela (ed.) Horizonte De Los Derechos Humanos Ecuador 2014-2016, Universidad Andina Simón Bolívar Sede Ecuador, Quito, 2018, p. 60.

were often removed for "inexcusable error"[227] after making rulings that conflicted with the government's interests, effectively transforming the judiciary into a political tool despite Correa's claims of having created an independent system.[228] Similarly, under Correa, the Constitutional Court was effectively controlled[229] by the executive through a flawed selection process that often resulted in the appointment of politically subservient individuals lacking prior constitutional law experience. With judges protected by constitutional provisions that made their removal nearly impossible, corruption flourished, turning the court into a "marketplace" where bribery was common, as illustrated by a major scandal involving a private company. This systemic corruption and a "protection pact" eventually led to the dismissal of the court's judges in 2018 and the subsequent implementation of a new, merit-based selection process.[230]

Autonomy of the managing authority of the judicial or bodies in the field of access to asylum

The autonomy of the governing authority of Ecuador's judicial bodies, primarily the Judicial Council, remains fragile and highly exposed to political interference, undermining both institutional stability and judicial independence.[231] While the Council has the legal responsibility to administer, evaluate, and discipline judges and judicial officials, in practice, its structure and leadership are frequently reconfigured through referendums or executive-led reforms that allow ruling parties to appoint politically aligned members. This pattern has given the incumbent government disproportionate influence over the judiciary and allowed the use of disciplinary powers to intimidate or remove judges perceived as hostile to political or economic interests.[232]

The lack of autonomy at the top also permeates lower levels: judicial administrators and middle managers, who oversee the courts' day-to-day operations, are often constrained by centralized control, vague disciplinary rules, and exposure to external pressures. Their career stability and advancement may depend less on merit than on adapting to changing political agendas, leaving them vulnerable to corruption and threats, especially in high-stakes cases related to organized crime or state corruption. The repeated restructuring of the judiciary under Presidents Correa, Moreno, and Lasso reflects a persistent cycle[233] in which political leaders justify interventions in the name of reform, efficiency, or the fight against corruption, but the cumulative effect has been a weakening of institutional autonomy and a precarious

[227] In Ecuador, the "inexcusable error" (*error inexcusable*) is an error by a judge or court in interpreting or applying legal rules, or in altering the facts of a case. To be considered inexcusable, the error must be grave and prejudicial. It is obvious, irrational, and indefensible, and falls outside the logical and reasonable bounds of legal interpretation. Furthermore, is prejudicial because it significantly impairs the administration of justice and harms litigants or third parties. The concept is distinct from willful misconduct or gross negligence, which involves a breach of duty. See Constitutional Court, ruling No. 3-19-CN/20, adjudicated on 29 July 2020, §§ 64-69.

[228] See Basabe Serrano, S. (2011). "*Jueces sin toga: políticas judiciales y toma de decisiones en el Tribunal Constitucional del Ecuador (1999-2007)*". Quito: FLACSO, pp. 82-84; Human Rights Watch, Letter on Judicial Independence in Ecuador, January 29, 2014; Human Rights Watch (2018) Ecuador: Political Interference in the Judiciary; Seyis D. and Munir H. (2024) Populists in Government and the Independence of the Judiciary in Latin America, In: Chryssogelos A. et al., The Ideational Approach to Populism, Volume II, London, pp. 42-44.

[229] Castro-Montero J.L. and van Dijck G. (2017) "Judicial Politics in Unconsolidated Democracies: An Empirical Analysis of the Ecuadorian Constitutional Court (2008–2016)", Justice System Journal, 38:4, p. 380-398.

[230] See Basabe-Serrano S. (2013). "*Explicando la corrupción judicial en cortes intermedias e inferiores de Chile, Perú y Ecuador*". Perfiles Latinoamericanos 42, 79–108; Basabe-Serrano S. (2022) Judicial Corruption. The Constitutional Court of Ecuador in Comparative Perspective, In: Botero S, Brinks DM, Gonzalez-Ocantos EA, eds. The Limits of Judicialization: From Progress to Backlash in Latin America. Cambridge University Press; pp. 227-239.

[231] See U.S. Department of States, 2023 Country Reports on Human Rights Practices: Ecuador, pp. 8-11.

[232] See Pásara L. (2014) Judicial Independence in Ecuador's Judicial Reform Process, Executive Summary Report, Centro de Estudios de Derecho, Justicia y Sociedad; Viti K. (2023) Country Report – Ecuador – General Judicial Reforms, Global Trends in Judicial Reform, Stanford Law School.

[233] Viti K. (2023) Country Report, cit.

environment for managers and middle managers who should otherwise safeguard the system's impartiality.[234]

Financial independence

The financial independence of Ecuador's judicial bodies is formally recognized by law, but remains weak in practice, as the judiciary relies heavily on the executive and legislative branches for budget approval and funding allocation. According to the 2008 Constitution, the Judicial Council is responsible for managing the judiciary's resources, preparing the budget, and overseeing expenditures. Furthermore, with the enactment of the Organic Code of the Judiciary (COFJ) in 2009, the economic, financial, and administrative autonomy of the judiciary was recognized. It also established the State's obligation to guarantee the necessary resources for the functioning of the justice system, with failure to do so being considered a form of obstruction of the administration of justice. These provisions grant the judiciary a certain degree of financial autonomy.[235] However, the proposed budget must be sent to the Ministry of Economy and Finance and ultimately approved by the National Assembly, leaving the judiciary vulnerable to political negotiation and executive discretion.

In practice, allocations are often lower than requested, forcing judicial managers to operate with limited resources, delay infrastructure projects, and restrict recruitment or training programs. This dependency undermines the Council's ability to plan long-term reforms and compromises the independence of managers and middle managers, who are left to administer courts under conditions of chronic underfunding. Despite the Judicial Council's consistent requests for an optimal budget, the Ministry of Economy and Finance has systematically allocated less than the required amount. This reduction in funding violates the judiciary's autonomy and independence and undermines the constitutional mandate to prioritize the justice sector, thereby negatively impacting both users and employees of the system.[236]

Independence concerning human resource decisions

Following the 2008 constitutional reforms, Ecuador's judiciary abandoned its "notable-based" selection system in favour of competitive public examinations for all judicial roles, including positions on the highest courts. This shift eliminated the previous notion of judicial "exceptionalism", which had shielded the highest courts from merit-based entry requirements under a "special regime". Unlike prior competitions in 1998 and 2005 that favoured candidates with prominent professional backgrounds, the 2011-2012 process adopted a new approach. It de-emphasized a candidate's specific professional history, instead valuing general work experience, academic credentials, and, most importantly, performance on theoretical and practical exams.[237]

Currently in Ecuador, the selection, appointment, and promotion of judges and other judicial personnel are governed by the Organic Code of the Judiciary. Access to the judicial branch is exclusively through a competitive examinations and merit (Art. 52). This process is initiated by a reasoned resolution from the Plenum of the Judicial Council, which explains the need for the competition (Art. 51). Candidates must meet general and specific requirements, including being an Ecuadorian citizen in full enjoyment of their political rights, demonstrating probity, and holding a recognized law degree (Art. 55, Art. 57). The competition includes theoretical, practical, and psychological tests designed to evaluate knowledge, skills,

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234 See Human Rights Watch, Ecuador Events of 2021, https://www.hrw.org/world-report/2022/country-chapters/ecuador#515640

235 Moreno-Sacón V.C. and García-Segarra H.G. (2025) "*Independencia judicial*", cit., p. 121.

236 Judicial Council, *Los recortes presupuestarios sistemáticos atentan contra la independencia de la Función Judicial*, 11 April 2023, https://www.funcionjudicial.gob.ec/los-recortes-presupuestarios-sistematicos-atentan-contra-la-independencia-de-la-funcion-judicial/

237 Herrera (2022) "*La designación de jueces en Ecuador: en búsqueda de una nueva legitimidad*", ÍCONOS Revista de Ciencias Sociales, No. 72, Vol. XXVI, pp. 130, 131.

and aptitude for the position (Art. 61). Candidates who pass these tests are placed on an eligible list, with the order of scores being mandatory for entry into the initial training program (Art. 65). Promotions within judicial careers are determined by the results of evaluations and knowledge tests (Art. 52). The law also outlines procedures for addressing any irregularities in the process (Art. 53), declaring a competition void if no one passes (Art. 54), and ensuring transparency through public calls for applications (Art. 58).

According to Article 179 of the Ecuadorian Constitution, the Judicial Council is responsible for the administration, oversight, and disciplinary control of the judiciary. This body can evaluate the performance of judges and other judicial officials and impose sanctions for misconduct. While Article 181 grants the Judicial Council powers of evaluation, promotion, and discipline, it explicitly prohibits the Council from interfering with the content of judicial decisions. This restriction is crucial for maintaining judicial autonomy, ensuring that judges can make impartial rulings without external influence. Despite these legal guarantees, a study revealed that the independence of the judiciary in Ecuador has been undermined by the disciplinary actions of the Judicial Council. Despite Article 130 of the Organic Code of the Judiciary (COFJ), which protects judges from arbitrary dismissal and transfer, there have been numerous cases in which judges, prosecutors, and defence attorneys have faced disciplinary proceedings without sufficient justification. This study demonstrated that the current disciplinary regime lacks objectivity and structurally compromises judicial independence. Analysis of emblematic cases and decisions of the Judicial Council revealed that sanctions were often based on subjective criteria and restrictive interpretations of judicial performance, rather than a comprehensive assessment of the procedural context.[238]

Internal independence

In general, the internal independence of Ecuador's judicial bodies has been a persistent and complex challenge. While the legal framework formally guarantees judicial independence, a history of political interference, inadequate institutional safeguards, and pervasive corruption significantly undermine it in practice.

The influence of higher-ranked adjudicators and managers, particularly the Judicial Council, on lower courts and individual judges is a significant threat to internal independence. As mentioned above, the Judicial Council, which is responsible for appointing, evaluating, and disciplining judges, has historically been subject to political influence. Past governments have used referendums and constitutional reforms to restructure the council and install members loyal to the executive branch. This allows the executive to exert control over the entire judiciary through the council. Furthermore, the Judicial Council has been criticized for using vaguely worded legal provisions, such as "inexcusable error", to suspend or remove judges who issue rulings that are not in line with the government's interests. This creates a "chilling effect", where judges may feel pressured to rule in a certain way to avoid professional repercussions.

Although Ecuador's civil law system doesn't rely on judicial precedent, the National Court of Justice and the Constitutional Court can issue binding precedents that establish crucial guidelines for judges and public officials, as provided in Articles 185 and 436, n. 6, of the Constitution. While these precedents have led to notable progress in areas like human rights, their practical implementation is a major challenge. The court's decisions often face hurdles such as limited resources, an overburdened judicial system, and the need for more specialized training for court officials on human rights and gender issues. This diverse interpretation of higher court decisions and their application can generate legal uncertainty and a reliance on subjective interpretation, potentially leaving the system vulnerable to external influence.[239]

[238] See Moreno-Sacón V.C. and García-Segarra H.G. (2025) "*Independencia judicial*", cit., pp. 115-131.
[239] Ramos, H., Bayas, W., Arias, M. & Guambuguete, P. (2025). "*El papel de la Corte Constitucional en la protección de los derechos humanos en Ecuador: análisis de sentencia*". Esprint Investigación, 4(1), pp. 83-84.

Implications of various aspects of independence

The independence of the Ecuadorian judicial bodies responsible for analysing barriers to asylum has varied over time, but has arguably strengthened in recent years, especially within the Constitutional Court. However, this independence is not absolute. A study of the court's unconstitutionality rulings between 2008 and 2016 concluded that it was often constrained by the interests of the president at the time, Rafael Correa. The results of the study showed that the Constitutional Court was more likely to annul regulations under two specific conditions: 1) When public officials, meaning those in the executive branch, challenged the regulations' constitutionality; and 2) When the cases were reported on by the media. In stark contrast, when non-public actors challenged regulations during Correa's presidency, their claims were almost never successful.[240]

This dynamic may help explain several key decisions analysed in Part I and II. For instance, when declaring Decree 1182 unconstitutional, the Constitutional Court did so only partially (Ruling No. 002-14-SIN-CC, 14 August 2014). It upheld the existence of a deadline for applying for asylum, even though those challenging the decree had argued for eliminating the deadline entirely. This limited action suggests the court may have been hesitant to fully oppose the executive's policy. Similarly, it could also explain the outcomes in the 2016 cases of summary expulsions of Cuban citizens. Even though individuals requested international protection during their deportation hearings, some trial judges chose to order their expulsion, declaring themselves incompetent to hear asylum applications or indicating that the applications were untimely.[241] This demonstrates a potential systemic reluctance within the judiciary to fully exercise its authority when faced with government policy, a trend that may have been influenced by the broader political climate.

Independence of the whole judicial system

The independence of Ecuador's judicial system is weak and has been a persistent issue, with a long history of political interference from the executive and legislative branches. For decades, the judiciary has been described as a "heel of Achilles" for the rule of law in Ecuador. Historically, political power has constantly interfered with the judicial system, leading to the dismissal of Supreme Court justices on multiple occasions through executive decrees or parliamentary resolutions, rather than through formal impeachment processes. At the beginning, the Judicial Council had a "clearly political profile" and assumed a leadership role over the judiciary. This led to a large-scale renovation of judicial personnel through disciplinary processes that lacked due process and transparency, resulting in the removal of over 200 judges. Public statements by high-ranking authorities have also served as a tool for pressure, with the Judicial Council acting as an enforcement arm for the government's political agenda. The problem facing judicial independence in Ecuador is therefore not a legal one, but a political one. The government has pursued a clear line of action to control judicial decisions, which has severely weakened the separation of powers and the system of checks and balances necessary for a democratic regime.[242]

Furthermore, judges and prosecutors, especially those handling politically sensitive or organized crime cases, face threats, intimidation, and violence from criminal groups. This climate of fear directly impacts their ability to act impartially.

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[240] Castro-Montero J.L. & van Dijck G. (2017) *Judicial Politics*, cit., p. 394.

[241] For instance, First Criminal Judicial Unit for Contraventions of the Canton of Quito in the Province of Pichincha, No. 17151-2016-00549, 09 July 2016; Criminal Judicial Unit Headquarters in Iñaquito, Metropolitan District of Quito (Pichincha), No. 17151-2016-00492, 14 July 2016; Specialized Chamber of Criminal, Military, Police, and Transit Laws of the Provincial Court of Justice of Pichincha, No. 17151-2016-00570, 30 July 2016.

[242] Pásara L. (2014) "*Independencia judicial en la reforma de la justicia ecuatoriana*", Fundación para el Debido Proceso; Centro de Estudios de Derecho, Justicia y Sociedad; Instituto de Defensa Legal, Quito, pp. 92-95.

Ecuador's Constitution is notably progressive on human mobility, enshrining the right to seek asylum and prohibiting discrimination based on migratory status. This constitutional elevation means that judicial bodies, particularly the Constitutional Court, have a strong legal basis to challenge restrictive policies. The Court has proactively used this power to influence policy outcomes, such as when it broadened the definition of a refugee and struck down restrictive time limits on asylum applications imposed by executive decree. This is an instance where judicial independence, albeit fragile, has been successfully leveraged to protect human rights.

C. Centralization/decentralization

Ecuador's judicial bodies are decentralized and structured hierarchically across the country's territorial divisions. The system is composed of multiple local units to provide justice at the national, provincial, and local levels. Article 155 of the Organic Code of Judicial Function (COFJ), establishes that, on the basis of the territorial division of the State, the courts, tribunals and low-level judges are organized in:[243]

- *First instance judicial bodies:* Judicial units (lower courts)

  The number of these units varies by location and population density: Azuay 29 judicial units; Bolívar 12 judicial units; Cañar 15 judicial units; Carchi 12 judicial units; Chimborazo 14 judicial units; Cotopaxi 18 judicial units; El Oro 29 judicial units; Esmeraldas 15 judicial units; Galápagos 4 judicial units; Guayas 51 judicial units; Imbabura 16 judicial units; Loja 22 judicial units; Los Ríos 25 judicial units; Manabí 47 judicial units; Morona Santiago 12 judicial units; Napo 7 judicial units; Orellana 9 judicial units; Pastaza 6 judicial units; Pichincha 51 judicial units; Santa Elena 7; Santo Domingo de los Tsáchilas 8 judicial units; Sucumbíos 10 judicial units; Tungurahua 15 judicial units; Zamora Chinchipe 10 judicial units.[244]

- *Second instance judicial bodies:* Provincial Courts (*Cortes Provinciales*)

  There is one Provincial Court in each of Ecuador's 24 provinces: Azuay; Bolívar; Cañar; Carchi; Chimborazo; Cotopaxi; El Oro; Esmeraldas; Galápagos; Guayas; Imbabura; Loja; Los Ríos; Manabí 47; Morona Santiago; Napo 7 judicial units; Orellana; Pastaza; Pichincha; Santa Elena; Santo Domingo de los Tsáchilas; Sucumbíos; Tungurahua; Zamora Chinchipe. These courts hear appeals from lower courts and tribunals within their respective provinces.

- *Third instance judicial or quasi-judicial body/bodies:* National Court of Justice (*Corte Nacional de Justicia*)

  This is the highest ordinary court and has jurisdiction over the entire country. It is located in the capital, Quito.

- *Forth instance judicial bodies:* Constitutional Court (*Corte Constitucional*)

  Constitutional instance with jurisdiction over the entire country. It is located in the capital, Quito.

The decentralized structure of the Ecuadorian judicial system presents a complex set of challenges and opportunities for asylum seekers. While decentralization can improve physical access to judicial bodies across the 24 provinces, it often leads to uneven resource allocation and a lack of uniform application of legal norms, which can negatively impact asylum seekers. In particular, judges in remote judicial units may lack specialized training in human rights and refugee law, which can result in inconsistent or erroneous decisions that require costly and lengthy appeals to a higher court. Likewise, there is a disparity in resource allocation across provinces, so judicial units and administrative offices in border provinces are often under-resourced and understaffed. Such units lack the technical expertise and personnel necessary to process the

[243] Torres Machuca A., Arroyo León E. & Vaca Enríquez D. (2025), National Report Ecuador, Global Access to Justice Project.
[244] Jucicial Council, *Directorio de Unidades Judiciales*, https://apps.funcionjudicial.gob.ec/siscadep/frmConsulta/frmConsulta-main.php

high volume of asylum applications they receive. This can lead to significant backlogs and procedural delays.

D. Specialization

Institutional specialization on asylum

- *First instance judicial bodies:* In Ecuador, there's a lack of specialized judicial bodies to handle asylum and immigration cases. As a result, judges in ordinary civil and criminal courts, in first and second instance, must also hear constitutional appeals related to asylum barriers, even though they are not constitutional specialists. This forces them to deviate from their regular caseload and potentially disrupt their schedules to address these constitutional cases and prevent human rights violations. A key consequence of this lack of specialization is that it undermines the principle of effective judicial protection. Without dedicated expertise, it is difficult for judges to provide reasoned and fair resolutions that are essential for constitutional justice and human rights.[245]

  In April 2024, a constitutional referendum approved a series of reforms to the Ecuadorian Constitution, including "the establishment of specialized judiciaries in constitutional matters, both at first and second instance, to address jurisdictional guarantees".[246] Based on this outcome, in May 2025, Ecuador's Judicial Council attempted to address the overwhelming workload in the ordinary courts by creating 17 specialized constitutional judicial units.[247] Under Resolution 006-2025, these units would exclusively handle cases related to jurisdictional guarantees like habeas corpus and protection actions, which are the main legal recourse for asylum seekers. The goal was to enhance the technical and specialized handling of these cases and reduce the burden on regular courts by concentrating the new units in areas with high case volumes, such as Pichincha and Guayas.

  However, this resolution was declared unconstitutional by the Constitutional Court of Ecuador through *ruling No. 12-25-IN*.[248] While the court acknowledged the need for specialized judiciaries and recognized the problem of procedural overload, it found that the council's district-based model for implementing the new courts created a new barrier to justice. The court argued that concentrating these specialized units in specific, limited locations would diminish the right of plaintiffs to file claims where the constitutional violation occurred. This concentration, the court reasoned, contradicts the constitutional requirement for broad access to justice, especially for urgent matters like habeas corpus, which are designed to be presented orally and without a lawyer. The Constitutional Court emphasized that constitutional jurisdiction, due to its urgent and rights-based nature, cannot be treated like ordinary justice, where a district-based model might be effective.

