ACCESS

The Role of Courts in Shaping Access to Asylum

CHILE
NATIONAL REPORT

2026

Data collection: Nov. 2024 – Dec. 2025

DOI 10.6092/unibo/amsacta/9025

Sara Mariella Lambertini Martinez,
University of Bologna

ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA

DEPARTMENT OF POLITICAL AND SOCIAL SCIENCES

ACCESS is funded by the European Research Council 2022 Starting Grant Gatekeepers to International Refugee Law—The Role of Courts in Shaping Access to Asylum [101078683].

European Research Council
Established by the European Commission

CONTENTS

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

This section identifies the barriers to accessing asylum relevant to Chile between 2010 and 2024.

A. Barriers of general relevance

Which of these barriers are implemented in this jurisdiction?

Pushbacks: ☒

Walls and fences: ☒

Detention: ☒

Procedural barriers: ☒

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: Between 2010 and 2024, Chile has increasingly implemented restrictive border rejection and summary expulsion policies for individuals without legal immigration status, focusing on northern border regions and airports. The Investigative Police (PDI) and, since 2019, the Armed Forces have been the primary actors enforcing these measures. These barriers are facilitated by physical infrastructure like border trenches and technologies such as the "Digital Wall", often intersecting with bureaucratic hurdles for asylum applications, for instance, the "self-reporting" for irregular entry, and administrative detention. Chilean immigration policy grants significant discretionary power to border officials, sometimes leading to denials of asylum access, and a recent agreement with Bolivia further allows for the return of irregular migrants to that country. The government justifies these measures as essential for controlling migration flows, protecting national security, and preventing criminal activities and irregular entry. However, national and international bodies have consistently raised concerns regarding due process violations, the absence of individualized assessments, the risk of violating the principle of non-refoulement, and limited access to protection mechanisms, particularly for vulnerable groups.

1. Functioning: The specific operation of this barrier is to prevent the entry of persons into the territory of the Republic of Chile or to summarily expel those with an irregular status, thus denying them access to asylum. This is evidenced in cases where Chilean authorities have denied entry at border controls without conducting individualized assessments of protection needs, thereby preventing the initiation of asylum procedures, which require the applicant's presence in Chilean territory to submit the application. Furthermore, documented cases of summary expulsion or immediate return of foreigners who have crossed the border irregularly demonstrate a lack of adequate consideration of potential protection requirements and the opportunity to submit an asylum application. In cases of expulsion, persons with an irregular migratory status within Chilean territory are issued expulsion orders for immigration violations, such as unauthorized border crossings, and are ordered to leave the country. While in cases of immediate return, the measure is implemented within ten kilometres of the Chilean border. Upon interception, individuals are transferred to a police station for identification, data collection, and fingerprinting. Subsequently, authorities issue an immediate return order, and the individual is then escorted to the border for handover to authorities in their country of origin or the presumed country of illegal transit. The contentious aspect of this process is that this order can only be challenged at Chilean consulates located

in the country to which the individual has been returned, often rendering the exercise of this right practically impossible.[2]

2. Time: While the exact date this barrier was implemented is unknown, there is information that pushbacks and summary expulsions occurred in Chile since 2010, particularly on the border between Chile and Peru.[3] In recent years, this practice has also been identified on the border between Chile and Bolivia, first only for Bolivian citizens who crossed into Chile irregularly and, after the protocol signed between both countries in February 2025, also for nationals of third countries. There is no prescribed timeframe for compliance with this barrier.

3. Place: The barrier applies throughout the national territory, although specific practices may vary regionally. Denials of entry are particularly prevalent in northern Chile, specifically in the regions of Arica and Parinacota, Tarapacá, and Antofagasta, along the borders with Peru and Bolivia. Similarly, immediate return procedures are in place for foreigners who have entered Chilean territory without authorization, especially through the northern border. Summary expulsions for irregular entry can occur at the border and within the national territory.

4. Actors: The Investigative Police (*Policía de Investigaciones* - PDI) is the primary authority responsible for enforcing this barrier. Border control, initially a police function, was reassigned to the armed forces in 2019, originally on a temporary basis, and subsequently, permanently. Currently, both police and armed forces jointly conduct border control and the expulsion of migrants without lawful status. Conversely, in instances of immediate return, the Bolivian police have played a significant role in readmitting Bolivian nationals and denying entry to foreign nationals refused admission by Chile. Subsequent to the execution of the agreement facilitating migrant return between the two nations, enhanced cooperation is anticipated from Bolivian border authorities in readmitting third-country nationals denied admission to Chilean territory.

5. Interaction: Border rejections and the immediate return of foreign nationals are facilitated by physical barriers, such as the trench constructed along the northern border between Chile and Bolivia, as well as by the use of technology for border control and the interception of those crossing without authorization, such as the "Digital Wall". Pushbacks at the airport interact with bureaucratic obstacles, in particular visa requirements. In the context of summary expulsions, these measures can intersect with bureaucratic impediments to submitting asylum applications, particularly the self-declaration of irregular entry, which is utilized as evidence for administrative expulsion due to non-compliance with immigration regulations.[4] Furthermore, this practice can intersect with administrative detention pending expulsion from Chilean territory. The self-declaration of irregular entry will be detailed in the section on bureaucratic barriers, and deprivation of liberty for deportation purposes will be discussed in the section on detention.

6. Development: Chile's immigration landscape has undergone a notable transformation since 2010. While historically a destination for European immigrants in the 19th and early 20th centuries, and experiencing a decline post-World War II, recent years have witnessed increased diversification, including the arrival of migrants of African descent from Colombia and Haiti, and a substantial influx from Venezuela.[5] This evolving context has coincided with a shift in Chilean migration policy. During her first presidential term (2006-2010), Michele Bachelet's administration championed Law No. 20.430, which, after its approval in 2010 and promulgation in 2011, established comprehensive provisions for refugee protection in Chile.

[2] See Supreme Court No. 12.157-2022, adjudicated on 26 December 2022.
[3] H. Olea, 2012, *Refugiados en Chile: Análisis de la Ley 20.430 y su reglamento*, Alber to Coddou (ed.), *Informe 2012*, Santiago, Universidad Diego Portales, p. 122.
[4] See D. Lawson and M. Rodríguez, 2016, *El debido proceso en los procedimientos de expulsión administrativa de inmigrantes: situación actual y alternativas*, T. Vial Solar (ed.), Informe anual sobre derechos humanos en Chile 2016, p. 224.
[5] Doña-Reveco C., Chile's Welcoming Approach to Immigrants Cools as Numbers, 18/05/2022, in Migration Policy Institute, https://www.migrationpolicy.org/article/chile-immigrants-rising-numbers

Notably, this legislation enshrined the principle of *non-refoulement* robustly, guaranteeing that individuals would not be returned to a place where they face danger and prohibiting the imposition of entry bans.[6]

President Sebastian Piñera (2010- 2014 and 2018- 2022) introduced measures that, while not overtly denying the right to seek asylum, raise serious concerns regarding the effective access to refugee status determination. A significant milestone in Chile's border control policy was the implementation of the Northern Border plan ("*Frontera Norte*") from 2010 to 2014, which aimed to contain "dangerous mobilities" associated with organized crime, drug trafficking, and migrant smuggling.[7] In 2017, the Chilean executive unveiled his "cleaning up the house" migration doctrine[8] with more restrictive policies. This initiative was followed in 2018 by the Secure Border Plan ("*Plan Frontera Segura*"), which further reinforced security measures and coincided with the imposition of consular visas for Haitian and Venezuelan nationals. These two government plans, focusing on migration and border control, converged to create a narrative centred on safeguarding the border and restricting the entry of "undesirable" groups.[9]

In March 2018, Chile's president advanced migration reforms with measures that reflect a juxtaposition of visions between securitisation and human rights.[10] And in April 2021, the new migration law was approved, enclosed in that doctrine.[11] While ostensibly framed with human rights language, the law significantly increased the authority's directionality and power to expel migrants and limit their access to protections. In particular, the law introduced the "immediate return" (*reconducción inmediata*) for irregular border crossings.[12] This policy grants Chilean border officials the authority to detain and immediately return individuals found entering through unauthorized crossings directly to their country of origin's border. This immediate action provides unchecked discretionary power to law enforcement and lacks accountability. Consequently, it constitutes a clear violation of migrants' rights by denying them the opportunity to self-defence, explain their situation, or seek asylum or other international protection.[13] Moreover, in 2019, Chilean authorities introduced a "consular tourist visa" requirement for Venezuelan citizens intending to travel to Chile. The absence of this prerequisite subsequently led to a rise in border rejections and an increase in irregular crossings via unauthorized routes.[14] This evolving situation, in turn, prompted a more stringent approach from Chilean authorities regarding the request for "voluntary declarations of illegal entry" (self-reporting), thereby creating a significant impediment to accessing asylum, as will be elaborated in the section on bureaucratic barriers.

In February 2023, and pursuant to the Critical Infrastructure Law, No. 21.542, the Armed Forces were granted the authority to conduct identity checks and registration within delimited border zones, as well as to detain individuals for the sole purpose of placing them at the disposal of the police within a twelve-hour period. Moreover, in February 2024, Law No. 21.655 was published, amending Law 21.325 (Migration and Foreign Nationals Law), in relation to the measure of immediate return of foreign persons who enter Chile irregularly. The new Article 131 of Law 21.325 mandates the immediate removal of

[6] H. Olea, 2012, *Refugiados en Chile*, Cit., p. 117.
[7] Ramos, R. & Tapia Ladino, M. (2024) "*Entre humanitarismo y seguridad: la reorganización del control fronterizo en Chile (2010-2022)*", Estudios Fronterizos, Vol. 25, p. 5.
[8] Doña-Reveco C., How Chile's welcome turned sour, 18/04/2024, https://mixedmigration.org/chiles-response-to-migration/
[9] Ramos, R. & Tapia Ladino, M. (2024) "*Entre humanitarismo y seguridad",* cit., p. 5.
[10] D. Acosta, M. Vera-Espinoza, L. Brumat, 2018, The New Chilean Government and its Shifting Attitudes on Migration Governance, Migration Policy Centre, https://migrationpolicycentre.eu/new-chilean-government-shifting-attitudes-migration-governance/
[11] Sanders R., Chile's Immigration Challenges Heat Up Ahead of 2025 Elections, in United States Institute of Peace, 22/01/2015, https://www.usip.org/publications/2025/01/chiles-immigration-challenges-heat-ahead-2025-elections
[12] Doña-Reveco C., *Chile's Welcoming Approach*, Op. cit.; OCHA, R4V, Special Situation Report - Bolivia, Chile & Peru, 18/02/2022, https://reliefweb.int/report/bolivia-plurinational-state/special-situation-report-bolivia-chile-peru-18-february-2022
[13] Pascual T. and Rodríguez M. 2021, Chile's new immigration law: an adaptable solution or further crackdown?, Migration Mobilities Bristol, MMB Latin America, https://mmblatinamerica.blogs.bristol.ac.uk/2021/07/21/chiles-new-immigration-law-an-adaptable-solution-or-further-crackdown/
[14] Álvarez V. et al. (2023). *Derechos de las personas en movilidad humana: Ingresos por pasos no habilitados y desprotección*, in Schönsteiner E. (Ed.) *Informe Anual sobre Derechos Humanos en Chile 2022*, Universidad Diego Portales, pp. 275-276.

individuals who re-enter Chile while an expulsion or entry ban is active, without requiring a new resolution. Similarly, foreigners caught attempting to enter or having entered by evading control (including within 10km of the border or using false documents) face immediate return, with a temporary one-year entry ban. The controlling authority must inform the National Immigration Service (SERMIG) to determine the full duration of the ban, which becomes void if not decided within six months. According to the provisions of the law, before the removal, individuals have the right to be heard, informed of the process and appeals, contact relatives in Chile, and receive interpreter assistance. The decision is appealing from abroad through Chilean consulates within fifteen days, although the appeal doesn't suspend the removal. Exceptions to return include suspected victims of trafficking or serious crimes and those required by Chilean courts. Finally, individuals who are reconducted must receive written notification of the reasons for the action. Despite explicit proposals during parliamentary debates to include the right to seek and receive asylum, along with the principle of non-refoulement as mandated by international law,[15] these provisions were ultimately not integrated into the final article.

Furthermore, in December 2024, the governments of Chile and Bolivia executed the Interinstitutional Agreement on Migration Cooperation, and its Protocol, which permits the immediate return of migrants without lawful status, was executed at the end of February 2025. As the content of the protocol is not publicly available, the actual return of third-country nationals returned to Bolivia from Chile remains unknown.

It should be noted that asylum seekers entering Chile are often unaware of their rights due to a lack of information from border police.[16] Besides, Chilean border officials wield considerable discretion in deciding who is admitted into the country, basing their decisions on individual assessments. For individuals seeking refuge, this can mean that the asylum application process begins at the border itself, where they must "persuade" an officer of the PDI of their refugee status to be granted entry and initiate the formal recognition process.[17] This discretionary power is compounded by concerning practices such as the verbal refusal of entry[18] without written notification or the possibility of appeal,[19] often forcing individuals to resort to irregular entry, which can later impede their asylum claims.[20] The National Institute of Human Rights of Chile has documented irregularities, particularly at the northern border, including information gaps and arbitrary rejections.[21] Alarmingly, some border authorities reportedly engage in illegal practices that deny the right to seek asylum, such as outright refusal of entry without informing individuals of asylum procedures and conducting informal "pre-admissibility" interviews that act as verbal screenings, effectively blocking access to formal processes without due process.[22] The practice of pre-admissibility interviews will be detailed in the section dedicated to bureaucratic barriers.

In addition, Chilean immigration regulations lack specific standards for expulsion procedures, and removal orders often fail to demonstrate a reasoned assessment of the infraction versus the sanction or consideration of the impact on family unity or the rights of children. Frequently, removal orders rely solely on technical reports from the PDI, such as those indicating irregular entry, without a thorough and fair

---

15 See Chamber of Deputies. 2023. Informe de Comisión de Gobierno, Sesión 116. Legislatura 371.

16 Doña-Reveco C., *How Chile's welcome*, cit.

17 H. Olea, 2012, *Refugiados en Chile*, Cit. p. 121.

18 One of the problems that exist around this right is that, at the border, people in need of international protection are not allowed to enter the national territory, despite clearly stating their intention to be applicants for refugee status or having clear stories or indications of needing international protection. Gutiérrez F. & Vargas F., *Trabas en el ejercicio del derecho humano a buscar y recibir asilo en Chile: el ingreso al procedimiento de asilo*, in *Revista de Derecho*, Vol. XXXVI - Nº 1, June 2023, p. 148

19 National Institute of Human Rights (INDH). (2022). *Informe Anual 2021, Situación de los Derechos Humanos en Chile*, p. 164.

20 Nationa Institute of Human Rights (INDH), *Informe Misión de Observación. Situación de la población migrante en Iquique y Colchane. Región de Tarapacá, 29 al 31 de mayo de 2013*, p. 17; Liberona Concha N. & López E., *Crisis del sistema humanitario en Chile. Refugiadas colombianas deslegitimadas en la frontera norte*, in Estudios Atacameños, No. 60, San Pedro de Atacama, December 2018, https://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0718-10432018005001502&lng=en&nrm=iso&tlng=en; Doña-Reveco C., *How Chile's welcome*, cit.

21 National Institute of Human Rights (INDH), *Informe Misión de Observación*, Op. Cit.p. 28

22 Amnesty International, *"Nadie quiere vivir en clandestinidad". Desprotección de personas refugiadas venezolanas en chile*, 2023, pp. 9-10.

investigation. This practice undermines the constitutional right to defence and the opportunity to refute allegations. Furthermore, beyond the lack of clear regulations, fundamental due process guarantees like access to legal counsel, interpreters, consular notification, and adequate information are often violated in these expulsion proceedings.[23]

Social tensions arising from increased migratory flows in the northern regions of the country constitute a significant factor contributing to the implementation of this barrier. In 2022, the border town of Colchane, situated on the northern frontier, became a focal point[24] of such tensions. Protests expressing opposition to the influx of migrants escalated into violence when local residents ignited a migrant encampment in the town's central square. This incident served as a stark manifestation of the social unrest generated by uncontrolled immigration in Chile. Concurrently, authorities in Chilean border towns proximate to Peru and Bolivia had advocated for the adoption of more stringent measures to curtail the entry of migrants originating from countries including Colombia, Haiti, and El Salvador.[25]

During the period under study, cases of border rejections or summary expulsions have been documented in Chile. For instance, between February and May 2021, Chile collectively expelled hundreds of migrants,[26] violating international law by failing to conduct individual assessments or allow them to seek protection. Notably, in April 2021, at least 55 Venezuelan migrants were summarily expelled from Iquique airport after being detained without communication and denied legal assistance.[27] An analysis of 610 expulsion resolutions for illegal entry, issued by the Tarapacá Municipality (northern border) between February and April 2021, revealed a pattern of uniformity. Despite being directed at distinct individuals, the resolutions were found to be verbatim copies. These documents detailed the relevant legal provisions and the actions taken by the police and the Municipality, culminating in an expulsion order. Critically, there was a complete absence of individualized case analysis, and the affected individuals were not afforded information regarding their factual or legal options to seek asylum and initiate a refugee status recognition procedure.[28] The National Institute of Human Rights of Chile found that this uniform application of expulsion decisions contravened human rights standards by failing to provide for individualized assessments of cases.[29]