- *Third instance judicial bodies:* National Court of Justice

  The National Court of Justice has six chambers; however, none of them specialize in asylum, immigration, or constitutional matters.

- *Forth instance judicial bodies:* Constitutional Court of Ecuador

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[245] Zari-Zari A. & Fuentes-Saenz M. (2024) "*La falta de especialización de jueces constitucionales y sus efectos en la administración de justicia en el Ecuador*", Pol. Con. Vol. 8, No. 3, pp. 366, 367.

[246] See National Electoral Council, *Resolución PLE-CNE-1-8-5-2024*, https://www.cne.gob.ec/wp-content/uploads/2024/05/RESOLUCION-PLE-CNE-1-8-5-2024-signed.pdf

[247] El Canal Noticias (2025) "*Consejo de la Judicatura implementa 17 dependencias judiciales especializadas en material constitucional*", 30/05/2025, https://canalrtu.tv/2025/05/30/consejo-de-la-judicatura-implementa-17-dependencias-judiciales-especializadas-en-material-constitucional/

[248] Constitutional Court, ruling No. 12-25-IN/25, adjudicated on 26 May 2025.

The Constitutional Court is the only court specializing in constitutional matters in Ecuador; however, it does not specialize in asylum or migration issues.

Specialized training in asylum

Professionals involved in asylum adjudication in Ecuador do have access to specialized training, although it is not mandatory. In response to mandates from Ecuador's Constitutional Court (rulings *No. 897-11-JP/20* and *No. 639-19-JP/20 and accumulated*), the Judicial Council launched a comprehensive training initiative in 2021 for judges on human mobility matters. This program, a collaborative effort between the Judicial School, the Public Defender's Office, and UNHCR, aims to equip judges with the knowledge necessary to protect the rights of migrants and refugees. By coordinating their efforts, these institutions ensure that judicial personnel can effectively apply national and international laws concerning human mobility, thereby upholding the rights of vulnerable populations.[249] Through the Judicial Service School platform (*Escuela de la Función Judicial*), judges, lawyers, public defenders, prosecutors, and police officers, among others, can access training on Human Mobility, as well as courses on subjects such as habeas corpus and constitutional guarantees.

Furthermore, to date, no sources have been identified that assess the specialization of other professionals involved in granting asylum (e.g., clerks or lawyers).

Discrepancies between the specialization provided on paper and the actual specialization

To date, no sources have been identified that address the issue. However, it could be argued that there is a discrepancy within the Ecuadorian judicial system regarding the specialization of the bodies responsible for deciding asylum applications, as there is a *de jure* lack of specialization, which contrasts with the *de facto* specialization driven by procedural necessity. For example, some courts have been more likely to decide on migration and refugee issues, such as those located in border areas or in cities with major international airports, in contrast to other courts where such cases may be rare or simply non-existent. This can lead to *de facto* specialization among judges.

The lack of specialization among adjudicators and other professionals in the asylum process in Ecuador could have significant negative implications for the quality and consistency of decisions. Without a uniform and specialized approach, the adjudication of cases involving barriers to accessing asylum can be highly inconsistent across different courts. Because of this inconsistency, the outcome of a case may depend more on the specific adjudicator than on the merits of the claim itself. This variability directly contradicts the constitutional principle of equality before the law and generates significant legal uncertainty for asylum seekers. This problem is most pronounced at lower levels of the judiciary, where judges are often generalists and may lack the necessary expertise to adequately assess asylum cases. In contrast, the Constitutional Court has demonstrated a high level of expertise in human rights and international law. While not a specialized asylum court, it has exercised its authority to issue landmark rulings that have shaped policy and corrected the failings of lower-level systems. This demonstrates that specialization, even when not formally institutionalized, is a tool that guarantees the protection of asylum seekers' rights.

E. Human resources

Profile of the group of adjudicators

- *First instance judicial bodies:* At the first level, there are 1,380 judges, of whom 604 are women (44%), and 776 are men (56%).[250]

[249] Judicial Council (2020) "*Informe de avance plan de formación continua en movilidad humana, en cumplimiento a las sentencias No. 897-11-JP/20 y No. 639-19-JP/20 y acumulados de la Corte Constitucional del Ecuador*", 29/12/2020.
[250] Ecuavisa, De los 2000 jueces en funciones en Ecuador, solo un 38% son mujeres, 05/10/2023, https://www.ecuavisa.com/noticias/politica/jueces-funciones-ecuador-38-mujeres-FE6107250

- *Second instance judicial bodies:* There are 320 judges in the provincial courts. Of these, 96 are women (30%) and 70 are men (70%).[251]
- *Third instance judicial bodies:* The National Court of Justice of Ecuador has thirty-nine judges, with fifteen of them being women. Their expertise spans various fields such as civil, criminal, administrative, and labour law. There is no publicly available information to suggest that any of the judges have specialized training in asylum or migration matters.[252]
- *Forth instance judicial bodies*: The Constitutional Court of Ecuador is made up of nine judges, three of whom are women. Their expertise is varied, with specialties ranging from civil, criminal, and administrative law. Notably, only one of the judges specializes in international law and the Inter-American system.[253]

All judges, in all instances, are professional judges, as established in the rules for the election of judges in Ecuador. Their training varies between civil, criminal, and administrative law.

Selection and appointment

- *First instance judicial bodies:* Judicial units

  Judges of first instance are selected and appointed under the framework of the 2008 Constitution and the Organic Code of the Judicial Function (COFJ). The process is designed to be merit-based and centralized through the Judicial Council, with competitive examinations and merit. In consideration of the needs of the administration of justice service, the Judicial Council may provide that two or more judges of the same or different subject matter be assigned to the same judicial unit. (Art. 171 COFJ)

- *Second instance judicial bodies:* Provincial Courts

  Judges of the Provincial Courts are selected and appointed under the framework of the 2008 Constitution and the Organic Code of the Judicial Function (COFJ). Under Article 206 (COFJ) each province has a Provincial Court of Justice. The number of judges in each court is determined by the Judicial Council based on the caseload. These judges are selected through competitive merit-based exams from candidates in the judicial career, private practice, and academia. They are organized into specialized chambers that mirror the structure of the National Court of Justice, with the exception of administrative and tax litigation, which maintain their district tribunal structure. The Judicial Council, based on technical studies, has the authority to create courts with fewer specialized chambers and to define their competencies and operational methods.

- *Third instance judicial bodies:* National Court of Justice

  According to the Ecuadorian Constitution, the selection process is managed by the Judicial Council, which uses a merit-based system that includes competitive examinations, oppositions, and social oversight. The process aims to achieve gender parity in the court's composition. The Judicial Council shall hold the competitive examinations and merit-based examinations for judges well in advance of the date on which the respective groups must cease to function, so that on the date on which each group ceases, those who are to replace them may take office. (Art. 176 COFJ). Regarding the term, national judges are elected for a nine-year term. The Court is partially renewed every three years.

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[251] Ecuavisa, *De los 2000 jueces en funciones en Ecuador, solo un 38% son mujeres*, 05/10/2023, https://www.ecuavisa.com/noticias/politica/jueces-funciones-ecuador-38-mujeres-FE6107250
[252] See National Court, https://www.cortenacional.gob.ec/cnj/index.php/institucion-a/salas-especializadas-a
[253] See Constitutional Court, https://www.corteconstitucional.gob.ec/237364-2/

- *Forth instance judicial bodies:* Constitutional Court

  The Constitutional Court of Ecuador's justices are chosen through a unique selection process overseen by a qualifying committee. This committee is composed of representatives from three distinct branches of government: the Executive, the Legislative, and the Transparency and Social Oversight Council. This final body, despite its government ties, is legally autonomous and independent from the Judiciary itself, reflecting its crucial role as the highest authority for constitutional interpretation and the administration of justice within the country.[254]

To date, no sources have been identified that specifically assess the influence of adjudicator characteristics or the appointment system on asylum access adjudication in Ecuador.

Clerks, or experts supporting the adjudication function

So far, Ecuadorian courts lack dedicated secretariats or experts to support judges' decisions on asylum-related barriers.

Interpretation service

Article 76, Section 7, Paragraph f) of the Constitution guarantees the right to due process. This includes the right to be assisted by a free translator or interpreter if the person does not understand or speak the language used in the proceedings. Furthermore, the General Organic Code of Procedure (COGEP) guarantees the right to a translator or interpreter for individuals who do not speak Spanish or have a hearing impairment. Article 79 mandates that a judge must appoint a translator for anyone who cannot understand or express themselves easily in Spanish. This right is further reinforced by Article 174 on testimonial evidence, which stipulates that if a witness does not speak Spanish, their statement will be taken with an appointed interpreter present. For individuals with hearing impairment, Article 180 requires that their testimony be received through writing or with the assistance of an interpreter who can communicate using sign language or other visual or sensory means. Notably, Article 79 allows individuals to be accompanied by a translator of their choice, which provides an additional layer of support. These provisions ensure that language and hearing barriers do not impede a person's ability to participate effectively in legal proceedings.

While Ecuadorian law guarantees interpretation services for non-Spanish-speaking individuals in all judicial proceedings, this legal right is often undermined by significant systemic flaws. For instance, a study on the criminal justice system revealed a fundamental deficiency: the absence of a specialized court interpreter system. Instead, the judiciary relies on a general registry of "professional and non-professional experts", where only a small fraction of the accredited individuals are translators or interpreters. The language supply is severely limited; while English dominates at roughly 92%, other languages like French and German are poorly represented, and some, such as Dutch and Russian, are virtually non-existent.[255] Furthermore, while defendants have the right to free legal assistance, some report problems such as a lack of interpreters during court hearings and language barriers with their public defenders, which hamper their ability to prepare an adequate defence. In practice, the right to adequate time and resources for defence preparation is not always fulfilled, and delays in translation services further complicate the situation for foreign defendants.[256]

This lack of qualified professionals leads to a dangerous reliance on *ad hoc* interpreters who frequently lack the necessary professional training. For instance, police often cannot provide an interpreter during an

[254] Prado E., Cacpata W., and Campaña L. (2021) "*Procedimiento de selección de jueces en Ecuador*", Revista Dilemas Contemporáneos, Vol. VIII, Special Issue, p. 7.
[255] See Freire M.F. & Fierro I. (2015) "*Análisis de la situación actual de la interpretación judicial para los extranjeros privados de la libertad en Ecuador*", Revista Científica y Tecnológica UPSE, Vol. III, No. 1, 28-40.
[256] U.S. Department of States, Ecuador 2021 Human Rights Report, pp. 9-10.

initial arrest, leaving a detainee unable to understand their rights, even though an interpreter may be available later at the prosecutor's office. A survey of individuals who performed interpretation work confirmed that 100% were never asked for proof of their qualifications. This highlights a critical failure to ensure professional standards and raises serious concerns about the quality and accuracy of courtroom interpretations. The problem is compounded by the fact that these unqualified individuals are often hired by lawyers, friends, or family, rather than through the court, further eroding the integrity of the process. Ultimately, the absence of a robust, professional system for interpreters in Ecuador creates a profound disadvantage for foreigners, potentially jeopardizing their right to a fair trial. Furthermore, because authorities must assign an interpreter to ensure due process, this may delay hearings and does not constitute a violation of rights or due process.[257]

The Constitutional Court of Ecuador, in its ruling *No. 897-11-JP/20* (12 August 2020), clarified the role of interpretation in due process. The case involved a Nigerian citizen whose refugee status application was denied after an interview conducted in English, with the interviewer also acting as the interpreter. The court found this practice to be a violation of due process. It established that anyone who does not speak the local language must be provided with a qualified and trained interpreter to ensure their right to defence is upheld throughout the entire asylum process. Additionally, all official decisions must be translated into the applicant's native language. The court stressed that the interviewer cannot also act as the interpreter due to the incompatibility of the two roles. Having an impartial third-party interpreter is essential for ensuring communication is clear, complete, and accurate, which allows asylum seekers to fully explain their reasons for seeking asylum. Although this specific case concerned RSD, the ruling affirmed the need for qualified interpreters at every stage of the process, which may extend to court actions and judicial proceedings.

Quality and availability of human resources

In Ecuador, the number of judicial officials falls far short of international standards. In 2020, Ecuador had just nine first-level judges and two second-level (provincial) judges per 100,000 inhabitants, significantly below the OECD standard of sixty-five judges. As of 2025, there is a shortage of 753 judges across the country, with the most critical needs in civil courts (232 judges needed) and criminal courts (175 more needed).[258] The National Court of Justice, the highest appeals court, has less than half the number of judges it needs.[259] This lack of staff undoubtedly affects the work of the courts and contributes to procedural delays.

Implications of human resources in judicial bodies responsible for asylum access

The shortage of human resources in Ecuador's judicial bodies seriously affects the effectiveness of the justice system and public trust. This lack of personnel has led to an "unsustainable procedural collapse", generating massive case backlogs and judicial rulings with a high margin of error.[260]

The crisis is compounded by severe budgetary and infrastructural issues. A budget deficit of USD 200 million has resulted in 600 vacant positions for prosecutors and assistants. Over 50% of judicial units are in a "critical" or "alert" state due to poor infrastructure. Specifically, of 245 buildings, 124 (50.6%) are in

[257] US Embassy in Ecuador, *Arresto de un Ciudadano Estadounidense en Ecuador*, https://ec.usembassy.gov/es/services-es/arrest-of-a-u-s-citizen-in-ecuador-es/#:~:text=Sobre%20el%20proceso%20legal,Funci%C3%B3n%20Judicial:%20Consulta%20de%20procesos%20.

[258] Observatorio Judicial (2020) "*La justicia en Ecuador ¿Cuenta la Función Judicial con suficientes recursos para cumplir con su labor?*, Quito, p. 13.

[259] Goebertus J. (2025) "*Ecuador necesita fortalecer su sistema de justicia para enfrentar el crimen organizado*", Human Rights Watch. https://www.hrw.org/es/news/2025/01/17/ecuador-necesita-fortalecer-su-sistema-de-justicia-para-enfrentar-el-crimen

[260] Judicial Council (2025), "*Crisis en el sistema judicial por falta de jueces, infraestructura deficiente, escaso presupuesto y tecnología obsoleta*". 15/06/2025, https://www.funcionjudicial.gob.ec/crisis-en-el-sistema-judicial-por-falta-de-jueces-infraestructura-deficiente-escaso-presupuesto-y-tecnologia-obsoleta/

critical condition, while only 34 (13.88%) are in good condition. This systemic neglect has made 38% of the judiciary understaffed and vulnerable to organized crime, further eroding public trust and undermining the rule of law. The technology is also severely outdated, with 73% of servers not up-to-date and 84% of network equipment discontinued.[261]

F. Tools supporting adjudication

Key organizational tools supporting asylum adjudication

So far, no tools have been identified to support the adjudication of asylum access cases in the responsible judicial bodies.

Functioning, role, and implementation of IT tools

In general, the judiciary in Ecuador is undergoing a significant digital transformation, primarily driven by the need to modernize the administration of justice and enhance the efficiency and accessibility of judicial processes. This effort, led by the Judicial Council (*Consejo de la Judicatura*), involves the implementation of a range of IT tools to support its functions. The role of these tools is to streamline administrative and jurisdictional activities, such as case management, scheduling of virtual hearings, and the handling of electronic documents, thereby reducing processing times, lowering operational costs, and increasing flexibility.

A core component of this digitalization is the use of virtual hearings, which have been crucial in allowing remote participation for judges, lawyers, and other parties, especially in rural areas or for those with mobility issues. This has led to a notable increase in the number of cases resolved and a decrease in cancelled hearings. The implementation of systems like the Ecuadorian Automatic Judicial Processing System (*Sistema Automático de Trámite Judicial Ecuatoriano / e-SATJE*) and the electronic notarial platform (*Plataforma Electrónica Segura Notarial* -PESNOT) supports the visualization and download of judicial documents, electronic notifications, and the secure processing of notarial acts. Additionally, the Judicial Council has developed the "Data Analyzer" tool to provide statistical data on productivity, which aids in informed decision-making and promotes transparency by monitoring the work of judges, secretaries, and other judicial staff.[262]

To improve efficiency and accessibility, the Judicial Council has implemented a 24/7 Electronic Judicial Management Office to ensure the continuous availability of virtual services for tasks such as online random selection drawings and document filing. This initiative aims to streamline in-person customer service, improve file management, and alleviate the transactional burden on SATJE. In its initial phase, the new system allows for the virtual filing of documents and cases 24/7, across all matters and instances, with one key exception: constitutional cases. Due to the need for further technological development, the filing of constitutional matters remains restricted to a virtual schedule of 8:00 a.m. to 5:00 p.m.[263]

Moreover, Ecuador's judiciary uses the E-SIPJUR (Jurisprudence Processing System) to help locate binding legal precedents, resolutions, and judgments. This system aims to improve the accuracy of legal decisions.[264]

Despite these advancements, the full implementation of digital justice technologies in Ecuador faces several challenges. Significant gaps persist in technological infrastructure and internet access across the

[261] Judicial Council (2025), "*Crisis en el sistema",* cit.
[262] See Council of the Judiciary (2024) "*Rendiciòn de cuentas 2024*". Quito; Echeverria F., Romero J. and Freier E. (2024) "*La transformación digital en el proceso judicial ecuatoriano, audiencias telemáticas y tecnología aplicada*", Revista Científica de Educación Superior y Gobernanza Interuniversitaria Aula 24. Vol. 6, No. 9, pp. 31-40.
[263] See Council of the Judiciary (2024) "*Rendiciòn de cuentas 2024*", cit., p. 30.
[264] Sacoto M. and Cordero J.M. (2021) "*E-justicia en Ecuador: inclusión de las TIC en la administración de justicia*", Foro, Revista de Derecho, p. 96.

country, which create unequal access to justice. Those in regions with better technological resources can litigate more efficiently than those in vulnerable situations. Furthermore, the push for technological implementation must be accompanied by robust guarantees to ensure that due process, publicity of evidence, immediacy, and the right to defence are upheld.[265] The pursuit of technological efficiency must not come at the expense of fundamental principles of justice.[266]

Implications (if any) of organizational tools (especially IT tools) in asylum access adjudication.

In general, the implementation of IT tools in the Ecuadorian judicial system has brought about several significant implications for its functioning and the adjudication process. The digitization of the system, including virtual hearings and electronic document management, aims to modernize the administration of justice and improve its efficiency and accessibility. In particular, the use of virtual hearings allows for remote participation of judges, lawyers, and other parties, leading to a notable reduction in case resolution times and operational costs. Moreover, the "Data Analyzer" tool serves a crucial role in providing data on the productivity of judges and staff, enabling data-driven decision-making and promoting transparency.

The implementation of these tools directly influences the adjudication process by promoting a faster, more flexible, and transparent system. Virtual hearings and electronic notifications accelerate procedures by reducing waiting times and logistical delays. The availability of comprehensive digital records, including recorded virtual hearings, provides a more complete and accessible history of legal proceedings. The "Data Analyzer" tool, by ranking officials based on activity, introduces a performance monitoring mechanism that can influence judicial output and efficiency. However, this digital transformation is not without its challenges. The reliance on digital platforms raises ethical and legal issues, particularly concerning data protection, privacy, and the need for robust regulations to prevent data breaches or information manipulation. Continuous training for judicial personnel is also a critical factor, as resistance to change and a lack of technical skills can hinder the effective adoption of new technologies. [267]

G. Management

Judicial bodies' managers and middle managers

- *First instance judicial bodies:* Judicial units

  A Head Judge of a First Instance Judicial Unit is responsible for ensuring the court operates properly and adheres to the law, managing its internal organization, and reporting on its administration to higher courts. They also oversee the assignment of cases to other judges in the unit, guaranteeing compliance with rules of specialization and competence, and ensuring due process, deadlines, and transparency are met. They also handle personnel matters like staff leave and substitutions, ensure the court's infrastructure is functional, and coordinate with the Judicial Council or Provincial Court for logistical support.