Moreover, in February 2022, at least 70 people, mainly Venezuelan refugees and migrants, were immediate reconducted from Chile to Bolivia. On 13 February, more than 50 of these individuals, including at least 20 children, were stranded for several hours at the border crossing between the cities of Colchane (Chile) and Pisiga (Bolivia). These people were denied entry to Chile, and they expressed their unwillingness to return to Bolivia. In the end, people who were removed from Chile returned to Bolivia. There is also evidence that during that month, there were some "pushbacks" and "expulsions" of Venezuelan refugees and migrants on the border between Chile and Peru. According to the information, these persons were detained by the Chilean police and returned to Peru.[30] It should be noted that the closure of borders and

[23] D. Lawson and M. Rodríguez, 2016, *El debido proceso*, cit., p. 224.
[24] Sanders R., Chile's Immigration challenges heat up ahead of 2025 Elections, in United States Institute of Peace, 22/01/2015, https://www.usip.org/publications/2025/01/chiles-immigration-challenges-heat-ahead-2025-elections
[25] Acero L. and Zuleta P., 2024, *Visions of the new migration policy in Chile: a brief analysis of leaders' narratives*, in *International Journal of Social Sciences and Management Review*, Vol. 07/05, p. 451.
[26] See Jiménez V. (2021). *Expulsiones colectivas en el Plan Colchane: La necesidad y propuesta de una sistematización de un concepto de expulsión colectiva*, Anuario de Derechos Humanos, Universidad de Chile, Vol. 17(2), p. 407.
[27] OHCHR, Chile: Arbitrary and collective expulsion of migrants must stop - UN experts, 19/05/2021, https://www.ohchr.org/en/press-releases/2021/05/chile-arbitrary-and-collective-expulsion-migrants-must-stop-un-experts?LangID=E&NewsID=27103; Amnesty International, *Amnistía Internacional Chile repudia la nueva oleada de detenciones y expulsiones ilegales en contra personas migrantes*, 27/04/2021, https://amnistia.cl/detenciones-y-expulsiones-ilegales-en-contra-personas-migrantes/
[28] See Vargas F. & Canesa M., *Derechos de las personas migrantes y refugiadas: La desprotección colectiva*, Centro de Derechos Humanos UDP, 2021, p. 320; Álvarez V. et al. (2023). *Derechos de las personas*, cit., pp. 286-287.
[29] National Institute of Human Rights (INDH), *Informe Misión de Observación*, Op. Cit.p. 28
[30] OCHA, R4V, *Special Situation Report, cit.*

the expulsion of a significant number of migrants to their countries of origin, presented publicly with sensationalist overtones, was strongly supported by Chilean society and the local press.[31]

7. Rationale: These measures are part of controlling migration flows and protecting security in the country. The government explicitly aims to prevent the entry of individuals involved in criminal activities, organized crime, drug trafficking, smuggling, and human trafficking, as well as those who disregard Chilean legal statutes. The policy also emphasizes that entering or attempting to enter Chile through unauthorized border crossings constitutes an offense that risks expulsion.

The immigration measures adopted in Chile since President Piñera's first term (2010-2014) stipulate that "countries, in accordance with international regulations, can establish clear rules for the entry and expulsion" of foreigners.[32] During President Piñera's second term (2018-2022), his statements reaffirmed this position. Regarding Decree 265 from January 2021, which allowed the Chilean Armed Forces to assist in border control, he indicated that this was a measure to "end the migratory disorder" and "put order in the house", reflecting a policy focused on combating illegal immigration. This was done with the aim of "protecting the security and improving the quality of life of the inhabitants" of Chile and of migrants.[33] Moreover, in 2021 declared, "We do not permit the entry of individuals engaged in criminal activity, organized crime, drug trafficking, smuggling, human trafficking, or those who disregard our legal statutes".[34] Furthermore, stated in 2021 that "those who enter or attempt to enter the Republic of Chile through unauthorized border crossings not only commit a criminal offense but also risk expulsion".[35]

Moreover, in 2023, the mayor of the city of Colchane estimated that at least 400 undocumented individuals were entering daily through his town's border region, a primary entry point. The governor of Arica and Parinacota called for the military to be authorized to "prevent entry through irregular crossings" at the border itself, rather than solely conducting inland road checks.[36]

8. Legal Status: Individuals affected by the inability to enter the territory or by the immediate return to the country from which they legally entered are not protected under Chilean law because they did not submit an asylum application. Individuals subject to a summary expulsion order may appeal the decision pursuant to Article 141 of Law 21.325 (Migration and Foreign Nationals Law). However, the immediate return to another country is not subject to the appeal process outlined in this article and must therefore be challenged at Chilean consulates abroad, as stipulated in Article 35 of the same law. This maintains the individual in an irregular situation and impedes access to legal assistance for filing an appeal.[37]

9. Specific Impact: Initially, this barrier affects all people equally, without distinction. However, women and children may experience disproportionately severe adverse effects due to police violence or the absence of protection following border rejection or expulsion. Furthermore, vulnerable groups, including victims of human trafficking, are also particularly affected.

---

[31] Acero L. & Zuleta P., *Visions of the new migration policy in Chile: a brief analysis of leaders' narratives*, in *International Journal of Social Sciences and Management Review*, Vol. 07/05, September - October 2024, p. 451.

[32] La Tercera, 2018, Rodrigo Ubilla, subsecretario del Interior: "Los gobiernos tienen que hacerse cargo, no decir 'oye, pero esto no estaba en el programa'", 15/04/2018, https://www.latercera.com/politica/noticia/rodrigo-ubilla-subsecretario-del-interior-los-gobiernos-tienen-hacerse-cargo-no-decir-oye-no-estaba-programa/133935/

[33] Presidency of the Republic, *S.E. el Presidente de la República, Sebastián Piñera Echenique, firma decreto que permite que las FF.AA. apoyen en el control de la migración ilegal por pasos no habilitados*, 12/01/2021, https://prensa.presidencia.cl/lfi-content/uploads/2021/01/12-01-2021-pdte-pinera-firma-decreto-que-permite-que-las-ffaa-apoyen-en-el-control-de-la-migracion-ilegal-por-pasos-no-habilitados-texto-oficial.pdf

[34] Government of Chile, *Presidente Piñera promulga nueva Ley de Migraciones para Chile*, 11/04/2021, https://prensa.presidencia.cl/discurso.aspx?id=173742

[35] Government of Chile, *Presidente Piñera promulga, cit.*

[36] BBC, *La crisis migratoria lleva al gobierno de Boric a militarizar la frontera norte de Chile*, 27/02/2023, https://www.bbc.com/mundo/noticias-america-latina-64764691

[37] Jesuit Migrant Service (SJM), *Informe seguimiento a la Política Nacional de Migraciones y la Ley de Refugio en Chile*, Santiago, Jannuary 2024, p. 26, https://sjmchile.org/wp-content/uploads/2024/03/informe-seguimiento-politica-migraciones-y-ley-de-refugio.pdf

10. Reach: Regarding irregular entries into Chile, as recorded primarily by the PDI for adults, have shown an increase over the last decade. Starting with a relatively low figure of 1,109 in 2012, there was a gradual increase until 2017, reaching 2,905. A notable surge occurred in 2018, more than doubling the previous year's figure to 6,310, and this upward trend continued with 8,048 entries in 2019 and a significant jump to 16,848 in 2020. The peak of irregular entries was observed in 2021, with 56,586 individuals recorded, followed by a slight decrease to 53,875 in 2022. The data for the first five months of 2023 shows 8,070 irregular entries, suggesting a potential decrease compared to the preceding two years if this rate were to continue.[38] By December 2024, there appears to have been a significant reduction in irregular border crossings in Chile following the militarization of border areas in early 2023, with irregular entries decreasing by 37% compared to 2023 and 49% compared to 2021.[39]

Moreover, in Chile, the total number of refugee applications saw a significant drop in 2019 to 781, compared to 5,723 in 2017 and 5,726 in 2018. Applications then increased in subsequent years, reaching 1,628 in 2020, 3,867 in 2021, and peaking at 5,138 in 2022, before decreasing slightly to 3,612 in 2023.[40] In this regard, the overall scale of numbers between irregular entries and refugee applications differs considerably, suggesting that not all individuals entering irregularly necessarily seek asylum in Chile.