- *Second instance judicial bodies:* Provincial Courts

  The president of a Provincial Court is elected by their peers, as stipulated in Article 210 COFJ. The President is chosen from among the court's judges during the first half of the corresponding year through a secret written ballot and by a majority vote. The term of office is two years. If the court has more than one chamber, the election must be held in an alternating manner among the various chambers to ensure rotating leadership. Under the COFJ, the President of a Provincial Court has several key duties as defined in Article 212. These responsibilities include preparing the

[265] See Morillo J.J. (2020) "*La justicia electrónica en Ecuador: desafíos para un cambio de paradigma*", Revista Diálogos Judiciales, Corte Nacional de Justicia; Echeverria F., Romero J. and Freier E. (2024) "*La transformación digital", cit.,* p. 32.
[266] Romero S. (2025) "*Retos del derecho*", cit.
[267] Echeverria F., Romero J. and Freier E. (2024) "*La transformación digital", cit.,* p. 34.

agenda, convening, and presiding over sessions of the Court's Plenum. The President also serves as the Court's formal representative in a ceremonial capacity. Furthermore, they are tasked with supervising the prosecutorial investigation in cases that fall under the Court's jurisdiction, ensuring the rights of both the accused and the victim are protected throughout that stage.

- *Third instance judicial bodies:* National Court of Justice

  According to the OCFJ, the president of the National Court of Justice is elected by their peers, as outlined in Article 198. The selection occurs in the first half of the corresponding term via a secret written ballot, and the president serves for a term of three years. In the event of a temporary absence, the most senior judge takes over; if the absence is permanent, the full court will convene to elect a new president to serve the remainder of the term. The functions of the president, detailed in Article 199, include representing the judiciary, setting the agenda for and presiding over the court's Plenum, and resolving extradition cases in accordance with international treaties. The president is also responsible for presenting legal consultations from judges for the Plenum's consideration and can grant leave to court staff for up to eight days, along with other duties as prescribed by law.

- *Forth instance judicial bodies:* Constitutional Court

  In accordance with Article 435 of Ecuador's Constitution, the Constitutional Court's leadership is elected from within its own ranks. The court's members are responsible for selecting a President and a Vice President to lead the institution. These officials serve a three-year term and are not permitted to be immediately re-elected. The President's role extends beyond managing the court's internal affairs, as they also act as the legal representative for the Constitutional Court.

Direct or indirect influence on asylum access adjudication

In Ecuador, managers in the judiciary have no direct authority over the content of asylum rulings. The assignment of cases to judges is governed by Article 222 of the OCFJ. The Judicial Council is mandated to implement a random selection system to determine which three judges will form a tribunal for each case. Furthermore, a separate random selection is used to select the presiding judge (*juez ponente*), who will lead the tribunal and has the legal authority to handle actions for damages and other responsibilities as defined by law. This system is designed to ensure impartiality and fairness in the judicial process by removing discretionary power from case assignment.

Although they don't directly interfere, court leadership and the National Council of Justice exert indirect influence over judges through institutional mechanisms. They manage dockets, set productivity goals, and define performance metrics, all of which can affect a judge's career. These frameworks create incentives that may influence how judges prioritize complex asylum cases, especially those involving urgent constitutional claims or deportation suspensions. In this way, while judges maintain substantive independence, managers can indirectly shape the procedural and institutional environment of asylum adjudication.

Professional performance measures

The Judicial Council is responsible for evaluating the performance and productivity of all judicial officials in Ecuador, including judges, prosecutors, and public defenders, as mandated by the constitution and law. The process relies on strict technical, qualitative, and quantitative parameters, and is designed to ensure that only the most qualified professionals remain in their roles. The ultimate goal of this evaluation is to

create a judicial service that is free from both internal and external interference, thereby strengthening the rule of law and the justice system as a whole.[268]

There is no updated data on performance evaluations; however, a 2014 study on the quality of justice in Ecuador's subnational appellate courts revealed a direct correlation between two key factors and judicial performance: the level of impunity in the judicial system and the training of legal professionals. The study defined the quality of justice as a judge's ability to apply legal principles and doctrine in their decisions. The research showed that provinces with higher levels of judicial corruption and less effective punitive mechanisms for judges tend to have lower-quality justice. Conversely, it found a higher quality of justice in areas where lawyers and judges have better academic and professional training. This is because well-trained lawyers can provide stronger legal arguments that assist judges, and judges in continuing education are better able to issue high-quality rulings. The empirical analysis of the study on appellate courts in different provinces of Ecuador found significant variation in the quality of justice, with some provinces showing a much greater capacity for legal enforcement than others.[269]

Given the above, it is likely that decisions in cases related to barriers to accessing asylum will continue this trend of lower quality in courts where judicial corruption and a high level of impunity exist.

H. Caseload and delays

Caseload of judicial bodies responsible for asylum access adjudication

In Ecuador, judicial caseload has become a significant structural problem,[270] impacting the efficiency of the legal system by prolonging resolution times and diminishing the quality of judicial decisions. Despite the country's commitment to protecting fundamental rights and implementing reforms to enhance efficiency, the effectiveness of legal guarantees like due process is often compromised by these delays and excessive procedural burdens. While Ecuador has made notable progress compared to other Latin American nations, it still faces regulatory gaps. Specifically, the system lacks maximum deadlines for case resolution and needs to strengthen its digitalization and transparency initiatives to guarantee timely and effective access to justice.[271]

However, in cases involving constitutional guarantees, the main means of countering barriers to asylum, the caseload tends to be lower, according to public data from the Judicial Council. The data suggests that, although the system handles a large volume of cases, its efficiency in resolving them remains high, even though the number of new cases varies from year to year.

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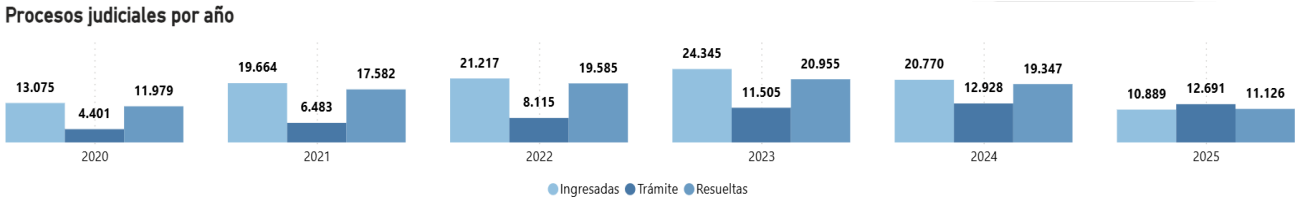
[268] See Judicial Council (2013) *Evaluación de desempeño de los funcionarios judiciales (procesos y metodologías de evaluación a juezas y jueces, conjuezas y conjueces y, servidoras y servidores administrativos)*, Good Practice Report for the Ibero-American Judicial Summit; Judicial Council, *El Consejo de la Judicatura evalúa la eficiencia y transparencia en la Función Judicial*, 20/03/2021, https://www.funcionjudicial.gob.ec/el-consejo-de-la-judicatura-evalua-la-eficiencia-y-transparencia-en-la-funcion-judicial/#:~:text=Por%20mandato%20constitucional%20y%20legal,disciplina%20de%20la%20Funci%C3%B3n%20Judicial.

[269] See Basabe-Serrano S. (2014) Determinants of the Quality of Justice in Latin America: Comparative Analysis of the Ecuadorian Case from a Sub-national Perspective, Justice System Journal, Vol. 35(1), pp. 104-120

[270] Salgado E. (2015). "*Transformaciones judiciales en el Ecuador: El equilibrio de poderes visto a través del análisis de redes sociales*", Ius Humani. Revista de Derecho, Vol. 4 (2014/2015), pp. 263-297; Romero S. (2025) "*Retos del derecho procesal en el Ecuador*", Blog de Investigación, Universidad Indoamérica, https://blog.indoamerica.edu.ec/derecho/retos-del-derecho-procesal-en-el-ecuador/

[271] Díaz-Basurto, I. J., Cajas-Parraga, C. M., & Paucar-Paucar, C. E (2025). "*Análisis comparativo del derecho procesal civil ecuatoriano frente a sistemas jurídicos latinoamericanos*". Revista Metropolitana de Ciencias Aplicadas, 8(3), 39-46.



Source: Consejo de la Judicatura, Portal de Estadística Judicial, 2025

The data illustrates fluctuations in the number of judicial processes filed annually from 2020 to 2025, with a notable peak in 2023. The statistics on case types show a clear dominance of protection actions (*Acción de Protección*), which represent the overwhelming majority of cases filed, (89,890) followed by habeas corpus actions (11,890), indicating that constitutional and human rights matters are a primary focus.

Furthermore, a comparison of judicial caseloads in the Ecuadorian provinces of Pichincha, Guayas, Carchi, and El Oro from 2020 to 2025, regarding constitutional guarantees, reveals significant variations in the volume of cases. The two most populous provinces, Pichincha and Guayas, consistently show the highest number of judicial processes, with Guayas peaking in 2023 with 24,345 cases filed and Pichincha in 2024 with 4,964 cases filed. In contrast, the border province of Carchi and the coastal province of El Oro have a much lower judicial caseload. El Oro's caseload remained relatively stable, with a peak of 1,016 cases in 2022, while Carchi's caseload was the lowest of the four provinces, peaking in 2023 with only 250 cases filed.

Implications of caseload on asylum access adjudication

In general, the excessive judicial caseload, particularly when combined with scarce human resources, has significant implications for the quality of justice in Ecuador. The high volume of cases forces judges and judicial staff to manage an overwhelming workload, leading to frequent hearing postponements and extended wait times for their resumption. This problem is exacerbated by a shortage of judges and support staff, which creates a significant bottleneck in the administration of justice. Furthermore, inadequate material and technological resources, such as insufficient courtrooms or outdated equipment, compound these delays by hindering the efficient scheduling and coordination of hearings. These systemic issues compromise the principles of due process and timeliness, leading to a decline in the overall quality and efficiency of the judicial system.[272] Moreover, the workload of judges in high-demand areas, where access to justice is more frequent but also more sensitive, often prevents personalized and in-depth attention to each case. Thus, the process becomes a "bureaucratic process" rather than a true instance of justice.[273]

However, no studies have been found that address the potential implications of a heavy workload on the allocation of asylum access in Ecuador.

Delays and backlogs characterizing judicial bodies responsible for asylum access adjudication

Procedural delays are a frequent problem in Ecuador. The speed of a judge's decision can also be influenced by media and political pressure or even fear in some cases. Some trials have reportedly been delayed by as much as a year.[274] According to a report from the Centre for Justice Studies of the Americas (CEJA), Ecuador's judicial system has shown fluctuating performance in its resolution and congestion rates. While the country's resolution rate (*tasa de resolución*- TR) was at 1.07 in 2018, it experienced a drop to 0.84 in 2020 before recovering to 0.96 in 2022 and then decreasing again to 0.85 in 2024, placing it in a critical range where significantly fewer cases are resolved than are received each year. Furthermore, its congestion rate (*tasa de congestión*- TC) has been in the critical range since 2018, with the exception of 2018,

[272] See Arguello-Piedra, E.G. and Carrillo-Dueñas, P.N. (2024) "*La tutela judicial*", cit., p. 3770.
[273] Romero S. (2025) "*Retos del derecho*", cit.
[274] U.S. Department of States, Ecuador 2021 Human Rights Report, pp. 9-10.

2019, and 2021 when it was in the "at risk" range, reaching 2.12 in 2024, which indicates a serious accumulation of unresolved cases and a structural problem. The report projects that by 2030, if current trends continue, Ecuador's situation will worsen, with a projected TR of 0.51 and a TC of 2.63, a combined scenario of low resolution and high congestion that could compromise the system's operational capacity and affect access to justice.[275]

To date, no sources have been found that specifically address the potential implications of workload on the allocation of asylum access.

Implications of backlog and delays in asylum access adjudication

In general, the significant backlog and delays in Ecuador's judicial system have severe implications for all parties involved, undermining the principles of justice and effective legal recourse. These delays are primarily caused by a deficit of judges, inadequate infrastructure, limited budget, and outdated technology. In some cases, judges may face disciplinary action or legal recourse for "unjustified delays", which, ironically, can be caused by the systemic issues they are trying to manage.

Moreover, procedural delays severely impact asylum seekers, as these delays directly undermine their constitutional right to asylum and their right to justice. Since asylum is a constitutional right in Ecuador, the legal actions they pursue are based on constitutional guarantees. Consequently, any procedural delays, regardless of the cause, leave asylum seekers in a vulnerable state, as their access to justice is compromised and their fundamental rights are not protected in a timely manner.

I. Influence of judicial or quasi-judicial bodies on access to asylum

Impact of case law in the field of asylum access adjudication on legislation

Rulings by the Ecuadorian Constitutional Court have had a direct and significant impact on migration and asylum legislation. Specifically, the court's declarations of unconstitutionality for certain laws and decrees directly influence public policy due to their close relationship with constitutional provisions.[276] For instance, the legal challenges against Executive Decree No. 1182—a 2012 regulation that introduced restrictive asylum procedures—led to a landmark ruling that compelled legislative changes. In its Ruling *No. 002-14-SIN-CC* (14 August 2014), the Constitutional Court partially declared several provisions unconstitutional. This decision forced the government to reincorporate the broader Cartagena Declaration definition of a refugee, which had been previously removed, thus expanding the scope of protection. The ruling also mandated the extension of an extremely short 15-day deadline for filing asylum applications and extended the deadlines for administrative appeals, bringing them into alignment with general administrative law. Furthermore, the court's judgment effectively eliminated the possibility of deporting an asylum seeker while a judicial review of their case was pending, reinforcing the fundamental international principle of non-refoulement.[277] This judicial intervention directly corrected failures and violations of due process, demonstrating how strategic litigation and judicial review can compel the state to align its laws with both the Constitution and international human rights obligations.

Furthermore, judicial decisions in Ecuador have significantly impacted asylum access by challenging and modifying executive branch regulations. The Constitutional Court has played a key role in this process, notably through two landmark rulings. In ruling *No. 035-17-SIN-CC* (13 December 2017), the Court

[275] See Center for Justice Studies of the Americas (CEJA) (2025) "*Índice de Congestión Judicial en las Américas: Estudio Comparado de Poderes Judiciales 2025*", Santiago de Chile, pp. 14, 24.
[276] Castro-Montero J.L. & van Dijck G. (2017) *Judicial Politics*, cit., p. 380-398.
[277] Ubidia Vásquez, D. (2014). "*Impactos de la declaratoria de inconstitucionalidad del Decreto Ejecutivo 1182 sobre el Derecho a Solicitar Refugio en el Ecuador"*, Aportes Andinos 35, Revista de Derechos Humanos, PADH-UASB, pp. 40-41.

declared the unconstitutionality of Executive Decrees No. 1471 and No. 1522 that imposed requirements for Colombian citizens entering Ecuador, including the need for a criminal record certificate. The Court found this requirement to be incompatible with the constitutional prohibition against discrimination. Similarly, in Judgment *No. 14-19-IN/23* (07 June 2023), the Constitutional Court ruled against inter-ministerial agreements No. 1 and No. 2 (between the Ministry of Foreign Affairs and Human Mobility and the Ministry of the Interior), which established additional entry requirements for Venezuelan citizens. The court's decision was based on the fact that these agreements violated legal principles by imposing conditions for the exercise of rights that were not established by the Constitution or law. These rulings show how the judiciary has directly challenged and modified sub-legal regulations created by the executive branch to restrict the entry of both Colombian and Venezuelan citizens.

Impact of case law in the field of asylum access adjudication on asylum policies

As previously indicated, Ecuadorian courts have been instrumental in reforming legislation and subleases that previously restricted access to asylum and territory, directly impacting people's ability to seek asylum. By declaring these restrictive instruments unconstitutional, the judiciary has forced a change in border practices, facilitating entry into the country and guaranteeing the principle of non-refoulement.

Additionally, several key judicial decisions have directly addressed and countered practices that violate fundamental rights. In case *No. 639-19-JP* (21 October 2020), the Constitutional Court upheld lower-instance rulings against the collective expulsion of Venezuelan citizens. The court found that the Ministry of Government and the National Police had violated the rights to migration, freedom of movement, and the prohibition of collective expulsion. Another important ruling, case *No. 1214-18-EP* (27 January 2022), allowed the Constitutional Court to review a habeas corpus action filed on behalf of a group of Cameroonian and Nigerian migrants who were denied entry and detained at Mariscal Sucre International Airport. The court found that their rights to personal liberty, personal integrity, and the principle of *non-refoulement* were violated.

These decisions demonstrate the vital role of the judiciary in Ecuador in ensuring that restrictive state practices are held accountable and that human rights are protected at the border.

Impact of case law in the field of asylum access adjudication on executive practices

In addition to the aforementioned rulings that have ensured the right of individuals to enter Ecuadorian territory and apply for asylum, it is important to mention the Constitutional Court's decisions regarding practices involving unaccompanied minors and the need for their rights to be protected at all times. While there are other cases involving minors, two Constitutional Court rulings deserve to be highlighted for addressing the issue of non-rejection at the border, the principle of non-refoulement, and the best interests of the child.

In case *No. 2120-19-JP* (22 September 2021), the Constitutional Court analysed the protection action filed on behalf of three siblings (a child, an adolescent, and an adult) who were prevented by immigration control agents from legally entering Ecuadorian territory to reunite with their mother. The Court concluded that immigration authorities must, in the case of unaccompanied, unaccompanied, or separated children and adolescents, (i) guarantee regular entry and (ii) facilitate accessible and affordable immigration regularization alternatives for children and adolescents. These measures must be fulfilled by ensuring the right to be heard. Under these parameters, no child or adolescent may be subject to immigration sanctions. It affirmed that the Ecuadorian State is obligated to have a special procedure for identifying the protection needs of children and adolescents who migrate unaccompanied, separated from their parents, or who, while traveling with them, do not have the documentation or requirements for regular entry. As part of the measures to be adopted, the court affirmed the need for a procedure that provides special protection

to children and adolescents in human mobility, and that it be adopted through a binding legal instrument that articulates the actions of the public entities in charge.

Likewise, in case *No. 2496-21-EP* (12 July 2023), the Constitutional Court declared that the right to refuge and the principle and right of non-refoulement, the right to effective judicial protection, and the right of children and adolescents to be heard in proceedings that affect them had been violated. This case involved an unaccompanied minor, an asylum seeker, who was repatriated to his country of origin by a court decision, violating the principle of non-refoulement. As part of the reparation measures, the Court indicated that the minor could return to Ecuador, if he so desired, to continue the procedure for determining refugee status.

L. Judicialization of politics

Judicial bodies, particularly the Constitutional Court, have played a prominent role in countering restrictive government policies and ensuring that the rights of migrants and asylum-seekers are effectively guaranteed. This reflects the judiciary's function as a check on executive power, upholding the constitutional rights to asylum and refuge. The Judicial Council (*Consejo de la Judicatura*) also has a role in this area; for instance, it was instructed to draft a regulation to protect the confidentiality and privacy of refugees and asylum-seekers in judicial processes. This was a step to ensure that a person's refugee status is taken into account in any legal proceedings.

For instance, in 2013 and 2015, the Constitutional Court issued judgments that brought parts of Decree 1182 into line with international standards, such as extending the deadline for filing asylum petitions from 15 days to three months and reinstating the Cartagena Declaration's definition of a refugee.[278] The judiciary has also been proactive in upholding the rights of migrants and refugees to due process and prohibiting collective removal, reinforcing the principle of non-refoulement.

Likewise, in October 2020, the Constitutional Court held that the Ministry of Government and National Police carried out collective expulsions of Venezuelans, violating the rights to migrate, free movement, and the ban on collective expulsion. It ordered changes to police protocols and reaffirmed due-process guarantees for migrants and people seeking protection. Moreover, in June 2023, the same Court invalidated ministerial and inter-ministerial regulations that imposed special entry requirements on Venezuelans, finding they breached the "reserve of law" principle and rights to migrate and seek refuge (including non-refoulement). The case file shows sustained executive opposition, and even a recusal motion filed by the Interior Ministry against the case's constitutional judge, which the Court rejected.