Furthermore, the administrative expulsion orders issued and executed in Chile between 2017 and 2022 fluctuated significantly over the period. The number of administrative expulsion orders issued starting at 2,951 in 2017, slightly increased to 3,307 in 2018, then more than doubled to 6,702 in 2019. Following this peak, the number of orders decreased to 3,963 in 2020 before rising again to 6,889 in 2021. A sharp decrease was observed in 2022, with only 911 expulsion orders issued. Meanwhile, the number of administrative expulsions executed remained consistently low throughout the period. The highest number of executed expulsions was in 2017, with 978. This number then sharply declined to 302 in 2018, 576 in 2019, 202 in 2020, 246 in 2021, and reached a low of only 31 in 2022.[41]

Comparing the trends of irregular entries and administrative expulsions between 2017 and 2022 reveals a significant disparity. While irregular entries exhibited a strong upward trend, peaking dramatically in 2021 and remaining high in 2022, the number of executed administrative expulsions remained consistently low throughout the same period. Despite a substantial increase in irregular border crossings, particularly from 2018 onwards, the actual implementation of administrative expulsion orders saw a very low execution rate, declining from 33.1% in 2017 to a mere 3.4% in 2022. This suggests that while there was a significant rise in individuals entering Chile irregularly, the government's capacity or policy to carry out administrative expulsions did not keep pace with this increase, resulting in a large gap between the number of expulsion orders issued and the number effectively executed.

11. Source: Entry denials at the border are based on Decree 78 from 2022, which delegates the protection of border areas to the Army, a power that was previously under the PDI. Moreover, the Critical Infrastructure Law, No. 21.542, of February 2023, gives the Armed Forces the authority to control identity and registration in the areas of the delimited border zones, as well as detention for the sole purpose of placing people at the disposal of the police, within a 12-hour period. The expulsions and the immediate return are based on Articles 126 and 131 of Law 21.325 and the Interinstitutional Agreement on Migration Cooperation between the governments of Chile and Bolivia (December 2024), and its Protocol (February 2025).

[38] Jesuit Migrants Service, 2023, *Anuario estadístico de movilidad humana 2023 en Chile*, p. 19. The total number of individuals who were rejected at the border by authorities in Chile for 2018 is 13,742, according to Pascual T. (2020). La (des)protección de los derechos humanos en contextos de movilidad humana en Chile: Expulsiones administrativas y solicitudes de protección internacional, in Anuario de Derechos Humanos Vol. 16(2), p. 398.

[39] Anfossi A., *Chile y Bolivia acuerdan reconducir reingreso de migrantes irregulares* , 23/12/2024, https://www.jornada.com.mx/noticia/2024/12/23/mundo/chile-y-bolivia-acuerdan-reconducir-reingreso-de-migrantes-irregulares-4535

[40] Jesuit Migrants Service, *2023, Anuario estadístico*, Cit., p. 31.

[41] Jesuit Migrants Service, 2023, *Anuario estadístico*, Cit., p. 26.

12. Justification: The Chilean government has justified increased border control measures by citing concerns over a rapid influx of migrants and the need to establish a more orderly migration system that prioritizes legal entry. They argue that these measures are necessary to combat criminal activities such as human trafficking and migrant smuggling concentrated at the border and point to a reported reduction in irregular migration as evidence of their success. In this migration discourse, migrants have a dual role: they are seen as both vulnerable victims and as a source of threats linked to non-state dangers like organized crime.[42]

Growing concerns among local residents in Chile's north about the rapid influx of migrants prompted the Executive to militarize the Chile-Bolivia border in late 2017.[43] This involved replacing the police with military control. Local authorities and residents of border towns support the measures implemented by the government to control the flow of migrants. In 2021, the regional governor of Tarapacá criticized the Chilean government's handling of the situation, blaming them for the "migrant crisis"[44] on the northern border. According to Chilean authorities, a revised Decree 265 from January 2021 strengthened cooperation between the Armed Forces and civilian law enforcement. This initiative extended their mandate to include combating human trafficking and migrant smuggling, alongside existing efforts against drug trafficking.[45] To achieve this, the military offered logistical, technological, and transportation assistance for border security, with the stated objective of establishing a more orderly migration system that prioritizes legal entry. The Minister of the Interior of Chile indicated that on "the border between Chile and Bolivia, as on all borders in the world, some of the most threatening criminal movements for our people are concentrated".[46]

The government reported that border reinforcement has successfully reduced irregular migration, with entries down to 29,269 in 2024, a 48% decrease from the 2021 high of 56,586. However, the Minister of the Interior stated that the remaining number of irregular entries is still "significant", justifying the ongoing military deployment and other measures, including the recent agreement with Bolivia for migrant return, likewise the project Integrated Border System (*Sistema Integrado de Fronteras* -SIFRON), known as the "Digital Wall" (*Muralla Digital*).[47]

It is pertinent to note that in 2021, the Republican Party advanced a proposal for the drafting of a Statute for the Expulsion of Undocumented Immigrants. This proposed statute encompassed all requisite administrative and legal measures designed to expedite the expulsion of foreign nationals who enter the Republic of Chile without lawful authorization. The intended effect of the statute was to preclude irregular migrants from utilizing judicial and administrative remedies "to obstruct" the expulsion process.[48]

Regarding the Protocol with Bolivia, "one of the most important tools perhaps on the border, which is what worries many people, is the possibility of redirecting" the migrants, said the Chilean Minister of the Interior in 2022.[49] Chilean authorities assert that the expansion of the border strip to 10 kilometres inland, enabling the detention and immediate return of individuals to their point of entry, "represents a significant

[42] Ramos, R. & Tapia Ladino, M. (2024) "*Entre humanitarismo y seguridad",* cit., pp. 5, 6.
[43] Doña-Reveco C., *Chile's Welcoming Approach*, cit.
[44] La Nación, *Violentos choques en la frontera norte de Chile en rechazo a la llegada de migrantes venezolanos*, 26/09/2021, https://www.lanacion.com.ar/el-mundo/violentos-choques-en-la-frontera-norte-de-chile-en-rechazo-a-la-llegada-de-migrantes-venezolanos-nid25092021/
[45] Presidencia de la República, *S.E. el Presidente de la República, Sebastián Piñera Echenique, firma decreto que permite que las FF.AA. apoyen en el control de la migración ilegal por pasos no habilitados*, 12/01/2021, https://prensa.presidencia.cl/lfi-content/uploads/2021/01/12-01-2021-pdte-pinera-firma-decreto-que-permite-que-las-ffaa-apoyen-en-el-control-de-la-migracion-ilegal-por-pasos-no-habilitados-texto-oficial.pdf
[46] La Tercera, *Gobierno de Boric firma protocolo con Bolivia para la reconducción de personas que ingresen de manera irregular al país*, 27/02/2025, https://www.latercera.com/politica/noticia/ministra-toha-firmara-protocolo-con-bolivia-para-la-reconduccion-de-personas-que-ingresen-de-manera-irregular-al-pais/DWMQMIDIARGLFNH6UAZCIMWOSU/
[47] Gobierno de Chile, *Congreso renueva despliegue militar en frontera norte y Macrozona Sur: Ministra Tohá destaca caída en violencia rural e ingresos irregulares migratorios*, 29/01/2025, https://www.interior.gob.cl/noticias/2025/01/29/congreso-renueva-despliegue-militar-en-frontera-norte-y-macrozona-sur-ministra-toha-destaca-caida-en-violencia-rural-e-ingresos-irregulares-migratorios/
[48] Partido Republicano de Chile, *Recuperemos Chile: Plan para detener la Invasión Migrante Ilegal*, February 2021.
[49] Poblete J., *Crisis en la frontera norte, cit.*

advance for Chile, as it enhances inspection and control capabilities in strategic areas". Additionally, they indicate that this mechanism encourages Bolivia to reinforce its own immigration controls in this perimeter, which will contribute to "reducing the flow of clandestine entries and will strengthen security". It is expected "not only to control the irregular transit of people, but also to prevent irregular migrants from hiding from the authorities or entering without clear identification".[50]

13. Domestic and International Reactions: Both domestically and internationally, concerns have been raised regarding the implementation of these measures, as they could result in violations of due process, the absence of individualized assessments, and the risk of expelling individuals who may need international protection, potentially violating the principle of non-refoulement. Criticism has centred on restrictive aspects of Chilean asylum law, the deployment of armed forces at the border, collective expulsions, and the imperative to guarantee individual assessments and adhere to international human rights and refugee law. Moreover, concerns have been expressed about limited access to protection mechanisms and deficiencies in due process within Chilean migration policies. Some of the criticisms that have been raised are presented below:

The Jesuit Migrant Service (JMS) has strongly criticized Article 2 of the Chilean asylum law, which introduces new, restrictive criteria for refugee status. Specifically, it mandates that applicants arrive directly from the country where their life or freedom is endangered. Furthermore, it limits stopovers in third countries to a maximum of sixty days, effectively implementing a "safe third country" concept.[51] This policy is further solidified by the bilateral agreement with Bolivia, which facilitates the return of irregular migrants. Moreover, in 2023, the JMS communicated to the United Nations Committee on Migrant Workers (CMW) its apprehensions regarding the deployment of armed forces at the border and the utilization of "return" ("*reconducción*") as a form of summary expulsion. The JMS specifically highlighted the insufficient training and procedural guidance provided to border police personnel regarding the safeguarding of migrants' rights. This deficiency creates a significant risk that border authorities may fail to identify individuals requiring international protection, including those eligible for refugee status or those who exhibit indicators of having been victims of human trafficking or migrant smuggling. Such failures, the JMS asserted, could result in violations of the principle of non-refoulement.[52] Furthermore, within Chile, the return policy *("política de reconducción*") has been described as a "euphemism for the summary expulsion of immigrants who have entered or are attempting to enter the country".[53] In June 2021, the Chilean Senate conducted an analysis of migrant expulsion policies. The discussion centred on the summary and collective expulsions of migrants that had occurred earlier in the year. Certain participants in the debate raised concerns regarding violations of due process, the absence of individualized assessments, and the potential presence of individuals seeking international protection. Conversely, other senators emphasized security considerations, thereby justifying the expulsion measure.[54]

In February 2021, the United Nations High Commissioner for Human Rights expressed concern regarding the militarization of border management by Chile, Ecuador, and Peru. The High Commissioner also cited worrying reports of individuals being expelled without proper evaluation of their vulnerabilities or

[50] Delegación Presidencial Regional de Tarapacá, *Acuerdo con Bolivia para la reconducción de migrantes irregulares*, 26/12/2024, https://dprtarapaca.dpr.gob.cl/2024/12/26/acuerdo-con-bolivia-para-reconduccion-de-migrantes-irregulares/

[51] Hilliger G. & Castillo C., *Nueva ley que modifica el procedimiento para la determinación de la condición de refugiado*, 28/03/2024, https://sjmchile.org/opinion/columna-nueva-ley-que-modifica-el-procedimiento-para-la-determinacion-de-la-condicion-de-refugiado/

[52] Jesuit Migrants Service, *Informe Comité de Trabajadores Migrantes de las Naciones Unidas*, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCMW%2FNGS%2FCHL%2F56629&Lang=en

[53] Páez A., *Migración. "Reconducir": El eufemismo para expulsar inmigrantes que usa el gobierno amparado en el estado de excepción*, La izquierda Diario, 16/02/2022, https://www.laizquierdadiario.cl/Reconducir-El-eufemismo-para-expulsar-inmigrantes-que-usa-el-gobierno-amparado-en-el-estado-de

[54] Chilean Senate, *Análisis de política gubernativa en materia de expulsión masiva de migrantes a la luz del respeto a los derechos fundamentales de las personas*, 24/06/2021.

protection needs.[55] Subsequently, the Special Rapporteur on the human rights of migrants reported that Chile, Ecuador, and Peru had resorted to militarizing their border governance and indicated that these states were reportedly expelling migrants without adequately assessing their vulnerabilities or protection needs, raising significant concerns.[56] In April 2021, the Inter-American Commission on Human Rights (IACHR) indicated that it became aware of an increase in the entry of irregular persons on the Chilean northern border with Bolivia and Peru, and of various tense events due to increased mobility and the deportation of people without consideration of possible needs for international protection or family reunification. The IACHR expressed its concern about the increasing use of the armed forces in different countries in the region, including Chile. In this regard, it called on States to respect and guarantee the human rights of migrants, refugees, and those in need of protection.[57]

In May 2021, United Nations Special Rapporteurs on the human rights of migrants and on torture, and the Working Group on Arbitrary Detention, urged the Government of Chile to immediately cease collective expulsions of migrants. They emphasized the migrants' right to individual assessments and to remain in Chile pending such assessments, in accordance with international human rights law. The Rapporteurs asserted that deportations must not be summarily conducted, but necessitate individualized determinations of international protection needs, including humanitarian considerations.[58] They further stated that the lack of individualized risk assessments prior to deportation heightens the risk of human rights violations, notably the principle of *non-refoulement*. Likewise, several UN agencies expressed concern regarding Chile's deportation of Venezuelan nationals in June 2021. The agencies stressed the necessity of adhering to international human rights and refugee law, particularly during the pandemic, and highlighted the fundamental right to individualized assessments, including the evaluation of protection needs and risks upon return.[59]

Furthermore, in July 2021, Human Rights Watch documented severe due process violations in Chile's summary expulsions, including the denial of fair hearings, legal representation, and individualized assessments of protection needs.[60] Likewise, in November 2021, the IACHR expressed apprehension regarding the expulsion of individuals in Chile, including those potentially requiring international protection, and urged the State to uphold the principle of non-refoulement, in accordance with inter-American norms and standards, and to ensure due process and access to effective protection mechanisms in expulsion or deportation proceedings for migrants.[61] Moreover, in 2023, Amnesty International reported that Chile's practice of summary and collective expulsions resulted in the violation of several fundamental rights, including the right to seek asylum, the principle of non-refoulement, the right to due process, and the right to an effective judicial remedy.[62] Additionally, on 11 December 2023, the CMW, in a letter to the Chilean authorities, reiterated its ongoing concerns regarding the country's treatment of migrants and asylum seekers, as well as the deployment of the Armed Forces in border areas in the north

[55] OHCHR, 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

[56] Special Rapporteur on the human rights of migrants, Felipe González Morales, Report on ways to address the human rights impact of forced returns of migrants on land and at sea, Human Rights Council, 47th session, June 21–July 9, 2021.

[57] IACHR, *La CIDH llama a los Estados de la región a adoptar políticas migratorias y de gestión de fronteras que incorporen un enfoque de derechos humanos*, 01/04/2021, https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2021/082.asp

[58] OHCHR, *Chile: Arbitrary and collective, cit.*

[59] UNHCR, *Agencias de la ONU en Chile expresan preocupación sobre proceso de expulsiones*, 08/06/2021, https://www.acnur.org/noticias/news-releases/agencias-de-la-onu-en-chile-expresan-preocupacion-sobre-proceso-de

[60] Human Rights Watch, *Chile: Sentencias protegen los derechos de venezolanos deportados*, 28/07/2021, https://www.hrw.org/es/news/2021/07/28/chile-sentencias-protegen-los-derechos-de-venezolanos-deportados

[61] IACHR, *La CIDH expresa preocupación por las expulsiones de personas en situación de movilidad humana en Chile y llama al Estado a respetar el principio de no devolución*, 29/11/2021, https://www.oas.org/es/CIDH/jsForm/?File=%2Fes%2Fcidh%2Fprensa%2Fcomunicados%2F2021%2F318.asp.

[62] Amnisty International*, Chile: Informe al Comité para la protección de los derechos de todos los trabajadores migratorios y de sus familiares: 37° periodo de sesiones, 27 de noviembre – 8 de diciembre de 2023*, 27/10/2023, https://www.amnesty.org/es/documents/amr22/7354/2023/es/

of the country to carry out immigration control activities, which would put migrants at greater risk of discrimination.[63]

In May 2024, IACHR determined that Chile's new law operates within a context of limited access to international protection mechanisms and a deficit of due process safeguards, including in expulsion actions. Of particular concern are the provisions that mandate direct arrival from the country of threat for asylum applications and the broadened territorial authority for border returns without formal expulsion. The IACHR concluded that these provisions systematically prevent individuals from entering Chilean territory to have their international protection needs properly assessed.[64]

14. Externalization: Currently, there is no formal agreement between the governments of Chile and Bolivia for the latter to process asylum applications from third-country nationals expelled or returned from Chile. However, the protocol signed by both countries in early 2025 appears to address this issue, as the Bolivian government has agreed to the readmission of third-country nationals. In December 2024, the Governments of Chile and Bolivia signed an Interinstitutional Agreement on Migration Cooperation. Among the protocols of the aforementioned legal instrument, the Protocol signed at the end of February 2025 that allows the return of irregular migrants stands out. In the case of Chile, if Carabineros or the Army find a Bolivian national or a national from a third country within the 10 km zone from the border into the interior of the national territory, that person will be referred to the PDI personnel to hand him over to the Bolivian police and return to that country, after biometric registration.[65] The Minister of the Interior of Chile has indicated that the protocol will work by "proving through some reasonable means that, effectively, that person crossed from the neighbouring country".[66] It should be noted that until the new agreement, Bolivia's policy restricted the return or re-entry of individuals to Bolivian citizens only, leaving a significant gap in the management of irregular migrant flows.[67] In fact, in 2022, Bolivia rejected 93% who were redirected across the border in Colchane (Chile), in particular, around 3,000 Venezuelan nationals who had crossed irregularly into Chile through the northern border with Bolivia.[68] According to the Chilean authorities, those who were redirected were not received by the Bolivian authority and re-entered Chile, becoming "a vicious circle".[69] The newly implemented agreement, however, now mandates that both Chile and Bolivia accept the return of their respective citizens and third-country nationals.