So far, there hasn't been any reported hostility between Ecuador's executive and judicial branches, specifically over migration or refugee policies. However, in 2025, the government's broader attacks on the judiciary became a significant concern. The government intensified its public hostility toward the Constitutional Court, even labelling it an "enemy of the people".[279] This sparked condemnation from international organizations, which viewed it as a direct threat to judicial independence. For instance, the UN Special Rapporteur on the independence of judges and lawyers expressed serious concerns, emphasizing that all government institutions must respect judicial independence and protect judges from intimidation.[280] Furthermore, Ecuador's President has proposed a new constitutional referendum for 2025 that could significantly alter the powers of the Constitutional Court. The proposals include allowing the

[278] Ubidia Vásquez, D. (2015). *La inconstitucionalidad parcial*, cit., pp. 154-156.
[279] Mella C. (2025) *El Gobierno de Noboa declara "enemiga del pueblo" a la Corte Constitucional de Ecuador*, El País, https://elpais.com/america/2025-08-17/el-gobierno-de-noboa-declara-enemiga-del-pueblo-a-la-corte-constitucional-de-ecuador.html?utm_source=chatgpt.com
[280] OHCHR (2025) *Ecuador: Injerencia en la Corte Constitucional amenaza al estado de derecho y a las garantías contra el abuso de poder*, https://www.ohchr.org/es/press-releases/2025/08/ecuador-interference-constitutional-court-threatens-rule-law-and-safeguards

National Assembly to remove the court's judges with only a simple majority. Additionally, the referendum aims to limit the court's authority by requiring a supermajority of at least six of the nine judges to declare the unconstitutionality of presidential laws, emergency decrees, or referendum proposals.[281]

The government's actions, while not directly tied to migration issues, could undermine the court's ability to act as a crucial check on executive power, thereby weakening a vital safeguard for migrants and refugees.

Restriction or expansion of the jurisdiction or competence

The Ecuadorian legislature has not recently modified the jurisdiction of judicial bodies that handle asylum cases. The only recent legislative change that could affect migration and asylum is the Organic Law of National Solidarity from 10 June 2025. This law modifies Article 66 of the LOMH, creating a new transit visa requirement for certain nationalities. This visa acts as a prerequisite for entry, and if a person is denied the visa from abroad, they can only pursue an administrative appeal to reconsider the decision. They cannot involve the judiciary to guarantee their entry and potential asylum claim.

Ways to influence policy outcomes

Ecuador's courts, particularly the Constitutional Court, have been vital in shaping asylum and refugee policy outcomes. As mentioned above, by challenging and amending government decrees, such as Presidential Decree 1182 and other ministerial decrees, the Constitutional Court has been able to influence the country's immigration and asylum policy. Furthermore, the court has also systematically reaffirmed the principle of non-refoulement. Through various rulings, it has prohibited collective expulsions, expulsions at airports, and the rejection of unaccompanied minors at borders, while also guaranteeing due process in asylum cases.

Nevertheless, despite the courts' efforts to promote human rights, government policy has sometimes, and more recently, been oriented towards immigration control and restrictive measures.

Influence on policy outcomes in practice

The influence of Ecuador's judicial bodies on asylum policy outcomes appears to be more a result of the impact of their decisions and the nature of the decision-making body itself, rather than the sheer volume of cases they handle. The Constitutional Court, in particular, selects cases that are likely to establish important precedents based on the subject matter or the new legal arguments they could generate.

Assessment of the judicialization of politics in the country

In Ecuador, the relationship between the judiciary and politics is defined by the judicialization of politics, a process where political confrontations are transferred to the "judicial arena". This can be measured by the number of "criminal trials in which the litigants involved were political actors".[282]

For others, this dynamic can be seen as a two-way street: the politicization of justice, where other government branches interfere with judicial processes, and the judicialization of politics, where the courts use their constitutional authority to check and correct political actions. While some argue that this judicial oversight is essential for protecting rights and constitutional order, critics fear that an overreaching

[281] Swissinfo, *Noboa envía siete nuevas preguntas a la Corte Constitucional para el referéndum*, 10 September 2025, https://www.swissinfo.ch/spa/noboa-env%C3%ADa-siete-nuevas-preguntas-a-la-corte-constitucional-para-el-refer%C3%A9ndum/89977689

[282] Basabe-Serrano S. (2012) "Presidential Power and the Judicialization of Politics as Determinants of Institutional Change in the Judiciary: The Supreme Court of Ecuador (1979-2009)", Politics & Policy, Vol. 40, No. 2, p. 343.

judiciary can lose its legitimacy and public trust, especially given the risk of political parties influencing judicial appointments and decisions.[283]

Finally, it has been noted that the judicialization of human rights, in particular, places courts and tribunals at the centre of interpreting and applying fundamental rights. In this regard, while Ecuador's Constitutional Court has advanced human rights protections, consolidating these gains requires strengthening its independence and operational capacity through adequate funding, continuous training, and protection from political interference.[284]

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

As mentioned in Part II, the Commission for Refugees and Statelessness (*Comisión de Refugio y Apatridia*) is the technical body in Ecuador responsible for determining and recognizing a person's refugee and/or stateless status. This Commission is composed of three regular members and two alternates, who are officials of the Ministry of Foreign Affairs and Human Mobility. They are designated by the maximum authority of the Ministry and are coordinated by the Director of International Protection.[285] The Commission has the authority to know and resolve, in a justified manner, the recognition, cessation, cancellation, revocation, exclusion, or ratification of a person's refugee status in Ecuador. It also resolves requests for the recognition of stateless status and family reunification for refugees.

The Commission is responsible for accepting, denying, or postponing a request for the recognition of refugee and/or stateless status. It can also request additional information from the Zonal Directorate (in the province of the country) to obtain enough elements to issue its resolution, including adding documents or expanding country of origin information. The Director of International Protection may invite, with the right to speak but not to vote, a delegate from UNHCR and other governmental or non-governmental institutions to its sessions, in order to provide advice on technical aspects related to the analysis and decision of cases, and specific topics.[286]

Involvement, efforts, and interests that executive bodies display

In Ecuador, executive bodies, particularly the Ministry of Foreign Affairs and Human Mobility and its sub-units, play a direct and extensive role in asylum adjudication. This is because the process is primarily administrative, with the Commission for Refugees and Statelessness as responsible for determining and recognizing refugee and stateless status.

The Ministry of Foreign Affairs and Human Mobility, through its Zonal Directorates and the Directorate of International Protection, is deeply involved in every step of the asylum process. The Zonal Directorates are responsible for receiving and registering applications, conducting interviews, creating and maintaining case files, and notifying applicants of administrative decisions. The Directorate of International Protection directs and coordinates the country's international protection policy and coordinates the Commission for Refugees and Statelessness.

In Ecuador, the executive branch's interests undeniably influence the asylum process, even without evidence of direct manipulation in a specific case. The Ministry of Foreign Affairs and Human Mobility is

[283] See Benítez Núñez C., Manrique Molina F. and Hernández Ramírez M. (2023) "*Análisis del lawfare y la judicialización de la política. Retos de la democracia constitucional en América Latina*", Via Inveniendi Et Iudicandi, vol. 18, no. 1, 05.
[284] Macías-Macías J. and Espinoza-Bravo L.A., (2024). "*Evolución y desafíos del derecho constitucional en la protección de los derechos humanos en Ecuador*". Digital Publisher CEIT, Vol. 9(5), pp. 861, 862.
[285] Ministry of Foreign Affairs and Human Mobility, "*Acuerdo Ministerial No. 00000012*", 14 February 2023, Art. 3.
[286] Ministry of Foreign Affairs and Human Mobility, "*Acuerdo Ministerial No. 0000006*", 31 January 2023, Art. 13.

responsible for setting migration policies and has historically implemented barriers to territorial access, which in turn affect asylum seekers. Examples include imposing additional entry requirements, such as criminal records, on citizens from countries like Colombia and Venezuela, nationalities that historically submit the most asylum applications. This demonstrates a clear link between the executive's role in creating access barriers and its authority in adjudicating asylum claims. Furthermore, the executive has reportedly denied asylum to nationals of certain countries, such as Cubans, "even those with strong claims", during periods of political alignment with their governments,[287] revealing an inconsistency in its public policies. This approach, which appears to prioritize political interests over a human rights perspective, seems inconsistent with the principles of the 2008 Constitution and international instruments on human mobility.[288] Given this significant relationship, it is essential to further explore how executive interests shape the asylum adjudication process.

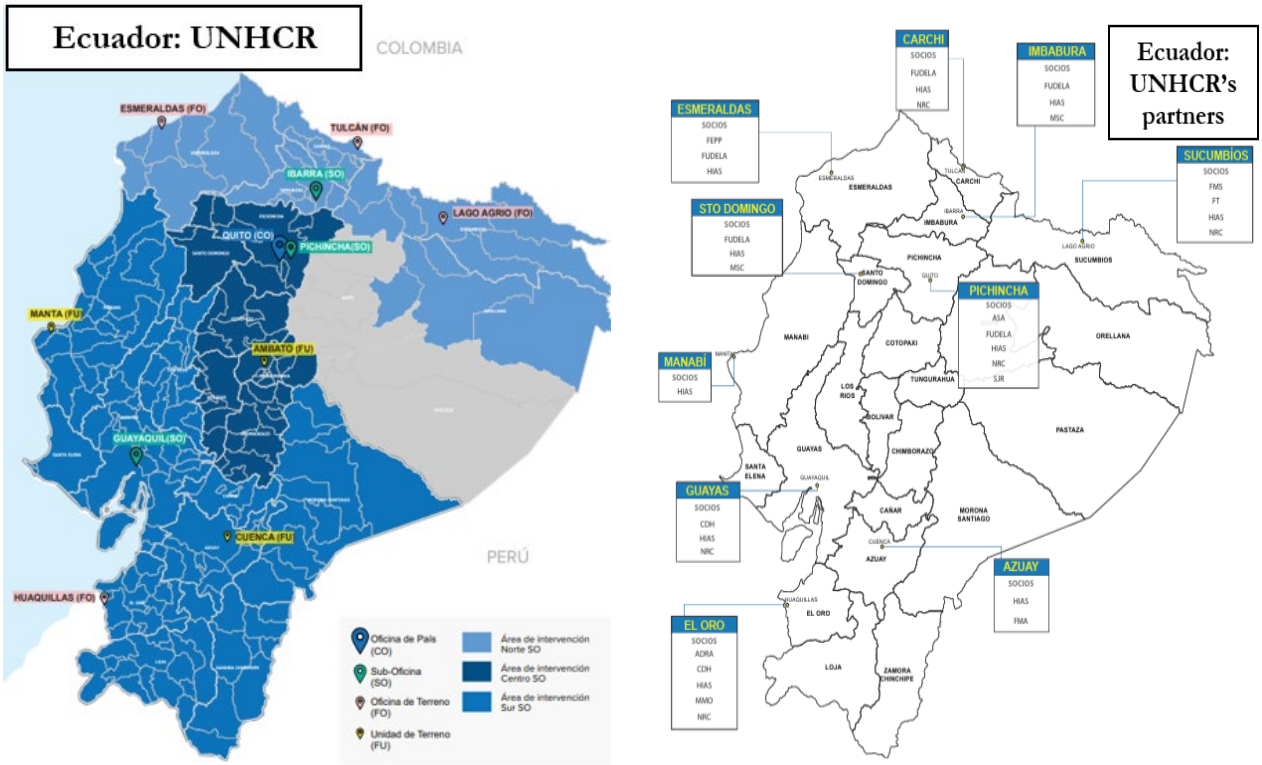
Role of executive bodies and their implications in asylum access adjudication

In Ecuador, the executive branch is deeply involved in all stages of the asylum process, from initial application to final adjudication. Its representatives, primarily through migration authorities at entry points, are responsible for receiving and formalizing asylum applications before they are processed by the Commission for Refugees and Statelessness. The executive's role extends to the judicial arena, where representatives of the Commission participate in court to defend the legality of asylum policies and actions when they are challenged. However, the executive's most critical involvement lies in the final decision-making process. The Commission for Refugees and Statelessness, a body that is directly integrated into the executive branch, is responsible for granting or denying an asylum application. This extensive and multifaceted involvement at every stage underscores the executive branch's profound influence on asylum outcomes in the country.

B. International or regional organizations

As mentioned in Part II, UNHCR has been operating in Ecuador since 2000, assisting the government in the protection and integration of asylum seekers, refugees, stateless people, and others who have been forcibly displaced from their countries. UNHCR has a widespread presence across Ecuador, with strategically located offices to provide support to both refugees and host communities. This network includes three sub-offices in Quito, Guayaquil, and Ibarra, which are responsible for distinct geographical areas. The Quito sub-office covers the provinces of Pichincha, Santo Domingo, and the Sierra Centro region. The Guayaquil sub-office is responsible for the coastal region, the Southern Sierra, and the Southern Amazon, including the border with Peru. The Ibarra sub-office oversees the northern border with Colombia. To better serve people in key areas, UNHCR also has field offices in the northern border cities of Esmeraldas and Lago Agrio, and field units in Tulcán (on the border with Colombia), Huaquillas (on the border with Peru), and in the urban centres of Manta, Cuenca, and Ambato. This strategic placement allows for effective coordination with authorities and direct service delivery in regions with high concentrations of displaced populations.[289]

[287] Cantor DJ. *European influence*, cit., p. 80.
[288] Burbano M., Zaldívar A. & Vera M. (2019) "*La política pública migratoria ecuatoriana en el caso de la crisis migratoria venezolana*", Revista de la Facultad de Jurisprudencia, Pontificia Universidad Católica del Ecuador, No. 6, p. 133.
[289] UNHCR, *Ecuador*, https://www.acnur.org/donde-trabajamos/pais/ecuador



Source: UNCHR, Operación de ACNUR en Ecuador and UNCHR, Nuestros socios en 2025

Involvement, efforts, and interests that international and regional organizations display

As mentioned in Part II, UNHCR actively works in Ecuador to ensure asylum seekers are properly identified and granted access to national asylum procedures. The organization engages with the Ministry of Foreign Affairs and Human Mobility and border authorities to advocate for adherence to international law and prevent irregular returns or denials of entry. UNHCR provides technical guidance to help officials properly identify asylum seekers at the borders. The organization has historically voiced concerns about policies that restrict entry for asylum seekers. Furthermore, UNHCR and its partners also provide legal services, including orientation and representation, to help asylum seekers access the system.[290] These efforts reflect UNHCR's ongoing commitment to ensuring a protective and fair environment for people seeking refuge in Ecuador.

Role of international or regional organizations and their implications

As indicated in Part II, the Coordinator of the Commission for Refugees and Statelessness may invite UNHCR officials and representatives from governmental or non-governmental organizations to participate in meetings to offer perspectives, granting them the right to speak but not to vote.[291] However, UNHCR plays a significant and multifaceted role in Ecuador's asylum process, primarily by providing technical assistance and advocacy. The organization collaborates with the government by offering technical guidance and developing administrative practices that align with international standards.

In 2012, with the support of UNHCR, the Public Defender's Office in Ecuador began focusing on providing free legal representation in administrative proceedings, specifically for asylum cases and respecting the principle of *non-refoulement* in deportation cases.[292] This was a crucial step in ensuring that

[290] UNHCR, *Ecuador*, https://www.acnur.org/donde-trabajamos/pais/ecuador
[291] See Ministry of Foreign Affairs and Human Mobility (MREMH), *Acuerdo Ministerial No. 0000012*, 14 February 2023.
[292] UNCHR, *País: Ecuador Buena práctica: Defensa Legal para personas solicitantes de asilo y refugiadas*, 2012.

people in need of international protection had access to legal assistance throughout their process. This collaboration was formalized in a 2014 Cooperation Agreement between the two organizations, which aimed to strengthen the Public Defender's legal protection services for asylum seekers. As part of this commitment, UNHCR provided a specialist for six months to support public defenders.[293] Currently, UNHCR continues to support the Public Defender's Office with ten consultants in border areas. These consultants provide training and technical guidance on legal aid, strategic litigation, and ensuring the principle of non-refoulement. This partnership has significantly improved the quality of legal services for asylum seekers and refugees and has enhanced the standards of the RSD process through individual legal defence and strategic litigation.[294]

Moreover, UNHCR has actively collaborated with the Ecuadorian government in the formulation and implementation of national refugee policies. A notable example is UNHCR's joint work with Ecuadorian executive bodies in drafting the Policy on Refugee Matters in 2008, reflecting a commitment to strengthen national capacity for protection and asylum administration. More recently, UNHCR has participated in legislative discussions, such as the reform of the LOMH, where its representative provided input to the International Relations Commission of the National Assembly.[295]

Furthermore, UNHCR provides its unique expertise to the Constitutional Court of Ecuador, offering technical opinions on how national laws and ministerial agreements impact refugees and asylum seekers, particularly concerning access to territory. In 2012, the two organizations signed a cooperation agreement to coordinate training programs and activities aimed at providing more effective assistance to these groups.[296] A subsequent agreement in 2021 committed both parties to mutual strengthening by systematizing protection standards from international human rights instruments and the Court's own jurisprudence, which are applicable to people in a situation of human mobility. This includes developing a practical tool for justice operators that contains protection standards and jurisprudential guidelines. The collaboration also involves conducting studies to analyse how justice operators apply international standards and jurisprudential criteria in their rulings.[297]

Finally, UNHCR's presence at key entry points on the northern and southern borders, where they identify vulnerable cases and provide immediate assistance, also contributes to evidence collection and referral. The organization and its partners also provide legal services, including orientation and representation, to help asylum seekers navigate the system.

C. NGOs and bar associations

NGOs and bar associations involved in asylum access adjudication

The organizations that continue to offer legal assistance in Ecuador on refugee and migration issues are:

[293] Reliefweb, *La defensoría pública y ACNUR se unen para garantizar el acceso a la justicia de las personas refugiadas*, 16 April 2014.
[294] Asylum Capacity Support Group, "*Ecuador: Fortaleciendo alianzas para la defensa legal de personas solicitantes de asilo y refugiadas*", https://acsg-portal.org/tools/ecuador-defensa-legal-para-personas-solicitantes-de-asilo-y-refugiadas/
[295] National Assembly, *Comisión de Relaciones Internacionales avanza en reformas a Ley de Movilidad con aportes de organismos nacionales e internacionales*, 18 June 2025, https://www.asambleanacional.gob.ec/es/noticia/107023-comision-de-relaciones-internacionales-avanza-en
[296] UNHCR, *ACNUR y Corte Constitucional de Ecuador firman acuerdo para atender a refugiados*, 30 January 2012, https://news.un.org/es/story/2012/01/1233731#:~:text=La%20Corte%20Constitucional%20de%20Ecuador%20y%20el,que%20se%20han%20asentado%20en%20el%20pa%C3%ADs.
[297] Constitutional Court of Ecuador, *Carta de Entendimiento entre la Corte Constitucional del Ecuador y la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR)*, 20 April 2021, https://www.corteconstitucional.gob.ec/carta-de-entendimiento-entre-la-corte-constitucional-del-ecuador-y-la-oficina-del-alto-comisionado-de-las-naciones-unidas-para-los-refugiados-acnur/

The Jesuit Refugee Service (JRS)'s presence in Ecuador at the beginning of the 21st century was a direct response to a complex humanitarian situation, particularly the influx of Colombian refugees. The Ecuadorian state at the time lacked a comprehensive response, and its legislation was outdated, based on a national security framework from the 1970s. This vacuum created an urgent need for civil society organizations like JRS to step in and provide crucial support.[298] JRS focuses more on international human mobility, involving people in situations of refuge, displacement and migration, especially those most vulnerable. It provides direct assistance to the population, labour integration, legal, psychological, and medical care, accommodation, support for mobilization, food, education, entrepreneurship, and socio-cultural integration. JRS Ecuador develops participatory community programs, aiming at encouraging refugees' inclusion and integration into host communities.

HIAS (Hebrew Immigrant Aid Society) works with government institutions, partner agencies, and the private sector to promote empowerment and the development of sustainable livelihoods through community-based programs and humanitarian assistance. HIAS' strategy in Ecuador focuses on a case management approach that provides families with personalized and comprehensive assistance.

Involvement, efforts, and interests that NGOs and bar associations

- The Jesuit Refugee Service (JRS) is part of the Jesuit Refugee Service for Latin America and the Caribbean (JRS LAC), the regional office of the international non-profit organization Jesuit Refugee Service (JRS) that accompanies, serves, and defends refugees, migrants and forcibly displaced people in this region. During the years, the JRS has demonstrated a deep and multifaceted involvement in asylum access and adjudication in Ecuador. Their efforts are not limited to direct humanitarian aid; they also include legal, social, and political initiatives designed to address the systemic barriers faced by forced migrants. JRS offers direct legal assistance to help asylum seekers and refugees regularize their status. This includes providing legal orientation, offering legal services through its offices, and collaborating with university legal clinics, such as those at the Pontifical Catholic University of Ecuador (*Pontificia Universidad Católica del Ecuador*-PUCE). Their work also involves providing emergency humanitarian assistance like shelter and food, and psychosocial support to help individuals integrate and cope with trauma. Furthermore, JRS considers political advocacy ("*incidencia política*") a core part of its mission, which involves lobbying governments and advocating publicly for refugee rights. They actively participate in legal working groups to review new human mobility laws and propose changes to improve protection for refugees. Likewise, to combat the lack of knowledge about rights and the asylum process, JRS developed the "*Escuela de Ciudadanía*" (Citizenship School) to empower migrants and refugees with knowledge of their rights and the Ecuadorian institutional framework.[299]
- HIAS's involvement in asylum access and adjudication in Ecuador is extensive and multifaceted, focusing on providing direct support and advocating for systemic change. In particular, HIAS provides legal orientation and information to refugees and asylum seekers about the asylum process. The organization refers individuals to the Ministry of Foreign Affairs and Human Mobility, which is the governmental body responsible for granting refugee status. While HIAS does not offer legal representation, it does accompany individuals to state institutions that provide free legal services and directs them to other expert organizations.
  Furthermore, HIAS actively participates in working groups on legal matters, which include reviewing and proposing changes to human mobility laws and regulations. This engagement aims to increase the visibility of issues related to refugee protection and ensure that assisted individuals

[298] Burbano M., Chiara P. and López F. (2019) "*El Servicio Jesuita a Refugiados en Ecuador. El reto de acompañar la migración forzada en un contexto cambiante"*, Aliaga, F., & Louidor, W. (eds) Defensa de los derechos humanos de los migrantes y refugiados: El rol de las organizaciones del tercer sector en Colombia y Ecuador. Bogotá: Ediciones USTA, p. 241.
[299] Burbano M., Chiara P. and López F. (2019) "*El Servicio Jesuita*", cit., p. 281.

receive better opportunities that are aligned with their needs. The organization's legal program also develops workshops to educate refugees about their rights and obligations under Ecuador's Constitution and to inform public and private entities about the relevant laws.[300]

- Asylum Access Ecuador (AAE) was a non-profit organization that worked in Ecuador between 2007-2019 to defend the rights of refugees. The organization's efforts were not limited to providing legal assistance but also included community empowerment, public policy advocacy, strategic litigation, and movement building to create a broad base of support for refugee rights. The extent of AAE's involvement was explained by its available resources and expertise, which it deployed differently depending on the specific barrier. For example, to address the challenge of limited access to information and legal assistance, AAE initially operated from a single office in Quito but later expanded to include mobile legal clinics and offices in various cities, including Guayaquil, Ibarra, and those along the northern border like Esmeraldas, Carchi, and Sucumbíos. This geographic expansion was a direct response to the large number of refugees, particularly from Colombia, who settled in urban centres and border areas.[301]
  AAE officially closed in 2019. The organization's foundation was voluntarily dissolved and liquidated during a general assembly on 1st October 2019. This came after the Public Defender's Office decided to close AAE's free legal clinic due to a lack of activity in providing legal advice.[302]

There is significant collaboration and financial dependence between NGOs working with refugees in Ecuador and UNHCR.[303] Informal discussions with Ecuadorian academics indicate that NGOs were "co-opted" by the UNHCR. Initially, these organizations received funding that enabled them to expand their operations, but they were later forced to shut down after the funding ceased. This was the case for prominent organizations working on refugee issues in Ecuador, such as Asylum Access and the Coalition for Migration and Refuge of Ecuador (*Coalición por las Migraciones y el Refugio de Ecuador*).

Role of NGOs and bar associations and their implications

Some NGOs play a direct and impactful role in Ecuador's asylum access adjudication, with significant implications for how rules are interpreted and legal expertise is applied. For instance:

HIAS actively engages in legal working groups that focus on legislation, the review of the LOMH, and proposals to enhance the visibility of refugee protection issues. This involvement facilitates collaborative and network-based work, allowing the people they assist to gain greater opportunities that align with their specific needs.[304]

The JRS directly challenges narrow, state-centric interpretations of refugee law. It advocates for a broader, more humane definition, including "de facto refugees" (those who are victims of armed conflicts, natural disasters, or flawed economic policies). This stance is a direct critique of the traditional legal distinction between forced and economic migration, which often leaves many vulnerable populations unprotected. While not explicitly collecting evidence for individual court cases, JRS engages in extensive research and diagnostic work. This includes conducting participatory diagnostics, collecting testimonials from victims,

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300 See Lustgarten S. and Ron Ordóñez M. (2019) "*La Hebrew Inmigrant Aid Society en Ecuador: acoger al extranjero y proteger al refugiado*". Aliaga, F., & Louidor, W. (eds) Defensa de los derechos humanos de los migrantes y refugiados: El rol de las organizaciones del tercer sector en Colombia y Ecuador. Bogotá: Ediciones USTA, pp. 147-152.
301 See Sarmiento K. (2018) "*Asylum Access Ecuador y su labor para hacer realidad los derechos de las personas refugiadas*", Aliaga, F., & Louidor, W. (eds) Defensa de los derechos humanos de los migrantes y refugiados: El rol de las organizaciones del tercer sector en Colombia y Ecuador. Bogotá: Ediciones USTA, pp. 155-194.
302 See Public Defender's Office, Resolution No. DP-DPG-DAJ-2019-031 of 22 March 2019, through which the Legal Clinic "ASYLUM ACCESS ECUADOR" is automatically closed.
303 Gómez Martín C. & Malo G. (2020). "*Salir de la noción economicista y despolitizada del refugiado. Una visión crítica sobre el refugio colombiano en Ecuador*". PÉRIPLOS, Revista de Investigación sobre Migraciones. Año 3 - Número 2, p. 139.
304 Lustgarten S. and Ron Ordóñez M. (2019) "*La Hebrew Inmigrant",* cit., p. 152.

and systematizing their experiences to generate knowledge. The information gathered is then used as a basis for their policy and advocacy efforts to highlight the realities of forced migration and influence legislative changes.[305]

Furthermore, the work of Asylum Access Ecuador and the Coalition for Migration and Refugees of Ecuador went beyond individual cases. Their involvement in strategic litigation, such as the constitutional challenge against Executive Decree 1182, demonstrated their effort to create legal precedents that benefit the entire refugee community.[306] As mentioned before, this case resulted in a landmark decision by the Constitutional Court in 2014, which extended the timeframe for asylum applications and appeals and incorporated a broader definition of a refugee into national law. This showed a strategic use of their legal expertise and resources to address systemic barriers, such as a law that limited due process guarantees.

Organized or formal involvement of civil society, apart from NGOs

In Ecuador, civil society and academic institutions play a crucial role in supporting asylum seekers and migrants. These organizations, which often specialize in migration and human rights, provide vital services. While many focus on offering humanitarian aid, they also offer essential legal assistance and help with documentation, which is crucial for those seeking asylum.

Many of these organizations offer comprehensive support. For instance, Norwegian Refugee Council (NRC), provides comprehensive support to displaced individuals including legal information, counselling, and assistance to help them obtain legal documents, fight evictions, and secure their housing rights. Casa un Techo para el Camino provides not only legal guidance but also accommodation, food, and medical and psychological care. This holistic approach is common among the many groups dedicated to helping vulnerable people. Alas de Colibrí focuses on protection for victims of human trafficking, migrants and refugees through psychological and legal assistance. It has focused on responding to the needs of migrants and refugees from Venezuela with a gender-sensitive approach. Other notable organizations include the Religious Congregation of the Sacred Hearts, the Oblate Sisters, Cáritas Ecuador, the Congregation of the Marist Sisters, the Scalabrinian Missionaries (Mision Scalabriniana), the Capuchin Tertiary Sisters, and the Company of the Daughters of Charity. A significant focus of their work is on legal and documentary assistance, which is essential for migrants and refugees. Cáritas Ecuador, for example, has a wide presence in cities across the country and often collaborates with other groups like the Oblate Sisters to provide a full range of services, from legal support to basic necessities. Through shelters like the Good Samaritan in Quito, they ensure that the most vulnerable receive the legal, documentary, and humanitarian aid they need to navigate their journey.[307]

D. Supranational courts

As mentioned in Part II, the IACtHR's rulings have significantly influenced Ecuador's national courts, particularly the Constitutional Court, in their approach to asylum barriers. The Constitutional Court has repeatedly used IACtHR jurisprudence to strengthen protections for asylum seekers, including against issues like procedural barriers and arbitrary detention.

Ecuador's Constitutional Court has directly applied IACtHR standards to ensure due process for asylum seekers. In a 2018 case, the Court cited IACtHR principles to rule that denying an appeal to Venezuelan asylum seekers was an unlawful structural barrier. This led to mandated reforms to ensure procedural fairness. Additionally, in its ruling *No. 335-13-JP-20*, the Constitutional Court referenced key IACtHR

[305] Burbano M., Chiara P. and López F. (2019) "*El Servicio Jesuita*", cit., p. 266.
[306] Sarmiento K. (2018) "*Asylum Access Ecuador*", cit., p. 167.
[307] See UNHCR, *Protegiendo a las personas refugiadas en el Ecuador: Preguntas y Respuestas*, https://www.acnur.org/fileadmin/Documentos/RefugiadosAmericas/Ecuador/Preguntas_y_respuestas_sobre_refugio_en_Ecuador.pdf; Vatican, Country Profiles Ecuador, cit.

cases, such as *Vélez Loor v. Panama* (2010) and *Baena Ricardo and Others v. Panama* (2001), to affirm that due process applies not just in judicial proceedings but also in administrative decisions that affect asylum seekers. This has helped prevent arbitrary detention and ensure individualized assessments for those seeking asylum.

The IACHR's interpretation of the principle of non-refoulement has also been crucial. The Court has clarified that this principle includes the right to a timely and impartial review of one's asylum claim. Drawing on IACtHR's Advisory Opinion OC-21/14, Ecuador's Constitutional Court has stressed the need for special procedural safeguards for vulnerable groups like children. In a 2023 ruling (*No. 2496-21-EP/23*), the Court cited *Ximenes Lopes v. Brazil* (2006) and *Guachalá Chimbo and Others v. Ecuador* (2021) to protect individuals with mental health conditions, emphasizing the need for specialized care and a rejection of asylum barriers based on health vulnerabilities.

Furthermore, the Court has also drawn upon IACtHR jurisprudence to address collective expulsion and discrimination concerns, as seen in ruling *No. 639-19-JP/20* (21 October 2020). Referencing Advisory Opinion 18/03 and cases like *Pacheco Tineo Family v. Bolivia* (2013) and *Dominicans and Haitians expelled v. Dominican Republic* (2014), the Court underscored the requirement for individualized assessments in expulsion proceedings and the prohibition of discriminatory or disproportionate measures, thereby reinforcing procedural protections consistent with international human rights standards.

E. Other actors

So far, no additional actors involved in asylum access adjudication in Ecuador have been identified.

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

Ecuador is a country of origin, transit, and destination, with several simultaneous migratory dynamics.[308] In the past years, Ecuador has emerged as a significant destination for South American migrants, a country of transit for those heading north, and a renewed source of emigration, mostly to the United States.[309] Since 2022, Ecuadorians have become the second-most identified nationality crossing the Darién Gap.[310] In that year, 29,356 Ecuadorians passed through the province, a number that nearly doubled to 57,250 in 2023. According to Panama's National Migration Service, 12,128 Ecuadorians had already used this crossing by May 2024. Venezuelans remain the primary nationality in the region, with 109,895 people using this route.[311]

[308] Herrera G. (2022). *Migration and Migration Policy*, cit., p. 3; Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) (2025). "*Derecho a defender los derechos de las personas en movilidad humana: Ecuador*", p. 11.

[309] See Álvarez Velasco S. (2020) "From Ecuador to Elsewhere. The (Re)Confi guration of a Transit Country", Migration and Society: Advances in Research, Vol. 3, p. 34; Ceja I. and Ramírez J. (2022) "*Continuum migratorio: Una década de migración haitiana en y por Ecuador*". In Handerson J. and Cédric A. (Eds.) El sistema migratorio haitiano en América del Sur proyectos, movilidades y políticas migratorias, Ciudad Autónoma de Buenos Aires: CLACSO, p. 287; Jokisch, B. (2023) "Ecuador Juggles Rising Emigration and Challenges Accommodating Venezuelan Arrivals", Migration Policy Institute. Available in: https://www.migrationpolicy.org/article/ecuador-migration-trends-emigration-venezuelans

[310] The Darién Gap (*Tapón del Darién*) is the southern part of the Darien province in Panama and the northern part of the Chocó department in Colombia.

[311] IMO (2024) Analysis of the migration flow of Ecuadorian population abroad, https://crisisresponse.iom.int/sites/g/files/tmzbdl1481/files/appeal/documents/ANALYSIS%20OF%20THE%20MIGRATION%20FLOW%20OF%20ECUADORIAN%20POPULATION%20ABROAD.pdf

Main migration routes towards the country since 2010

Even before 2010, many Haitian migrants began moving to Ecuador due to its visa-free entry policy, often using the country as a temporary stop on their way to other destinations in the Americas. Three main travel routes were identified: one by direct flights from Port-au-Prince to Panama and then to either Quito or Guayaquil; a second by a land journey from Haiti to the Dominican Republic, followed by a flight to Panama, and then to Ecuador; and a third, a longer flight path from Port-au-Prince to Havana, then to Bogotá, San José, and finally Quito. A major hurdle for these migrants was the discretionary power of Ecuadorian immigration officials, whose interviews could lead to unpredictable outcomes, either granting or denying entry and encouraging irregular practices. Upon arriving, many Haitians were met by friends or migrant smuggling networks. Data showed that some who arrived in Quito were housed until a large enough group was formed, at which point a bus was chartered to take them to the southern border, usually to the cities of Huaquillas or Loja. The speed of this onward journey was often tied to the amount of money the migrants paid, with those who paid more experiencing faster transit.[312]

In recent years, the primary entry point into Ecuador has been the northern border, which sees a daily influx of approximately 1,000 refugees and asylum seekers using unofficial routes. For example, between July and October 2021, the number of Colombians entering Ecuador each month ranged from 150 to 444. Migration across this border is often characterized by clandestine crossings from Colombia, with three primary routes identified. The main point of entry is through the province of Carchi (Tulcan), which has a high volume of traffic, with 1,500 to 1,800 migrants entering daily. The other two key routes are located in San Lorenzo (Esmeraldas) and Lago Agrio (Sucumbíos).[313] These routes are crucial for migrants traveling through Ecuador to other destinations like Chile.[314]

Source: GTRM Ecuador: Mapa de Rutas

According to statistics from the Ministry of the Interior, the majority of Venezuelan migrants in 2017—79%—entered Ecuador by land through the Rumichaca Binational Border with Colombia. These migrants travelled by various routes across Colombia from Venezuela. People used different modes of transportation, including public transit, private vehicles, and even walking, to make the journey. These

312 See Bernal Carrera G., (2014) "*La migración haitiana hacia Brasil: Ecuador, país de tránsito*", in IMO, La migración haitiana hacia Brasil: Características, oportunidades y desafíos, Cuadernos migratorios No. 6, pp. 73-75; Álvarez Velasco S. (2020) *"From Ecuador to Elsewhere"*, cit., p. 41; Nieto C. (2022) "*La migración haitiana y su paso por el Perú. Análisis de las redes migratorias*", In: Handerson J. and Cédric A. (Eds.) El sistema migratorio haitiano en América del Sur proyectos, movilidades y políticas migratorias, Ciudad Autónoma de Buenos Aires: CLACSO, pp. 262-265; See Ceja I. and Ramírez J. (2022) "*Continuum migratorio:*", cit., p. 288.

313 UNHCR (2025) *Informe Tendencias Nacionales - El desplazamiento forzado en Ecuador 2025*, p. 11; El Comercio, Migrantes usan 6 rutas para entrar y salir del Ecuador, 13/08/2021, https://www.elcomercio.com/actualidad/ecuador/migrantes-rutas-entrar-salir-ecuador/

314 El Comercio, "*Migrantes usan 6 rutas para entrar y salir del Ecuador*", 13/08/2021, https://www.elcomercio.com/actualidad/ecuador/migrantes-rutas-entrar-salir-ecuador/

routes could take days, weeks, or even months to complete.[315] However, between 2024 and 2025, Venezuelan mobility patterns in Ecuador changed significantly, reflecting its growing role as a transit country rather than a final destination. In 2024, the majority of entries (55.4%) occurred through the southern border with Peru. Though a sustained trend emerged in 2025, with more people continuing their journey northward and exiting into Colombia. This shift indicates that migrants are increasingly passing through Ecuador to reach other countries such as Peru, Colombia, Chile, Brazil, the USA, or even to return to Venezuela. These mobility decisions are driven by a complex mix of economic, political, and security factors in both their home countries and in Ecuador itself.[316]

Moreover, migrants traveling between Ecuador and Peru often use three primary unofficial routes, which are also known to be used for smuggling. These crossings are situated in the provinces of El Oro and Loja (southern border with Peru). The main entry and departure points are located in Huaquillas (El Oro), as well as Zapotillo and Macará (both in Loja). This constant flow of people through informal crossings highlights the ongoing migratory dynamics in the region, even when borders are officially closed or security forces are present.[317]

Source: GTRM Ecuador: Mapa de Rutas

Main entry points in the country since 2010

The main border crossing points in Ecuador are a mix of land, sea, and airports.[318]

Land entry points:

The main land border crossings are located on the northern and southern borders. In total, Ecuador has eight immigration checkpoints at these border crossings. There are no physical barriers such as walls or migrant detention centres. Border control is the responsibility of border authorities, and they would be the first authorities before whom people could apply for refugee status.