15. Technology: Border rejections and immediate return procedures are facilitated using technological tools and infrastructure, in particular, the Integrated Border System (*Sistema Integrado de Fronteras -SIFRON*), known as the "Digital Wall" (*Muralla Digital*). This barrier will be detailed in the section dedicated to walls and fences.

16. Other: Judicial rulings have brought to light instances of entry denials at international airports. A prominent case, occurring in March 2018, involved the rejection of 62 Haitian citizens at Santiago de Chile Airport. Chilean authorities, operating under what was later determined to be a misinterpretation of

---

[63] CMW, Nota al Gobierno de Chile, Reference: CMW/followup/37/ik, 11/12/2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCMW%2FFUL%2FCHL%2F56840&Lang=en

[64] CIDH, *Chile: CIDH expresa preocupación por reformas migratorias que restringen el derecho al asilo*, 07/05/2024, https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/093.asp

[65] Government of Chile, *Revisa los detalles del importante e inédito acuerdo migratorio firmado con Bolivia*, 20/12/2024, https://www.gob.cl/noticias/revisa-detalles-importante-acuerdo-migratorio-firmado-con-bolivia/

[66] Government of Chile, *Revisa cómo funciona el nuevo protocolo de reconducción de migrantes a Bolivia*, 04/03/2025, https://www.gob.cl/noticias/revisa-como-funciona-nuevo-protocolo-reconduccion-migrantes-bolivia/

[67] Swissinfo.ch, *Bolivia y Chile firman acuerdos para combatir la trata de personas y migración irregular*, 28/02/2025, https://www.swissinfo.ch/spa/bolivia-y-chile-firman-acuerdos-para-combatir-la-trata-de-personas-y-migraci%C3%B3n-irregular/88940898

[68] Sistema Economico Latinoamericano y del Caribe (SELA), *Entre febrero y abril: Bolivia ha rechazado el 93% de migrantes reconducidos a través de Colchane*, 05/06/2022, https://www.sela.org/bolivia-ha-rechazo-93-de-migrantes/

[69] Poblete J., *Crisis en la frontera norte: Bolivia bloquea el retorno de más de 3 mil venezolanos irregulares que habían cruzado a Chile*, in Ex - ante, 21/03/2022, https://www.ex-ante.cl/crisis-en-la-frontera-norte-bolivia-bloquea-el-retorno-de-mas-de-3-mil-venezolanos-irregulares-que-habian-cruzado-a-chile/

immigration law, initially denied entry to these individuals. They remained in the airport's international transit area until court orders mandated their admission into the country.[70]

Walls and fences / Border trench

Summary: Chile intensified its border control measures, particularly at its northern frontier with Bolivia, through the construction and expansion of a border trench near the city of Colchane, operational since September 2017. This "inverted wall", managed by the Ministries of Defence and Interior, Chilean Carabineros, and the National Migration Service, aims to deter unauthorized entry and combat criminal activities like drug trafficking by impeding crossings at non-designated points. While not directly precluding asylum claims, the trench significantly hinders access to Chilean territory, a prerequisite for initiating such procedures, and interacts with pushbacks and immediate return practices that deny individualized assessments. This physical barrier is complemented by technological surveillance tools like the "Digital Wall" and recent agreements with Bolivia that facilitate the return of irregular migrants. Chilean authorities justify these measures as vital for national security and orderly migration, despite concerns raised by national and international bodies regarding potential violations of due process, the principle of *non-refoulement*, and limited access to protection mechanisms. The trench, whose construction has no specific legislative authorization but is based on general border control regulations and anti-organized crime policies, symbolizes a restrictive approach to migration, prioritizing state control over unhindered access to asylum processes.

1. Functioning: The border trench near the city of Colchane effectively deters unauthorized entry from Bolivia into Chilean territory. This "inverted wall"[71] aims to prevent crossings at undesignated points, with individuals attempting such entries facing immediate expulsion or return to Bolivia. While this physical barrier does not directly preclude access to the refugee status determination process, it significantly impedes entry into Chilean territory via the northern border, a prerequisite for initiating a refugee status claim. It is notable that in the Tarapacá Region, where this trench is situated, the sole authorized entry point into Chilean territory is the Colchane Border Complex, accessible via a road connecting the Bolivian town of Pisiga with the complex.

2. Time: Excavation of the trench on the northern border between Chile and Bolivia began in September 2017 and continued until July 2022, with some interruptions. The trench is expected to be continued in the coming months.

3. Place: Northern border of Chile with Bolivia, in the border city of Colchane.

4. Actors: The main actors are the Ministry of Defence and the Ministry of the Interior and Public Security, in particular Chilean Carabineros, and the National Migration Service (SERMIG). No international actors have been identified in the implementation of this barrier.

5. Interaction: This barrier primarily interacts with pushbacks at land borders. Individuals attempting to enter Chilean territory from Bolivia are required to pass through designated border checkpoints, where authorities possess the power to deny entry without conducting individualized assessments. Furthermore, this barrier is related to the immediate return of foreign nationals who attempt to enter or have already entered Chile via unauthorized border crossings; these individuals are summarily expelled back to the country from which they entered, in this case, Bolivia. This practice circumvents standard immigration procedures and can prevent access to asylum processes that require presence within Chilean territory.

6. Development: The concept of a border trench was first proposed in September 2016 during a meeting convened to address organized crime in the northern regions of Arica and Parinacota, Tarapacá, and

[70] See case *No. 4292-2018*, adjudicated by the Supreme Court on 21 March 2018, in the Second Part of this National Report.
[71] For further information regarding ditches as border barriers, please refer to De Marchi B., & Alvites B. A., *El muro invertido: las zanjas en el límite fronterizo de Chile con Bolivia*, in *Geopolítica(s) Revista de estudios sobre espacio y poder*, Vol. 13(2)/2022, pp. 355- 384.

Antofagasta. In September 2017, construction commenced in the border city of Colchane.[72] The initial plan entailed the excavation of trenches, each measuring 1.2 meters in width and 300 meters in length, at 13 identified unauthorized crossing points within a two-month timeframe, with subsequent plans to extend to an additional 19 identified points in the area.[73] The Chilean authorities have indicated from the beginning that this measure would also serve to control irregular immigration since it would hinder "as much as possible the illegal entries" of those who "do not complete the corresponding immigration formalities".[74]

In 2022, the border municipality of Colchane, with a resident population exceeding 1,300, experienced a significant influx of migrants, with over 1,500 individuals crossing the border from the Plurinational State of Bolivia. This situation precipitated the declaration of a state of emergency by national authorities. To manage the migratory flow across the northern border, Chilean authorities implemented military deployment for border control. Previously, following the declaration of a state of emergency in northern Chile by former President Sebastián Piñera in mid-February 2021, Chilean military personnel had been deployed to secure the trench, which measured approximately 1.5 meters in width, in support of border police patrols.[75] In 2022, the trench's dimensions were expanded to 3 meters in depth and 3 meters in width.

7. Rationale: The border trench is officially intended to impede the clandestine entry of both vehicles and individuals, serving as a measure to combat criminal activities, notably drug trafficking. Chilean authorities have stressed the need for such physical barriers to better manage and deter the indiscriminate entry of migrants. Ultimately, the stated purpose is to protect the nation's borders, uphold sovereignty, and ensure the security of its citizens[76] through the implementation of more effective border control.

8. Legal Status: Irregular border crossings into Chile, whether through the trench or other unauthorized routes, subject individuals to Chilean immigration legislation, which can result in immediate return to Bolivia.

9. Specific Impact: The border trench initially impacts men and women indiscriminately.

10. Reach: The absence of precise public statistics precludes the determination of the number of individuals affected by the border trench dug in Chile.

11. Source: No specific legislative provision authorizes the excavation of the border trench. However, its construction, as well as the implementation of the so-called Digital Wall, are based on the application of general regulations on border control and the National Policy to Combat Organized Crime. Biometric data registration is mandated by Exempt Resolution 25.425, which outlines the biometric registration process for foreign nationals who have entered the country via unauthorized border crossings or by evading immigration control and are currently residing irregularly within the national territory. This resolution was issued on 31/05/2023 and subsequently modified on 29/09/2023.

12. Justification: Government and executive branch justifications for the border trench primarily centre on controlling irregular migration and enhancing security along the border with Bolivia. Some official statements regarding the border trench are listed below:

---

[72] Álvarez V. et al. (2023). *Derechos de las personas*, cit., pp. 276-277.

[73] Ministry of the Interior and Public Security, *Inician la construcción de zanjas en pasos fronterizos de Colchane*, 08/09/2017, https://www.interior.gob.cl/noticias-regionales/2017/09/08/inician-la-construccion-de-zanjas-en-pasos-fronterizos-de-colchane/

[74] Ex-Ante, *Crisis en el norte: La historia de la zanja que el gobierno repara para impedir ingresos irregulares*, 21/02/2021, https://www.ex-ante.cl/crisis-en-el-norte-la-historia-de-la-zanja-cavada-por-bachelet-que-kast-propuso-extender-y-que-el-gobierno-repara-para-impedir-ingresos-irregulares/

[75] France 24, Trench proves ultimate barrier to Venezuelans arriving in Chile, 31/03/2022, https://www.france24.com/en/live-news/20220331-trench-proves-ultimate-barrier-to-venezuelans-arriving-in-chile

[76] Ministry of the Interior and Public Security, *Reforzamiento de seguridad fronteriza: llegan las primeras camionetas del proyecto SIFRON y se inicia el control biométrico en Tarapacá*, 06/09/2024, https://www.subinterior.gob.cl/noticias/2024/09/06/reforzamiento-de-seguridad-fronteriza-llegan-las-primeras-camionetas-del-proyecto-sifron-y-se-inicia-el-control-biometrico-en-tarapaca/

In 2017, the mayor of the Tarapacá region explained that the objective of the trench was not to "prevent pedestrian passage or the passage of animals for grazing, but rather the passage of vehicles that affects public safety issues". The focus was "to put an end to the entire criminal issue".[77] In 2021, the leader of the Republican Party advocated for creating a physical barrier, stating the need to "dig a trench" to prevent illegal entry. He further asserted that neighbouring countries, specifically Peru and Bolivia, bear partial responsibility for the flow of migrants, arguing that these individuals should be intercepted at the borders of Peru with Ecuador or Bolivia. The leader concluded that those claiming refugee status from Venezuela should not be permitted to reach the Chilean border, as they have already transited "through three or four countries to get to Chile".[78] That year, the Republican Party called for an analysis of the quantitative impact of recent migratory waves from the Dominican Republic, Haiti, Venezuela, and Cuba, and the significant tension arising from the increasingly massive arrival of immigrants to Chile. They asserted that the fundamental problem should not be overlooked: "the illegality committed by those who cross the border clandestinely, which invalidates their entry into the country from the outset".[79] In 2022, the Minister of the Interior indicated that the purpose of the trench was "to have greater capacity to control criminal gangs that want to pass in vehicles or people who want to enter Chile clandestinely".[80] And the mayor of the city of Colchane also said that "physical barriers are necessary to better control the indiscriminate entry of immigrants".[81] These statements were shared by the National Defence of Tamarugal (JDN), who emphasized that the trench would improve border control, enhance security for residents, and deter illegal migration and drug trafficking.[82]

In addition, in May 2024, during a visit to Hungary, the leader of the Republican Party further stated that "while the ditch is necessary, it is insufficient". Consequently, he proposed a complete border closure with Bolivia to "stop the influx of illegal immigrants" and advocated for the consideration of physical barriers, including a wall or fences.[83]

13. Domestic and International Reactions: In 2022, the NGO National Coordinator of Immigrants in Chile strongly criticized the government's approach to migration, asserting that physical barriers like ditches "have consistently failed as deterrents worldwide". Drawing parallels with the United States and Europe, where similar measures have proven ineffective in stemming migratory flows, the NGO emphasized that while such measures might initially seem to deter, they are quickly circumvented. Furthermore, they argued that "the core issue, which the government refuses to address, is the need to regulate, not contain, migration", suggesting that blocking legal entry routes only exacerbates irregular migration.[84]

14. Externalization: This barrier facilitates the delegation of immigration control functions, predominantly to Bolivian authorities, in accordance with the Interinstitutional Agreement on Migration Cooperation detailed in the section concerning border pushbacks.

---

[77] La Tercera, *Ministro Delgado explica trabajos de zanja en Colchane: "Es una mantención"*, 21/02/2022, https://www.latercera.com/nacional/noticia/ministro-delgado-explica-trabajos-de-zanja-en-colchane-es-una-mantencion/EJ7PY3DYLBACHECMKSJEYCOKMU/

[78] Chilevision, J.A. Kast sugiere *"hacer una zanja y señalarle a la gente que quiere entrar de manera ilegal que hay un límite"*, 04/02/2021, https://www.chilevision.cl/noticias/nacional/j-a-kast-sugiere-hacer-una-zanja-y-senalarle-a-la-gente-que-quiere

[79] Partido Republicano de Chile, *Recuperemos Chile, cit.*

[80] Swissinfo.ch, *Chile construirá nueva zanja en la frontera con Bolivia para frenar migración*, 05/03/2022, https://www.swissinfo.ch/spa/chile-construir%C3%A1-nueva-zanja-en-la-frontera-con-bolivia-para-frenar-migraci%C3%B3n/47406006

[81] La Tercera, *Ministro Delgado explica trabajos de zanja en Colchane,* cit.

[82] The Rio Times, Chile begins construction of a second border trench on the border with Bolivia, 09/03/2022, https://www.riotimesonline.com/brazil-news/rio-politics/chile-begins-construction-of-a-second-border-trench-on-the-border-with-bolivia/

[83] El País, *Kast propone instalar un muro en la frontera chilena con Bolivia: "Es necesario para terminar con la inmigración ilegal"*, 02/05/2024, https://elpais.com/chile/2024-05-02/kast-propone-instalar-un-muro-en-la-frontera-chilena-con-bolivia-es-necesario-para-terminar-con-la-inmigracion-ilegal.html

[84] Radio.uchile.cl, *Posible ampliación de zanja en Colchane: Alcalde celebra medida y comunidades migrantes señalan que "tiene un foco errado"*, 23/02/2023, https://radio.uchile.cl/2022/02/23/posible-ampliacion-de-zanja-en-colchane-alcalde-celebra-medida-y-comunidades-migrantes-senalan-que-tiene-un-foco-errado/

15. Technology: To enhance border security and mitigate irregular migration, the Republic of Chile is implementing a "Digital Wall" along its northern frontier. This initiative, by the Chilean Carabineros (*Carabineros de Chile*), involves deploying advanced surveillance technologies in areas prone to unauthorized border crossings. The system includes mobile observation posts with radar and cameras, providing comprehensive surveillance linked to centralized command centres. Tactical response vehicles are deployed for the immediate apprehension of individuals crossing irregularly, supported by transport vehicles for transferring apprehended individuals and confiscated goods to law enforcement facilities. Currently operational in the Tarapacá region (border with Bolivia), the "Digital Wall" is planned for expansion into the Arica y Parinacota (border with Peru and Bolivia) and Antofagasta (border with Bolivia) regions. The stated objective is to achieve "effective border control" through real-time identification and rapid intervention against irregular migration attempts.[85]

The Digital Wall project "seeks to fill a gap that the Chilean State has in terms of control, particularly of its northern border, in the area of unauthorized crossings," according to Chilean authorities.[86] The idea is to systematically install capacities on the border to have greater migration control through cutting-edge technology.[87] These projects are complemented by a biometric control in the region, which allows the biometric registration of migrants to "strengthen security". Despite explicit assurances that this process did not constitute regularization, migration experts have expressed apprehension that the collected data may be used to facilitate future expulsions.[88]

Detention

Summary: The Chilean government has implemented administrative detention of individuals with irregular immigration status as a necessary measure to facilitate their deportation from the country, with the primary enforcement agency being the PDI, and the SERMIG is also involved. While initial regulations limited detention to 48 hours following a final expulsion order, this period was extended to five days in 2023, a change supported by the argument that the shorter timeframe was insufficient for the PDI to complete the expulsion procedures effectively. This practice has faced criticism from human rights organizations and legal scholars, who argue that prolonged detention for administrative offenses is disproportionate, potentially violates due process and the principle of equality, and disregards international human rights standards, particularly regarding access to legal counsel and the prohibition of collective expulsions.

1. Functioning: The specific function of administrative detention as a barrier to asylum in Chile is to curtail the liberty of individuals with irregular immigration status to facilitate their deportation, effectively obstructing their access to protection. Once a formal removal order is issued, non-compliance can lead to detention, initially for up to forty-eight hours, but extended to a maximum of five days in 2023. This deprivation of freedom directly impedes these individuals' capacity to initiate or pursue asylum procedures before their potential removal from Chilean territory.