- In the province of **Carchi** (Inter-Andean Region), with a border of 140 km with Colombia, there are two immigration checkpoints: the **Tufino Tulcán International Pass** and the CENAF (National Centre for Migration and Immigration Control) at the **Rumichaca International Bridge** (which connects the cities of Tulcán in Ecuador and Ipiales in Colombia). These entry points serve as a critical passage for people traveling north or south, whether to settle in Ecuador or Colombia, or to continue

[315] Herrera G. and Cabezas Gálvez G (2019) "*Ecuador: de la recepción a la disuasión. Políticas frente a la población venezolana y experiencia migratoria 2015-2018*". In: Gandini L., Lozano Ascencio F. and Prieto Rosas V. (Ed.) Crisis y migración de población venezolana: entre la desprotección y la seguridad jurídica en Latinoamérica, p. 129.
[316] Working Group for Refugees and Migrants (GTRM) Ecuador, (2024) "*Evaluación Conjunta de Necesidades 2024. Población refugiada y migrante, en permanencia y en tránsito*", UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 12.
[317] El Comercio, "*Migrantes usan 6 rutas*", cit.
[318] Goverment of Ecuador, Directorio de los puntos de control migratorio, https://www.ministeriodegobierno.gob.ec/directorio-de-unidades-de-control-migratorio/

to countries like Peru, Chile, and the United States. Many of these individuals are fleeing conflict, persecution, and socio-environmental disasters, and they often travel without seeking international protection due to a lack of awareness and the urgent need to move. However, with Ecuador's declaration of an internal armed conflict and the enactment of new security-focused decrees in 2024, there has been a shift toward a securitized migratory management approach. This approach has led to the militarization of institutional presence, the normalization of states of exception, and the demand for apostilled physical criminal records for entry, which effectively restricts freedom of movement and makes migrants more vulnerable. The new measures increase protection risks, including exposure to prolonged emergencies, violations of the principle of non-refoulement, and a heightened risk of extortion, kidnapping, and violence from armed groups. It has also led to disproportionate use of force by authorities, unjust detentions, and deportations without due process. These policies, while intended to combat criminal groups, have forced migrants to use dangerous, irregular routes at night, exposing them to human trafficking and smuggling networks, and limiting their access to humanitarian assistance, basic services, and legal protection mechanisms.[319]

As mentioned in Part I, since 2009, Ecuador has used biometric fingerprint controls at the Rumichaca International Bridge.[320] Moreover, since 2024, Ecuadorian authorities have implemented new technology for immigration control to detect and process irregular migrants, thanks to the Video Surveillance System with Advanced Analytics,[321] as well as dedicated interview rooms at the Rumichaca International Bridge.[322]

- There is a checkpoint in the province of **Sucumbíos**, which borders Colombia's southern Putumayo Department. A strategic area with significant security challenges involving multiple armed actors. These include Ecuador's National Army and various police units (immigration, anti-narcotics, intelligence, and public security), as well as Colombian guerrilla fighters, drug producers, and armed traffickers on the other side of the border. This mix of groups has created a zone of constant violence. Caught in the middle are the "living border" communities, made up of Colombian and Ecuadorian civilians.[323]

- In the province of **El Oro**, on the southern border with Peru, there is an immigration checkpoint. The border cities of **Huaquillas** (Ecuador) and Tumbes (Peru) are the major transit points for people from Venezuela, Colombia, Haiti, Angola, and Asian countries like Bangladesh, who are either heading south or trying to reach the United States. Since 2024, Ecuadorian authorities have implemented new technology for immigration control to detect and process irregular migrants, thanks to the Video Surveillance System with Advanced Analytics in Huaquillas.[324] The increased restrictions and border controls at formal crossing points have driven many to use dangerous, irregular routes, exposing them to extortion, violence, and human trafficking by smuggling networks. [325]

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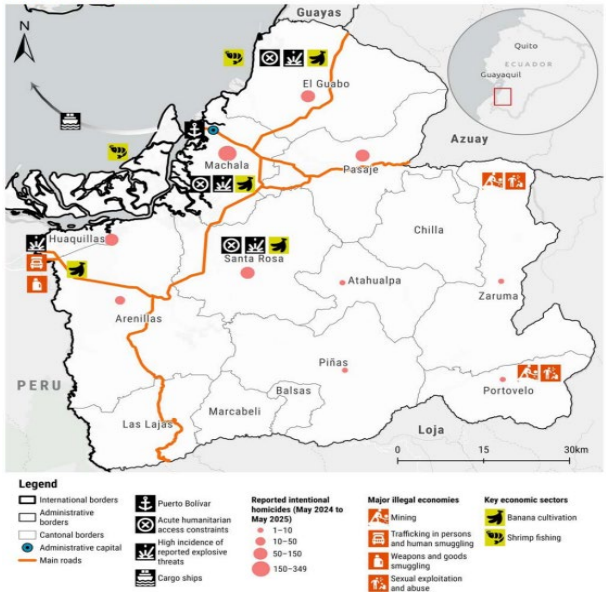
[319] Jesuit Refugees Service (2024) *"Análisis de contexto migratorio transfronterizo 2023-2024: ¿Qué está pasando en la frontera norte de Ecuador – sur de Colombia?*", Fronteras en Movimiento, p. 3.
[320] Portafolio (2008) *Ecuador aplicará,* cit.; El Tiempo (2008), *Más control a visitantes,* cit.
[321] Ministerio del Interior (2025) "*Tecnología de punta y cooperación internacional fortalecen el control migratorio en Ecuador*", Boletín nro. 243, 04/08/2025, https://www.ministeriodelinterior.gob.ec/tecnologia-de-punta-y-cooperacion-internacional-fortalecen-el-control-migratorio-en-ecuador/
[322] Primicias (2024), *Control en Rumichaca*, cit.
[323] Sánchez de la Vega L.I. (2003) "*El Ecuador frente al Plan Colombia. Inseguridad en la frontera colombo-ecuatoriana*", Revista IIDH, No. 38, San José, p. 238.
[324] Ministerio del Interior (2025) "*Tecnología de punta"*, cit.
[325] See Jesuit Refugees Service (2025) "*Análisis de contexto migratorio transfronterizo: ¿Qué está pasando en la frontera norte de Perú - sur de Ecuador? 2023-2024*", Fronteras en Movimiento, pp. 1-3.

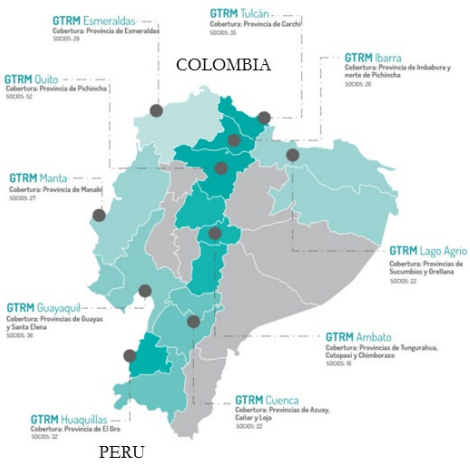
Map 1. Key violence and livelihood indicators in El Oro province, May 2024 to May 2025



The migration policies of both Ecuador and Peru are based on a security-focused approach that prioritizes militarization and police operations, leading to discriminatory and abusive practices. This approach often criminalizes migrants and results in summary expulsions and administrative actions without due process, disregarding a human rights-based approach. Furthermore, many of these individuals are labelled as migrants rather than being recognized as people in need of international protection, which leaves them vulnerable to further harm.[326] The area is also marked by the presence of armed groups and drug trafficking, with reports of violence. Migrants and refugees are particularly affected, facing a higher risk of exploitation and forced labour.[327]

- Furthermore, three in the province of **Loja** (on the southern border with Peru), and one in the province of Zamora Chinchipe.

The cities of San Lorenzo, Tulcán, Lago Agrio, Huaquillas, Zapotillo, and Macará are the main entry points.[328] UNHCR's field operations are managed from three main sub-offices: Quito, which oversees the provinces of Pichincha, Santo Domingo, and the Central Highlands; Guayaquil, which manages the coastal region, the Southern Highlands, and the Southern Amazon; and Ibarra, which directs operations along the Northern Border. In addition to these sub-offices, UNHCR maintains Field Offices in Esmeraldas and Lago Agrio, as well as Field Units in Tulcán, Huaquillas, Manta, Cuenca, and Ambato.[329]



Location of the Local GTRM Headquarters - Ecuador

Furthermore, the Working Group for Refugees and Migrants (WGRM) in Ecuador includes nine local working groups that coordinate the local response and are distributed throughout the country. The locations where the WGRMs have been established have a particular impact due to the high concentration of Venezuelan refugees and migrants, both in transit and permanently; thus, they are also localities with a significant impact on host communities. The WGRMs are located in border areas such as Tulcán, Lago Agrio, Esmeraldas, and Huaquillas; as well as in inland locations such as Ambato, Cuenca, Ibarra, Guayaquil, and Manta.
Source: WGRM in Ecuador

[326] Jesuit Refugees Service (2025) "*Análisis de contexto migratorio*", cit., pp. 1-3.
[327] See ACAPS Analysis Hub, Colombia (2025) ECUADOR The impact of violence on livelihoods in El Oro, Thematic Report, 11 August 2025
[328] Vatican, Country Profiles Ecuador, cit.
[329] UNHCR, Ecuador, https://www.acnur.org/donde-trabajamos/pais/ecuador#:~:text=ACNUR%20trabaja%20para%20asegurar%20la,acogen%20en%20todo%20el%20pa%C3%ADs.

Air entry points:

Ecuador operates immigration control units at all eight of its airports, with the primary locations being the International Airport **Mariscal Sucre** (Quito, Pichincha) and the International Airport **José Joaquin de Olmedo** (Guayaquil, Guayas). Immigration control is managed by the national border agency. These agents are the first point of contact for all arriving passengers, including individuals seeking international protection. Both airports use specialized facilities like "no-entry rooms" to temporarily hold individuals whose admission is being processed or denied. Furthermore, since 2024, Ecuadorian authorities have implemented the Video Surveillance System with Advanced Analytics to improve the efficiency and security of their immigration control operations.[330]

Sea entry points:

Ecuador also has immigration control posts at several of its maritime ports, located in the provinces of **El Oro** (Machala), **Esmeraldas** (Esmeraldas Maritime Port and Puerto San Lorenzo on the northern border with Colombia), and **Manabí**. Despite these controls, land routes are the primary choice for migrants, with sea or river travel being not common.

Implications that migratory routes towards the country have on how judicial institutions

While the specific migratory routes to Ecuador don't influence how judicial institutions evaluate the legality of barriers to asylum access, they do affect the number and type of legal challenges that come before the courts.

For asylum seekers arriving by land, the judicial system often acts as a critical check against summary expulsions and pushbacks, with courts considering the humanitarian situation in neighbouring countries. Courts in border states are frequently petitioned to intervene, often setting precedents that challenge the executive's authority to enact policies that violate the principle of non-refoulement. As mentioned in Part II, the legal arguments in these cases often rely on Ecuador's progressive LOMH and international conventions, compelling judges to rule against such expulsions.

Regarding migratory routes by air, at international airports like those in Quito and Guayaquil, barriers to asylum are typically related to denial of entry/*de facto* detention, and immediate removals, as was noted in Part II. These cases often involve disputes over the legality of in-transit asylum applications, where individuals are denied the right to apply for protection in the transit zone, or are refused an application because they are considered migrants rather than refugees. In these cases, the courts must then assess these barriers within the framework of national security and border control, with the legal debate focusing more on the interpretation of legal norms and the discretionary power of immigration authorities.

Implications of country entry points on what happens in judicial institutions

In Ecuador, judges in border states frequently handle barriers to access asylum, allowing them to develop specialized expertise and a body of case law sensitive to the realities of forced migration. These courts are often on the front lines of challenging policies and practices that violate the principle of *non-refoulement*. The legal arguments in these cases often rely on Ecuador's progressive LOMH and international conventions, compelling judges to rule against unlawful expulsions. The legal challenges and resulting judicial decisions are a direct reflection of the specific administrative practices at the border, such as the arbitrary denial of entry or the demand for particular documents like passports and criminal records. This can lead to a consistent body of rulings that set precedents.

[330] Ministerio del Interior (2025) "*Tecnología de punta",* cit.

Asylum seekers who enter through airports, such as in Quito or Guayaquil, face a different set of challenges. At these entry points, legal norms and practices are less focused on mass migration management and more on national security concerns. These cases often involve the legality of in-transit asylum applications, where individuals are denied the right to apply for protection in the international airport's transit zone, or are denied the ability to lodge an application because they are considered migrants and not refugees. The courts, in turn, must assess these barriers within the framework of national security and border control. The legal debate tends to focus on the interpretation of legal norms and the discretionary power of immigration authorities. However, the Constitutional Court has set an important precedent regarding asylum access at airports by emphasizing an individual's situation over general migration control.

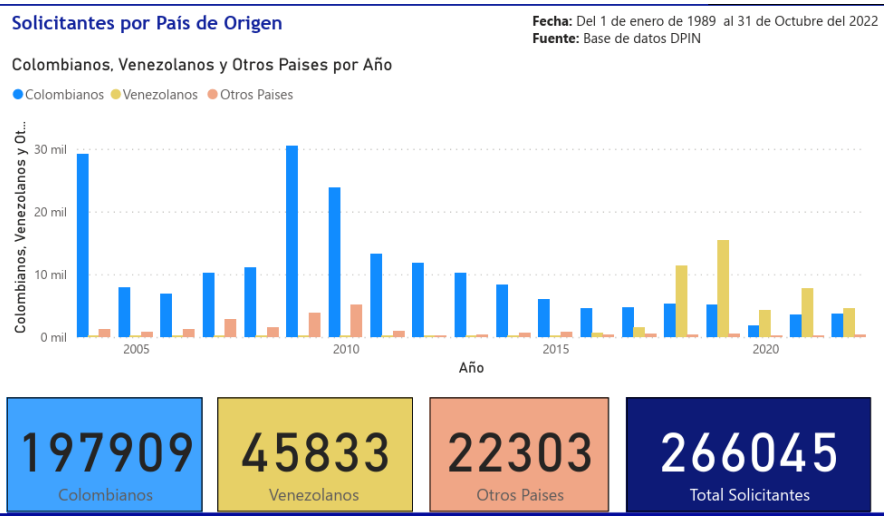
B. Composition and spatial distribution of forced migration population

Refugee demographics and asylum applications in Ecuador have shifted significantly over time. While the refugee population is currently a majority of women (55%) and young adults aged 18-59 (57%), the countries of origin have changed dramatically. Before 2018, 73% of the refugees in Ecuador were from Colombia, but by May 2022, Venezuelans constituted the overwhelming majority at 88%, with Colombians making up just 9% and other nationalities, such as those from Cuba, Yemen, and Syria, comprising the remaining 3%.[331]

This demographic shift is accompanied by a dynamic history of asylum applications. Between 2008 and 2010, for example, many Cuban citizens used asylum applications as a way to regularize their legal status in the country, but this practice was abandoned after the Refugee Directorate began systematically rejecting their claims without individual review. [332] In more recent years, asylum applications have shown a steady increase. In 2023, Ecuador registered 10,735 asylum applications, a slight increase from the previous year. For the first time, Colombian applicants (4,883) almost equalled the number of Venezuelan applicants (5,296). This upward trend has accelerated in 2024, with 6,308 applications recorded by the end of April—a remarkable 163% increase compared to the same period in 2023.

Asylum seekers by country of origin 2004-2022

Año	Colombianos	Venezolanos	Otros Paises
2004	29197	12	1189
2005	7891	4	796
2006	6861	7	1257
2007	10165	7	2838
2008	11111	8	1577
2009	30482	15	3806
2010	23851	34	5161
2011	13292	13	958
2012	11862	4	276
2013	10267	15	301
2014	8298	34	715
2015	5951	175	750
2016	4514	585	411
2017	4747	1535	542
2018	5272	11345	420
2019	5153	15350	468
2020	1752	4338	228
2021	3604	7796	239
2022	3639	4556	371
Total general	197909	45833	22303

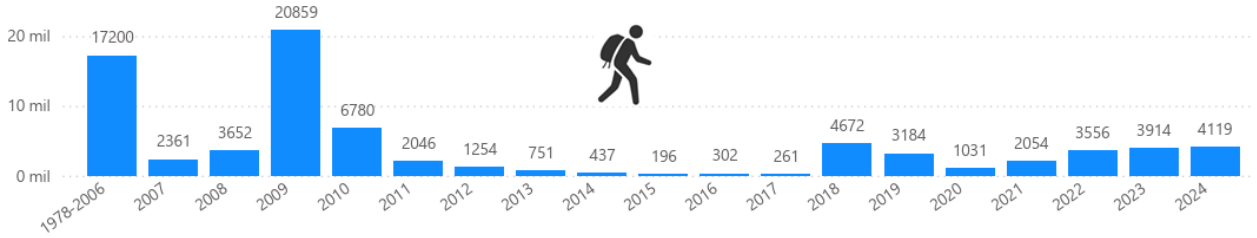


Source: Ministry of Foreign Affairs and Human Mobility

[331] Vatican, Country Profiles Ecuador, https://migrants-refugees.va/country-profile/ecuador/
[332] See Freier L.F., Correa A. and Aron V. (2018) "*El sufrimiento del migrante*", cit., p. 112.

The number of recognized refugees has also seen a gradual increase. Of the historical total of over 77,000, more than 14,980 people have been granted refugee status in the last six years alone. The year 2023 saw one of the highest numbers of recognitions, with 3,909 individuals granted refugee status, marking a significant increase from 3,185 in 2019. The positive trend continues into 2024, with 1,332 people recognized as refugees by the end of April—a 6.22% increase over the same period in 2023.

Recognized refugees by year (2006-2024)



Source: Ministry of Foreign Affairs and Human Mobility, Official Announcement, December 2024

Implications on what occurs in judicial institutions

In Ecuador, the judiciary has played a crucial role in the initial stages of refugee protection, particularly in ensuring migrants are not penalized for irregular entry. Courts in major entry point cities like Tulcan and Huaquillas, as well as those in Quito and Guayaquil, have been instrumental in safeguarding the right to remain in the territory and seek asylum.

Asylum seekers have used constitutional guarantee actions - specifically Protection Actions and Habeas Corpus- to address various issues. Case law from the Carchi province, a primary entry point with 12 judicial units, shows the courts' effectiveness in resolving problems like pushbacks and collective expulsions. Similarly, courts in Quito and Guayaquil have dealt with cases involving pushbacks and *de facto* detention at airports. Before the LOMH was enacted in 2017, courts in Quito also handled cases of pre-removal detentions in migrant centres and the collective expulsion of specific migrant groups. Despite a heavy caseload, judicial intervention has been timely.

The high number of asylum seekers and refugees in Ecuador, especially vulnerable individuals like minors, has put a significant strain on the country's judicial system. This large caseload, often involving people with limited resources and little knowledge of the law, presents a major challenge to the judiciary's capacity.

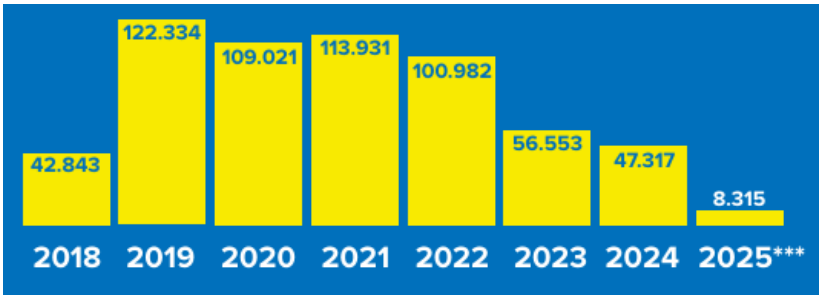
Ecuador's legal framework provides "reinforced protection" for children and adolescents. The LOMH of 2017 and subsequent Constitutional Court rulings mandate child-sensitive procedures, prohibit the detention of minors for immigration reasons, and prioritize family unity. The principle of the best interests of the child is a fundamental tool for Ecuadorian courts. It is used to eliminate or modify legal barriers that could separate families or prevent children from seeking protection. Several key rulings have explicitly addressed violations of children's rights. For example, ruling No. 983-18-JP/21, issued by the Constitutional Court on 25 August 2021, analysed the violation of the rights to life, health, equality and non-discrimination, family unity, effective judicial protection and reparation, and the principles of the best interests of children and adolescents and non-refoulement, in the context of persons in situations of human mobility and their families. Likewise, ruling *No. 2120-19-JP/21*, issued by the Constitutional Court on 22 September 2021, confirmed the violation of the right to family reunification and declared a violation of the right to migrate, as well as the best interests of the minors involved. Furthermore, the Constitutional Court, in its ruling *No. 2496-21-EP/23*, adjudicated on 12 July 2023, declared that the right to asylum, the principle and right of non-refoulement, the right to effective judicial protection, and the right of children and adolescents to be heard in proceedings that affect them had been violated by the Ecuadorian

authorities. These cases have reinforced the commitment of the judiciary to the protection of this vulnerable population.

Likewise, the country of origin of asylum seekers can also impact judicial decision-making. When a large number of people from a specific country, such as Venezuela, seek asylum, judges become more familiar with the political and humanitarian conditions there. This familiarity can lead to a more nuanced and consistent application of legal standards. A notable example is the Constitutional Court's ruling *No. 639-19-JP/20 and accumulated*, adjudicated on 21 October 2020, which addressed the collective expulsion of Venezuelans at the Peruvian border. The court affirmed that the government had violated the rights to migration, freedom of movement, and the prohibition of collective expulsion, demonstrating how a deeper understanding of a group's circumstances can lead to a more effective legal outcome.

Displaced persons who are not asylum seekers or recognized refugees

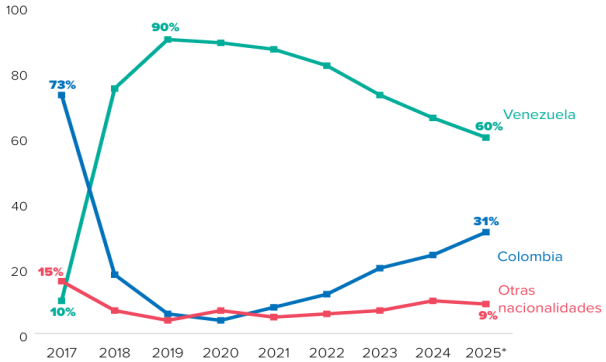
Ecuador has welcomed 610,833 people who have been forced to flee their home countries due to conflict, violence, and persecution as of April 2025. This total includes 440,450 Venezuelan refugees and migrants (82% of the total number of people in human mobility in Ecuador). The country has also officially recognized 80,005 individuals as refugees, with UNHCR having records for 68,079 of them. The numbers show a significant increase from 42,843 in 2018 to a peak of 122,334 in 2019, followed by a decline to 8,315 by April 2025. The refugee and migrant population make up 3.4% of Ecuador's total population.[333]



Source: UNHCR, Informe Tendencias Nacionales Ecuador 2025

In recent years, Ecuador has become a crucial host country for people fleeing their homes, primarily due to humanitarian crises and conflicts in neighbouring nations. The composition of people seeking asylum or humanitarian aid has evolved significantly from 2017 to 2025, with major shifts in the nationalities being recorded.[334]

Registration percentages by nationality

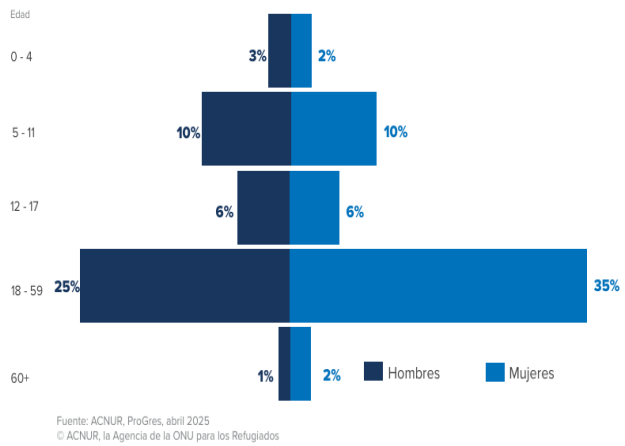


Source: UNHCR, Informe Tendencias Nacionales Ecuador 2025

Between 2017 and 2019, there was a dramatic rise in the number of Venezuelans, peaking in 2019 when they accounted for 90% of all registrations. This surge corresponded with the most severe period of the humanitarian crisis in Venezuela, which triggered a mass exodus across Latin America. While Venezuelans still make up the majority of new arrivals, their proportion has been steadily declining since 2020.[335]

[333] UNHCR (2025) *Informe Tendencias Nacionales - El desplazamiento forzado en Ecuador 2025*, p. 3
[334] UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 8
[335] UNHCR (2025) *Informe Tendencias Nacionales,* cit., p. 8

Conversely, the number of Colombian arrivals, which represented 73% of asylum seekers in 2017, dropped sharply between 2018 and 2019 but began to increase again in 2021, reaching 31% in 2025. This recent rise is linked to a resurgence of violence in Colombia that has caused internal displacement and cross-border movement into Ecuador. Ecuador also continues to be a transit and reception country for people from other nations, including African countries and Haiti. The number of people from these other nationalities has remained relatively stable, with a slight increase in recent years, indicating growing diversity among those seeking protection. This trend solidifies Ecuador's role as both a traditional host country and a strategic point of transit and protection in the regional humanitarian response, despite its own internal challenges.[336]

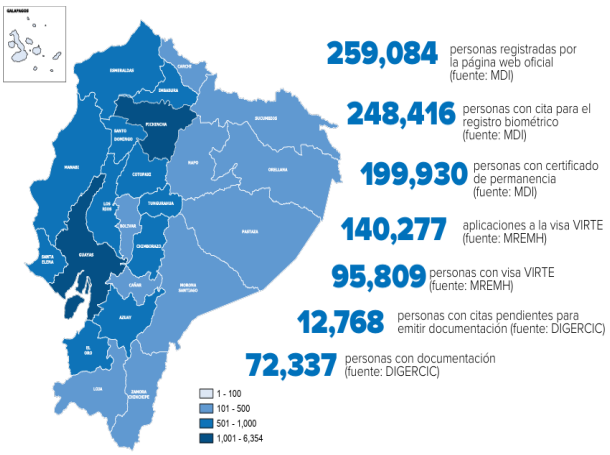


Women make up approximately 55.3% of the total, with 337,472 recorded individuals, compared to men at 44.7% or 273,316 individuals. This trend, known as the feminization of forced displacement, may be driven by factors such as women seeking protection from violence, mothers traveling with their children, or women taking on responsibilities in emergency situations. The age distribution shows that adults constitute nearly 63% of the registered displaced population, totalling 383,831 individuals, while minors account for 37%, or 226,957 individuals.

A comparison of sex and age reveals a slight majority of males among minors (115,494 males vs. 111,463 females), but this trend is sharply reversed in the adult group, where women significantly outnumber men (226,009 vs. 157,822). As a result, women represent almost 59% of the registered adult displaced population.[337] Lack of documentation and irregular status remained key barriers to protection and integration for many refugees and migrants in Ecuador. To address this situation, the Government has implemented various immigration regularization procedures for the Colombian and Venezuelan populations, in parallel with the asylum procedure. The latest was completed in April 2024, with the support of UNHCR and IOM. This initiative registered 259,084 people and issued 199,000 immigration certificates and 95,809 temporary residence visas (VIRTE). Due to the high number of individuals who could not access the regularization plan, the government launched VIRTE II in August 224, expected to benefit 100,000 additional individuals.[338]

[336] UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 8
[337] UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 8
[338] UNHCR, Annual Results Report 2024, Ecuador,

Province of residence of VIRTE visa applicants



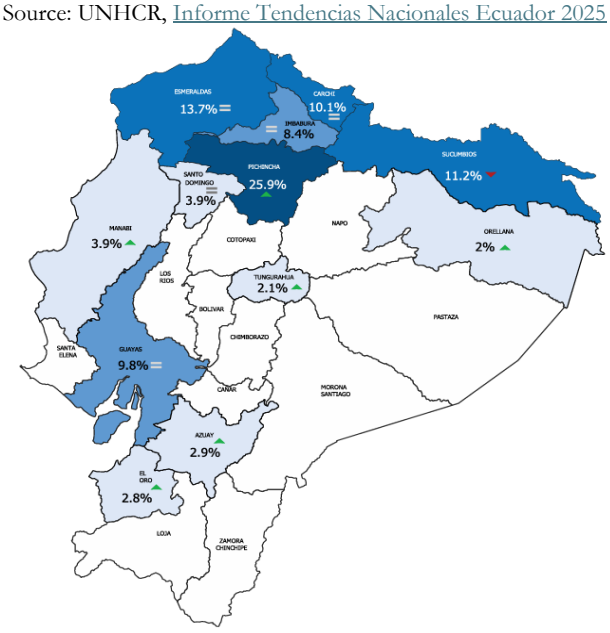
Source: UNHCR, Informe Tendencias Nacionales Ecuador 2025

The provinces with the highest number of applicants for the VIRTE visa, are concentrated in the central and coastal regions, specifically Pichincha and Guayas. For 2024, there were 259,084 people registered on the official website. Of these, 248,416 had scheduled appointments for biometric registration, and 199,930 had been issued a certificate of stay. A total of 140,277 applications for the VIRTE visa were submitted, with 95,809 individuals having already received their visa. Additionally, there were still 12,768 people with pending appointments to submit their documentation and 72,337 with documentation who had yet to complete the process.

Surveys revealed that approximately 70% of Venezuelans planning to stay in the country remained in an irregular status due to systemic barriers like high costs, a lack of information, and technical issues. Although a new regularization process was announced for late 2024, the government prematurely ended the initiative in March 2025. This decision closed off the few opportunities Venezuelans had to regularize their status, especially since regular entry requires a visa and there are no options to obtain documentation from abroad. Consequently, thousands of people are now in an irregular situation, which directly affects their ability to access fundamental rights, stability, and protection.[339] Colombians who have migrated to Ecuador are not limited to the border regions but have established themselves throughout the country.

Distribution of refugees from Colombia

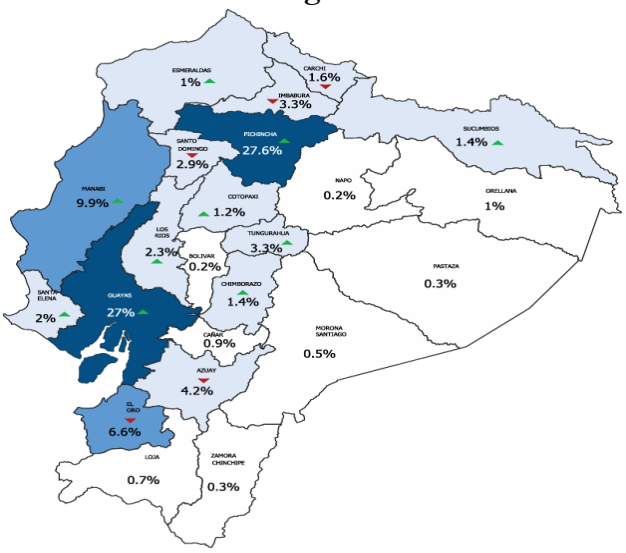
Source: UNHCR, Informe Tendencias Nacionales Ecuador 2025



While the 2001 census showed that 50% of the Colombian population was concentrated in the northern border, in the provinces of Carchi, Sucumbíos, and Esmeraldas, as well as in Pichincha, a later analysis indicates that they have spread to all other provinces. The largest numbers, however, are now found in the provinces of Pichincha, Guayas, and Santo Domingo de los Tsáchilas.[340] Colombians, consistent with historical trends, remain concentrated near the northern border, particularly in Sucumbíos province, due to historical, cultural, and family ties. However, there has been a noticeable decrease in this area, likely driven by rising violence and insecurity. In contrast, the Colombian population is growing in coastal and central regions, suggesting a move toward greater safety and better economic opportunities, possibly facilitated by established community networks.[341]

339 UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 13.
340 Valle A. (2017) "*Breve Análisis Histórico de la Inmigración al Ecuador*", Revista Facultad de Jurisprudencia RFJ, No. 2, pp. 387-389.
341 UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 10.

Distribution of refugees from Venezuela



Source: UNHCR, Informe Tendencias Nacionales Ecuador 2025

The Venezuelan population, on the other hand, shows a more dispersed settlement pattern, moving away from both the northern and southern borders and increasingly concentrating in the central highlands. This shift may be a response to the search for improved living conditions and access to basic services amid rising violence and instability. A decline in Venezuelan numbers at the borders could also indicate a change in routes or a diminished appeal of these areas due to security and economic precarity. Overall, the settlement dynamics of both groups reflect a complex interplay of geographic factors, personal safety concerns, economic opportunities, and community support networks.[342]

In the case of Peruvian immigrants in Ecuador, they are mainly concentrated in the southern border provinces. The largest number of Peruvians are located in the provinces of El Oro, Loja, Azuay, and Cañar, all of which are close to the southern border with Peru. According to the 2010 census, Peruvians were the third-largest group of migrants in Ecuador, with a registered population of 16,737. However, an earlier 2007 estimate suggests a much larger number, around 520,388, which indicates a significant number of undocumented immigrants.[343]

The spatial distribution of forced migration in Ecuador directly affects the caseload of its courts. Although no specific academic studies on the subject have been identified, the impact is evident. Provinces with the highest concentration of cases involving constitutional guarantees, such as protection actions and habeas corpus, also have a high percentage of people on the move. For example, 44% of the country's cases related to constitutional guarantees, such habeas corpus and protection actions, are concentrated in Pichincha and Guayas.[344]

C. Political and public debate in the country

Relevance of the topic in political debate

Ecuador's approach to human mobility and asylum has undergone a complex and at times contradictory evolution, reflecting a broader shift in the nation's political landscape. Initially, the focus was on protecting the rights of its own emigrants, but this stance has transformed into a more restrictive policy toward foreign populations arriving in the country. [345] This change is best described as a "policy of control with a human face", as the government has maintained a discourse of human rights while implementing measures that limit entry and complicate the path to legal residency.[346] This duality can be traced back to the period between 1998 and 2007, when migration policy was shaped by a tension between protection and control, mirroring a more restrictive tone in U.S. migration policy. During this time, legislative efforts primarily

[342] UNHCR (2025) *Informe Tendencias Nacionales*, cit., p. 9.
[343] Valle A. (2017) "*Breve Análisis Histórico*", cit., pp. 390-391.
[344] El Canal Noticias (2025) "*Consejo de la Judicatura",* cit.
[345] Freier L. & Luzes M. (2020) *How Humanitarian are Humanitarian Visas*, cit., p. 283.
[346] See Domenech E. (2017) "*Las políticas de migración en Sudamérica: elementos para el análisis crítico del control migratorio y fronterizo*", Terceiro Milênio: Revista Crítica de Sociologia e Política, Vol. 8/1, p. 38; Herrera G. (2022). *Migration and Migration Policy*, cit., pp. 20-25; See Ceja I. and Ramírez J. (2022) "*Continuum migratorio:*", cit., p. 284.

focused on penalizing migrant smuggling and regulating the entry and residence of foreigners. A significant shift began with the 2006 electoral campaign, where the *Alianza País* party, led by Rafael Correa, placed a rights-based migration policy at the centre of its agenda.

The legal framework for asylum in Ecuador has experienced four distinct phases, transitioning from a security-focused model to a rights-based one before reverting to a more controlled approach. The first phase, from 1987 to 2006, was characterized by a focus on national security and control, with emergency humanitarian aid for migrants largely managed by non-governmental organizations and international bodies. The second phase, from 2007 to 2009, marked a "golden era" for refugee recognition, as a new constitution and a rights-based policy expanded access to asylum and other rights. However, this period of openness was short-lived. The third phase, from 2010 to 2017, saw a significant rollback of these protections, with the government introducing stricter asylum application rules, increasing migration control operations, and even carrying out collective expulsions. These trends persisted despite the 2017 LOMH, which, though rights-based in character, lacked the necessary institutional support for full implementation. Ecuador's recent immigration policies represent a significant shift toward restriction, despite the country's constitutional and legal commitment to free human mobility. Although Ecuador introduced a humanitarian visa in August 2019 to aid Venezuelan migrants, the policy has been widely criticized for its restrictive nature. Key requirements, such as a passport and a mandatory US$50 fee for the application form, directly contradict the principles of the 2008 Constitution and the 2017 Human Mobility Law, which advocate for universal citizenship and the rejection of criminalizing migrants based on their migratory status.[347] Recently, in September 2025, the Temporary Visitor Visa for Transit was established to transit through the Ecuadorian State, as a last measure to control migratory flows. This restrictive turn has been fuelled by a combination of factors, including a national economic crisis and structural adjustments, among others, which have collectively weakened the state's capacity to provide comprehensive protection to migrants.[348] The government has further legitimized xenophobic rhetoric, using populist tactics that frame migration as a threat to national security and sovereignty. This has led to a rapid erosion of rights for those seeking international protection, with some state authorities even declaring the migrant movement a potential national security threat.[349] This shift marks a concerning departure from Ecuador's previously progressive stance on human mobility.

Rafael Correa 2007 – 2017

Upon taking office in 2007, President Correa framed migration as a consequence of neoliberal failure. This new administration institutionalized its migration policy by creating the National Secretariat for Migrants (SENAMI) in 2007 and presenting the National Plan for Human Development of Migrations, which embraced principles like the right to migrate, the idea that no human is illegal, and a transnational approach to family ties. These ideas were later enshrined in the 2008 Constitution, marking a radical change in the country's official approach to migration by moving from a security-centric view to a rights-based one.[350] Nevertheless, under the Correa presidency, Ecuador's approach to migration was marked by a significant gap between its progressive rhetoric and the reality of its legal framework.[351] While the 2008 Constitution and the policy of universal visa freedom championed the human right to migrate and the principle of universal citizenship, the outdated 1971 migration law remained in effect. This older legislation, described as "outdated", continued to criminalize irregular migrants, favouring deportations and providing very

[347] Freier L. & Luzes M. (2020) *How Humanitarian are Humanitarian Visas*, cit., p. 283.
[348] Hurtado Caicedo, F. et al (2020). "*(Des)protección de las personas refugiadas en Ecuador*". Quito: FES-ILDIS y Colectivo de Geografía Crítica de Ecuador.
[349] Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) (2025). "*Derecho a defender*", cit., p. 18.
[350] Ramírez, J. (2013) "*La Política migratoria en Ecuador: rupturas, continuidades y tensiones*", Quito: IAEN. Pp. 27-32.
[351] See Freier L.F., Correa A. and Aron V. (2018) "*El sufrimiento del migrante: la migración cubana en el sueño ecuatoriano de la libre movilidad*", Apuntes Vol. 84, pp. 102, 108; Álvarez Velasco S. (2020) "*From Ecuador to Elsewhere*", cit., p. 42;

limited options for regularization. The constitution's ideals were also undermined by the high fees for residence permits and a slow pace in implementing regional agreements, such as the MERCOSUR Residence Agreement. Consequently, despite the liberal discourse at the constitutional level, the practical implementation of migration policy led to a growing number of irregular migrants and a lack of coherent legal reform.[352]

The 2008 Constitution was a turning point, enshrining principles like universal citizenship and the free movement of people and granting significant rights to both Ecuadorian emigrants and immigrant populations. However, the policies implemented during this period largely centred on the Ecuadorian diaspora, such as the creation of the National Secretariat for Migrants (SENAMI). While an expanded registration program granted refugee status to around 30,000 Colombians, a subsequent decree restricted the definition of a refugee, leading to a considerable decrease in asylum grants. Moreover, following the implementation of a "no visa" policy in 2008, Ecuador quickly became a destination for migrants from various countries, including those in Africa, Asia, the Caribbean, and even Spain and the United States. In response to the increase in these migration flows, the government partially reversed its open borders policy by reintroducing visa requirements for citizens from specific nations:[353] Afghanistan, Bangladesh, China, Cuba, Eritrea, Ethiopia, Haiti, Kenya, Nepal, Nigeria, Pakistan, Senegal, and Somalia. While the official justification for this shift was to combat human trafficking and smuggling, the move has been linked to underlying ethnic and racial prejudices, as well as a desire by political actors to exclude specific groups.[354] Due to increasing pressure from Brazil, which wanted to limit the number of asylum seekers crossing its borders, Peru began requiring visas for Haitian citizens around 2012, and in August 2015, Ecuador's Ministry of Foreign Affairs and Human Mobility introduced new entry requirements, demanding that all Haitian tourists register online with a consulate and receive authorization to travel before their trip,[355] in order to control the influx of Haitians into the country.[356] A similar policy was implemented for Cubans nationals. Furthermore, during those years, there was "institutional violence" with arrests and deportations of groups of migrants, such as Cubans in 2016.[357]

In the period leading up to Ecuador's 2017 general elections, the deportation of Cuban nationals in 2016 was heavily influenced by political considerations. The government launched a public campaign announcing its intention to deport irregular migrants, a move framed as a response to public anxieties about crime and unemployment. This initiative culminated in the eviction of Cuban migrants from their camps in Quito, an operation overseen by the then-Interior Minister. Notably, five months after this highly publicized event, the Ministry was named the lead candidate for the governing party in the upcoming elections, suggesting a direct link between the government's anti-immigrant stance and its political strategy.[358]

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352 See Acosta D. and Freier, L.F. (2015) "Turning the immigration policy paradox up-side down? Populist liberalism and discursive gaps in South America", International Migration Review, 49 (3), 677- 680.

353 Herrera G. and Cabezas Gálvez G (2019) "*Ecuador: de la recepción"*, cit., p. 135.

354 Freier L.F. (2013) "Open doors (for almost all): visa policies and ethnic selectivity in Ecuador", CCIS Working Paper, No. 188; Freier L.F., Correa A. and Aron V. (2018) "*El sufrimiento del migrante*:", cit., p. 104.

355 Nieto C., "*Migración haitiana a Brasil"*, cit., p. 78; Ceja I. and Ramírez J. (2022) "*Continuum migratorio: Una década de migración haitiana en y por Ecuador*". In Handerson J. and Cédric A. (Eds.) El sistema migratorio haitiano en América del Sur proyectos, movilidades y políticas migratorias, Ciudad Autónoma de Buenos Aires: CLACSO, pp. 297-298.

356 See Fernandes D. and de Faria V.A. (2017), "*O visto humanitário como resposta ao pedido de refúgio dos haitianos*", R. bras. Est. Pop., Belo Horizonte, Vol. 34, No.1, p. 156; Álvarez Velasco S. (2020) "*From Ecuador to Elsewhere*", cit., pp. 43-44; Ceja I. and Ramírez J. (2022) "*Continuum migratorio:",* cit., p. 298.

357 Domenech E. and Dias G. (2020) "*Regimes de fronteira e "ilegalidade" migrante na América Latina e no Caribe*", Sociologias, Porto Alegre, Vol. 22, n. 55, p. 54.

358 Correa Álvarez A. (2020) "*Deportación, tránsito y refugio. El caso de los cubanos de El Arbolito en Ecuador*", PÉRIPLOS, Revista de Investigación sobre Migraciones. Vol. 3, No. 2, pp. 52-88

Later, in 2017, the LOMH incorporated constitutional principles but was followed by executive decrees that imposed visa requirements for specific nationalities, like Cubans and Venezuelans, contradicting the principle of free movement. These actions demonstrate that despite a progressive legal framework, the Ecuadorian executive's political agenda prioritized border control and selective entry policies, particularly in response to perceived security threats or public pressure.[359]

Lenin Moreno 2017 – 2021

During the presidency of Lenin Moreno, Ecuador's response to the Venezuelan migratory wave, particularly in late 2018, showed a clear shift from a rights-based approach to a securitized stance. While the government publicly framed the issue as a humanitarian crisis, its actions were paradoxically aimed at protecting Ecuadorian interests. This change was first signalled by a state of emergency declared in border provinces and was followed by a series of restrictive measures[360] that contradicted Ecuador's own laws. For example, the government began requiring passports from Venezuelan citizens for entry, even though the LOMH permitted regional migrants to enter with just a national ID. This measure, along with a subsequent requirement for apostilled criminal background checks, created significant barriers for Venezuelan migrants, many of whom faced immense difficulty in obtaining these documents due to their country's institutional crisis. Government officials, including the Interior Minister, justified these actions with alarmist rhetoric, linking migrants to public health risks and crime, which fuelled xenophobic sentiments.[361] Despite legal challenges from organizations like the Public Defender's Office and the IACHR, and a court order to suspend these measures, the government continued to introduce new, similarly restrictive requirements, reinforcing a policy that prioritized control and security over the constitutional and international human rights of migrants.

Guillermo Lasso 2021 – 2023

The migration policy of Guillermo Lasso's presidency (2021-2023) was characterized by a continuation of the security-focused approach seen under his predecessor, Lenín Moreno. Although Lasso's campaign rhetoric promised a more humanitarian stance and a broad regularization process for Venezuelans, his administration's actions were marked by a securitized and economic approach to human mobility. The government finally initiated an extraordinary regularization process for Venezuelans in June 2022, but the requirements—such as having entered the country through official channels and not being a "threat to public safety"—excluded many and were difficult to fulfil. Concurrently, the Lasso administration promoted a "nomad visa" to attract "digital nomads" from other countries, with significantly simpler requirements than those for Venezuelan migrants. This policy created a clear dichotomy: Venezuelans were viewed as a security threat, while digital nomads were seen as an economic opportunity. This approach, combined with institutional disarray, rising violence, and a stagnant economy, contributed to a new wave of Ecuadorian emigration, with an estimated 200,000 citizens leaving the country between May 2021 and May 2023. The government's focus on combating "risky migration" instead of addressing the

[359] Herrera G. (2022). *Migration and Migration Policy*, cit., pp. 20-25.
[360] Herrera G. and Cabezas Gálvez G (2019) "*Ecuador: de la recepción"*, cit., p. 138.
[361] Regarding the restrictive policies implemented by the Lenin Moreno administration, see Burbano Alarcón M., Zaldívar Rodríguez A., Vera Puebla M.F. (2019) "*La política pública",* cit., pp. 121-137; Ramírez, J. (2018) *"De la era de la migración al siglo de la seguridad: el surgimiento de "políticas de control con rostro (in)humano""*. Urvio, No. 23, FLACSO –Ecuador, pp. 10-28; Ramírez J., Linares Y. Useche E. (2019). *"(Geo)Políticas Migratorias, Inserción Laboral y Xenofobia: Migrantes Venezolanos en Ecuador*". In: Blouin C., Después de la Llegada. Realidades de la migración venezolana. Lima (Perú): Themis-PUCP, pp. 22-24; Ramírez J. (2020). *"De la ciudadanía suramericana al humanitarismo: el giro en la política y diplomacia migratoria ecuatoriana*". Estudios Fronterizos, Vol. 21, p. 2.

root causes of emigration, such as insecurity and lack of economic opportunities, highlights the disconnect between policy and the reality faced by many Ecuadorians.[362]

Daniel Noboa 2023-2025 (re-elected 2025-)

In the recent Ecuadorian presidential campaign, Venezuelan migrants were used as a "political weapon" by both candidates, Luisa González and Daniel Noboa. False narratives, combining misinformation and xenophobia, proliferated across platforms, asserting that Venezuelans were responsible for job losses, receiving undue economic benefits, and increasing crime. For instance, rumours spread about an agreement between Noboa and an opposition Venezuelan figure to grant public jobs to migrants, while González was falsely accused of planning to unite Ecuador and Venezuela. The disinformation campaign persisted, even making its way into the final presidential debate. The strategic and well-funded nature of this misinformation campaign, as noted by experts, capitalized on public anxieties, playing a significant role in a closely contested election where voter concerns about crime and foreigners were paramount.[363]

Relevance of the topic in public debate

Since the onset of Ecuador's severe economic crisis in the late 1990s, the country's media and government have increasingly focused on irregular migration.[364] Certain media narratives contribute to xenophobia towards refugees in Ecuador by repeatedly linking them with economic and security threats.[365] As a result, the Ecuadorian population prioritizes "national security" and advocates moderating the migratory flow.[366] The news often uses words like "criminality", "risk to national security", and "criminal record" to create a stereotype of refugees as dangerous. This is reinforced by the idea that refugees are an economic burden, with media language highlighting their "vulnerability", the "protection" they receive, and the potential for them to "exhaust domestic resources" and "increase requests" for aid. This constant association of refugees with danger and economic strain solidifies a negative image in the public imagination, fuelling prejudice and xenophobia.[367]

A study examining two major Ecuadorian newspapers, El Comercio and El Universo, during a six-month state of emergency and lockdown in 2020, found a significant focus on the Venezuelan immigrant community and issues like border blockades and humanitarian visas. The media's narrative frequently framed the Venezuelan community as a specific public concern, focusing on themes of order and security and neglecting other migrant populations, such as Colombians. The preference for informational genres and a heavy reliance on official sources, such as government authorities, further reinforced this framing, leading to a focus on the chaos and uncertainty of the situation rather than a human rights perspective.[368]

Likewise, a study of 18 local media podcasts from January 2020 to October 2021, concluded that the coverage of migration and human mobility in Ecuador was heavily influenced by current events and

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362 See Ramírez J. (2023) ""*El último que apague la luz": flujos, cambios y continuidades en las políticas migratorias del gobierno de Guillermo Lasso (Ecuador 2021-2023)"*, Revista Tlatelolco, UNAM, PUEDJS Vol. 2. No. 1.

363 Basante A.C. (2025) "*La migración venezolana en Ecuador es arma electoral entre Luisa González y Daniel Noboa*", El País, https://elpais.com/america/2025-04-13/la-migracion-venezolana-en-ecuador-es-arma-electoral-entre-luisa-gonzalez-y-daniel-noboa.html

364 Castañeda, A. and Valle A. (2010) "Irregular migration in Ecuador since the turn of the millennium. Development, economic background and discourses". Irregular Migration, Working paper No. 7/2010, Hamburg Institute of International Economics, p. 28.

365 Valle A. (2017) "*Breve Análisis Histórico de la Inmigración al Ecuador*", Revista Facultad de Jurisprudencia RFJ, No. 2, p. 392.

366 See Ripoll S. and Navas-Alemán L. (2018) "*Xenofobia y discriminación hacia refugiados y migrantes venezolanos en Ecuador y lecciones aprendidas para la promoción de la inclusión social*", Social Science in Humanitarian Action, p. 38.

367 Andrade, D. (2021). "*Discurso y refugio: análisis de representaciones de los migrantes venezolanos en la prensa ecuatoriana en 2019*". #PerDebate, Vol. No. 5, Quito: USFQ Press, p. 96.

368 See Márquez-Domínguez C., Asprino Salas M.C. and Cornejo Dávila L.A. (2022) "*Cobertura periodística de la migración en Ecuador durante los estados de excepción del 2020*", Contratexto, No. 38, p. 244-250

framed primarily through a security lens. While over 97% of refugees in the country are Colombian, the media's focus is driven by breaking news, such as the situation in Afghanistan, which received the same amount of coverage as Colombian refugees in the analysed episodes. Moreover, the podcasts consistently prioritized the migration of Venezuelan citizens, mentioning them in 78% of episodes. The language used often links migration to security and regularization, portraying migrants as a source of potential criminal activity. The most common voices belong to presenters and politicians, while migrants themselves were featured in only 11% of episodes. This lack of diverse perspectives, combined with the overwhelmingly expository content that provides little context, reinforced a negative perception of migrants and connected them to issues of violence and insecurity.[369]

Relevance of the topic in public opinion

Public opinion in Ecuador regarding refugees is a study in complexity, revealing a mix of humanitarian compassion and pragmatic scepticism. In this scenario, some restrictive measures imposed by the government in previous years, while not supported by law, found support in some public opinion and on social media.[370]

The Ipsos report from 2024 shows that, while there's a strong pro-refugee stance, with 81% of Ecuadorians believing people should be able to seek refuge from war or persecution, this empathy is tempered by suspicion. A significant majority of Ecuadorians, 74%, believe that most individuals seeking refuge are not genuine asylum seekers but rather economic migrants. This duality is evident in public attitudes toward border policies. Although a slight majority of 52% are against closing borders to refugees, a considerable minority of 44% supports such a measure. Interestingly, Ecuadorians are more supportive than the global average of expanding legal avenues for refugees, with 30% favouring more authorized routes. Views on the impact of refugees on the country are also divided. A majority of Ecuadorians, 54%, are optimistic about refugees' ability to integrate into society. However, economic and social concerns persist, with 42% believing refugees will negatively impact the job market and 46% anticipating a strain on public services like healthcare and education.

This public sentiment reflects broader anti-immigrant views, which are often amplified by media and social media and are rooted in xenophobia, aporophobia, and racism.[371] For instance, controversial statements in the media have fuelled negative stereotypes about Colombians. This led to widespread discrimination in Ecuadorian society, where Colombian men were labelled as drug traffickers, paramilitaries, guerrillas, or hitmen, and women were stereotyped as prostitutes.[372] More recently, Venezuelan migration is increasingly seen as a significant problem, driven by fears of job loss and an increase in crime.[373] This sentiment was tragically highlighted by the 2019 Ibarra incident. After a crime committed by a Venezuelan man was televised, a mob-led "social cleansing" ("*limpieza social*") began, culminating in the assault and expulsion of Venezuelan migrants.[374] Due to hostilities from a part of society towards the arrival of refugees, some organizations such as the Scalabrinian Mission, the Jesuit Refugee Service, the Pastoral Social Caritas Ecuador, the Ecuadorian Conference of Religious Men and Women, and the Justice and

[369] García Torres J. (2022) "*Migración y prensa ecuatoriana: Análisis de representaciones del inmigrante en pódcast entre 2020-2021*". #PerDebate, Vol. 6. Quito: USFQ Press, pp. 96-121.
[370] Burbano M., Zaldívar A. & Vera M. (2019) "*La política pública*", cit., p. 129.
[371] See Ramírez J., Linares Y. Useche E. (2019). *"(Geo)Políticas Migratorias*, cit., pp. 22-24; Ramírez J. (2020). *"De la ciudadanía"*, cit., p. 14; Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) (2025). "*Derecho a defender*", cit., p. 30.
[372] Zarama Santacruz J.M. (Ed.) (2018) "*Exilio colombiano. Huellas del conflicto armado más allá de las fronteras*", Centro Nacional de Memoria Histórica, p. 210.
[373] See Célleri D. (2023) "*Xenofobia y migración venezolana en Ecuador: Entre percepciones de inseguridad y competencia laboral*", European Review of Latin American and Caribbean Studies, No. 115, pp. 45-51.
[374] See Ramírez J., Linares Y. Useche E. (2019). *"(Geo)Políticas Migratorias*, cit., pp. 22-24; Ramírez J. (2020). *"De la ciudadanía"*, cit., p. 14; Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) (2025). "*Derecho a defender*", cit., p. 30.

Peace Commission of the Ecuadorian Episcopal Conference have pointed out the existence of a structural problem in need of an immediate attention and response.[375]

Implications that political debate and public opinion have on what occurs in judicial bodies

An analysis of Ecuadorian asylum jurisprudence reveals that political discourse may have influenced some judicial decisions regarding asylum barriers, particularly in the interpretation and application of the law. For instance, in the Constitutional Court's ruling *No. 002-14-SIN-CC* of 14 August 2014, the Court acknowledged the inherent inequality of a 15-day deadline for seeking asylum -established in Decree 1182- and extended it to three months. However, the ruling failed to address the core argument for eliminating a deadline entirely, which fundamentally misunderstands the nature of refugee status. The Court's reasoning implied that refugee status is "granted" after a formal process, stating that it is "acquired internationally after requesting admission to a safe country of asylum". This view is inconsistent with the principles of international law, which dictate that refugee status is not conferred by a state but is instead acquired the moment an individual meets the criteria of the 1951 Refugee Convention and the Cartagena Declaration. The existence of any deadline, even a more generous three-month period, ignores the reality of sur place refugees and does not extinguish a person's refugee status if the conditions for it are met.[376] This judicial decision may have been influenced by the prevailing political climate in the country, leading the court to opt for a compromise rather than a full elimination of the deadline.

Likewise, a notable example of this is seen in the 2016 judicial decisions, considered in Part I and II, concerning the expulsion of Cuban citizens, who had explicitly expressed their desire to apply for refugee status to prevent their deportation. Despite this, the judges, applying a restrictive interpretation of the law, ordered the individuals' deportation, arguing that they were not the competent authority to initiate the refugee procedure. These rulings appear to have favoured the foreign policy of the Rafael Correa administration, which considered Cuba a safe country[377] and had a strategic alliance with the Cuban government. This alignment allowed Cuban authorities to exert influence over decisions affecting their nationals in Ecuador.[378] This situation highlights the significant role of governmental ideology and foreign policy in shaping Ecuador's asylum policies and judicial outcomes.[379] The detained migrants were held for more than three days in the garage of the Flagrancy Unit in Quito, sleeping on the floor, waiting for the deportation hearing. These incidents underscore concerns about Ecuador's adherence to international human rights standards in its immigration enforcement practices.

D. Corruption

As mentioned in Part I, corruption appears to be part of the administrative failures, with information pointing to a link between migrant smuggling and the fraudulent processing of visas and asylum applications. In a study on prominent migration news from 2007 to 2009, researchers found that an increase in migratory flows to Ecuador coincided with the exposure of corruption cases within institutions handling migrant visas.[380] Another clear example of this is the experience of Haitian migrants in 2012 who were trying to reach Brazil by traveling through Ecuador. Many of them tried to apply for a Brazilian visa at the consulate in Quito, but the process was anything but simple. Appointments were often scheduled far beyond the three-month Ecuadorian tourist visa, a delay that may have been caused by high demand, consulate bureaucracy, or discrimination. This bureaucratic roadblock created a paradox: Haitians seeking legal entry into Brazil were forced to overstay their visas in Ecuador. As living costs rose during these long

375 Vatican, Country Profiles Ecuador, https://migrants-refugees.va/country-profile/ecuador/
376 Ubidia Vásquez, D. (2014). "*Impactos de la declaratoria"*, cit., p. 33.
377 Rodríguez N. (2014) "*The eye of the beholder*", cit., p. 20.
378 Freier L.F., Correa A. and Aron V. (2018) "*El sufrimiento del migrante"*, cit., p. 116.
379 Hammoud-Gallego O. (2022). "*A Liberal Region*", cit., p. 83.
380 See Castañeda, A. and Valle A. (2010) "*Irregular migration in Ecuador*", cit., p. 26.

waits, many felt they had no choice but to either pay for an earlier visa appointment or continue their journey illegally through Peru. The nationality of the individuals who sold these fraudulent visa slots is unknown.[381]

Furthermore, informal conversations with academics suggest anecdotal evidence of corruption in both border entry and resettlement procedures. However, recent studies or reports on the topic are lacking.

While no specific cases of corruption in asylum decision-making have been publicly identified, the broader issue of corruption in Ecuador's justice system remains a significant problem. A study of criminal courts nationwide showed that judicial corruption in Ecuador is a significant and widespread problem that varies according to the judicial hierarchy. In higher-ranking courts, a greater number of actors are involved, negotiations are more intense, and illicit payments are larger. The study's findings reveal that, in the presence of economic or other incentives, impunity in criminal matters is virtually assured. Furthermore, lawyers play a crucial role as key intermediaries in illicit agreements that lead to fraudulent judicial decisions, particularly in cases with high economic or political stakes. Likewise, the role of prosecutors is also key to the perpetration of judicial corruption. The complexity of these agreements increases with the importance of the judicial decision within the criminal process, and the value of the material or symbolic resources exchanged for a favourable ruling varies according to the interests involved.[382]

Furthermore, in 2024, the Judicial Council's response to the widespread "Purge Case" highlights the severity of this issue. This investigation implicated several judges in corruption networks, prompting the council to declare an extraordinary and urgent need to appoint temporary judges for the Provincial Court and administrative courts in Guayas province.[383]

E. Other socio-political factors

Although it does not directly influence the access to asylum, it is interesting to note that Ecuador faced external pressures to modify its visa policies. Following the 2008 "open doors" decree, the country faced considerable external pressure to change it. This international concern stemmed from fears that Ecuador's porous borders would facilitate "irregular south-south migration" to other countries in the Americas. China, for example, reportedly urged President Correa to reinstate visas, warning that Ecuador could become a "platform for the Chinese mafia". Similarly, the United States and Central American nations expressed concern that Ecuador was being used as a "trampoline" for immigrants seeking to enter the U.S. These discussions often conflated legitimate concerns about human smuggling and terrorism with racial and ethnic profiling. This was evident in Operation "Twilight", where Ecuadorian police, acting on a tip from the U.S. government, detained Muslim immigrants on ethnic grounds. This external pressure, often tied to financial aid and immigration management cooperation, was a key factor in Ecuador's decision to selectively reintroduce visa requirements for certain African and Asian nationalities.[384]

[381] See Rojas R. (2020), *Latin America's Lucrative*, cit.; Ceja I. and Ramírez J. (2022) "*Continuum migratorio: Una década de migración haitiana en y por Ecuador*". In Handerson J. and Cédric A. (Eds.) El sistema migratorio haitiano en América del Sur proyectos, movilidades y políticas migratorias, Ciudad Autónoma de Buenos Aires: CLACSO, p. 294.
[382] See Basabe S. (2024) "*La corrupción judicial en América Latina: Ecuador en perspectiva comparada*", Perfiles Latinoamericanos, Vol. 32(63), p. 21.
[383] See Council of the Judiciary (2024) "*Rendiciòn de cuentas 2024*". cit., p. 32.
[384] Freier L.F. (2013) "*Open doors*", cit., pp. 17, 18.