---

[85] Ministry of the Interior and Public Security, Official Letter No. 27.264 to the Chamber of Deputies, 12/10/2023; Government of Chile, *Ministra Tohá destacó proyecto Muralla Digital en la macrozona norte: "un país se hace cargo del control de su frontera con proyectos estructurales y sostenibles"*, 05/06/2024, https://www.interior.gob.cl/noticias/2024/06/05/ministra-toha-destaco-proyecto-muralla-digital-en-la-macrozona-norte-un-pais-se-hace-cargo-del-control-de-su-frontera-con-proyectos-estructurales-y-sostenibles/

[86] ADN, *¿Qué es la muralla digital?: El proyecto que plantea el Gobierno para resguardar las fronteras del norte de Chile*, 31/05/2024, https://www.adnradio.cl/2024/05/31/que-es-la-muralla-digital-el-proyecto-que-plantea-el-gobierno-para-resguardar-las-fronteras-del-norte-de-chile/

[87] Delegación Presidencial Regional de Tarapacá, *"Proyecto Muralla Digital es parte de una estrategia sistemática y responsable para poder controlar nuestras fronteras"*, 06/06/2024, https://dprtarapaca.dpr.gob.cl/2024/06/06/proyecto-muralla-digital-es-parte-de-una-estrategia-sistematica-y-responsable-para-poder-controlar-nuestras-fronteras/

[88] Human Rights Watch, Chile. Events of 2023, https://www.hrw.org/world-report/2024/country-chapters/chile

2. Time: The administrative detention of individuals with irregular immigration status as a necessary measure to facilitate their deportation from the country was established by Law No. 21.325, from April 2021.

3. Place: The barrier applies throughout Chilean territory.

4. Actors: The primary enforcement agency is the PDI. The SERMIG is also implicated. No international actors have been identified as participating in the implementation of this barrier.

5. Interaction: Detention practices are closely linked to expulsion procedures. Chilean authorities may detain individuals with irregular immigration status who are subject to an expulsion order to facilitate their deportation, provided the individual has not voluntarily departed the country. This practice is further enabled by bureaucratic barriers that impede access to the refugee status recognition process and the obligation to self-declare irregular entry into Chilean territory, which can serve as the foundational basis for an expulsion order.

6. Development: The Government of the Republic of Chile has stipulated that immigration detention is exclusively employed for the purpose of executing deportations in administrative or criminal matters. A protocol established in March 2013 between the Ministry of the Interior and the PDI mandated that expulsion orders be implemented within a 24-hour timeframe. This protocol further prescribed standards for the temporary detention of individuals awaiting expulsion, encompassing adequate living and sanitary conditions, gender segregation, and segregation from detainees held for other legal causes.[89]

Subsequently, Law No. 21.325, the Migration and Foreigners Law of 2021, codified the execution of expulsion orders in its Article 134. This legal provision specifies that upon a final and enforceable expulsion order, the affected individual may be subjected to restrictions and deprivation of liberty, limited to their domicile or specially designated police facilities that adhere to prescribed standards of health, hygiene, and habitability, with gender separation and segregation from other detainees. This measure is expressly prohibited for children and adolescents. Furthermore, the law enumerates the rights of detained foreign nationals, including the right to contact and receive visits from family and legal representatives, the right to written notification of their legal rights and obligations within two hours of detention, the right to necessary medical treatment, the right to communicate with their consular representative, the right to request an interpreter, and the right to receive written copies of pertinent information. The duration of deprivation of liberty solely for the effectuation of expulsion was initially capped at forty-eight hours but was subsequently extended to a maximum of five consecutive days in 2023 by Law No. 21.590, deemed "insufficient" under the prior limitation.[90]

In early 2013, two cases of prolonged, arbitrary migrant detention without judicial oversight came to light. Seventeen migrants were illegally detained at the Chilean Investigative Police Headquarters on General Borgoño Street (located in the city of Santiago de Chile).[91] Additionally, a Colombian national was detained in the region of Arica (northern border) in January 2013 and only released on March 14 after the Court of Appeals upheld a National Institute of Human Rights (INDH) appeal.[92] The INDH argued that expulsion enforcement was operating outside legal bounds, violating Chilean constitutional and international treaty rights. The Court of Appeals shared the INDH's concern that these cases indicated a systemic problem of undignified treatment for migrants facing expulsion.[93]

---

[89] Global Detention Project (GDP), Chile issues related to immigration detention, Submission to the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, 32nd Session, April 2021, Submitted in March 2021, p. 3.

[90] Presidency of the Republic, *Mensaje de S.E. el Presidente de la República que modifica la Ley N° 21.325 para ampliar el plazo de detención para la materialización de las expulsiones administrativas*, Santiago, 04 May 2023.

[91] See Santiago Court of Appeals, *No. 351-2013*, 09/03/2013.

[92] Arica Court of Appeals, *No. 10-2013*, 18/03/2013.

[93] National Institute of Human Rights (INDH), *Informe Misión de Observación. Situación de la población migrante en Iquique y Colchane. Región de Tarapacá, 29 al 31 de mayo de 2013*, pp. 6-7.

7. Rationale: The Chilean government reasons that administrative detention for deportation is necessary to effectively execute expulsion orders for individuals with irregular immigration status and to expedite their removal from the country. They argue that extending detention periods provides law enforcement with the time needed to complete deportation procedures and address practical obstacles in their implementation. The aim is to maintain immigration control and ensure the timely removal of those not authorized to remain in Chile.

During the deliberations on the draft constitutional reform on immigration (Bulletin 15.438-06), the PDI declared that the 48-hour period was insufficient to complete the necessary procedures to execute an expulsion order. It indicated that if an expulsion order is not executed within the period specified in the last paragraph of Article 134, the person must be released.

8. Legal Status: Detained persons have no further protection under Chilean national law. Only through judicial recourse (*Habeas corpus*) can they regain their freedom and prevent their deportation.

9. Specific Impact: There is no demonstrated particular impact of this barrier on specific groups, including children, women, LGBTQ+ people, or individuals with disabilities.

10. Reach: There are no public statistics that allow for the calculation of the number of people detained for immigration reasons from 2010 to 2024.

11. Source: Article 134 of Chilean Law No. 21.325 (Migration and Foreigners Law, 2021), modified by Law No. 21.590 (07/08/2023).

12. Justification: The Chilean government and executive branch have justified administrative detention for deportation purposes as a necessary measure to ensure the effective execution of expulsion orders against individuals with irregular immigration status. Official statements and legislative discussions, such as those surrounding the extension of detention periods, emphasize the need to provide law enforcement agencies like the PDI with sufficient time to complete the logistical and procedural requirements for deportation. Some of the justifications are presented below:

In 2021, the Chilean Republican Party released the document "Recover Chile: Plan to Stop the Illegal Migrant Invasion". This plan proposed several urgent measures, including the establishment of a Temporary Enclosure for Undocumented Immigrants, intended to provide "lodging, food, and healthcare to individuals who enter Chile through unauthorized crossings and who are illegally present in our territory", the express purpose was to expedite "the procedures for their expulsion from the country". The proposal stipulated that this enclosure be constructed on the Andean plateau.[94] To date, this proposal has not progressed.

In August 2022, the Chilean Parliament received Bill 15261-25, which amends Law No. 21.325 on Migration and Foreigners,[95] which aimed to criminalize clandestine entry into Chile. This bill proposed penalties, including minimum-degree imprisonment or fines of eleven to twenty monthly tax units, for individuals who enter the country without authorization. This would apply even to those potentially eligible for refugee status, unless they are directly fleeing a life-threatening situation. The bill argued that these entries were part of a multi-country flow, facilitated by criminal networks profiting from the situation, and tolerated by transit nations for economic or other reasons.

The primary justification for extending the administrative detention period to five days was to allow the Investigative Police (PDI) to effectively execute expulsion orders. However, the proposal faced several challenges. Some legislators questioned whether five days would be sufficient, suggesting longer durations (10 days, with the possibility of an extension). Others argued that the time limit was not the main issue, pointing to a lack of cooperation from countries of origin. Concern was also expressed about potential violations of individual rights, particularly the principle of proportionality, as prolonged detention for

[94] Republican Party (*Partido Republicano de Chile*), *Recuperemos Chile: Plan para detener la Invasión Migrante Ilegal*, February 2021.
[95] Deputies Chamber, *Modifica la Ley N° 21.325, de Migración y Extranjería, para tipificar el delito de ingreso clandestino a territorio nacional*, 05/08/2022.

administrative offenses could exceed that for criminal offenses. The proposal was also criticized for its potential violation of the constitutional principle of equality, as it would apply exclusively to foreigners. The Chilean government maintained that the extension was essential to address practical obstacles to expulsions. It stated that the five-day limit was reasonable, and that judicial intervention would be available in exceptional cases. It clarified that this detention constitutes a specific form of deprivation of liberty for the purpose of expulsion, distinct from judicial detention or detention in cases of flagrante delicto. It also addressed concerns about the current situation of migrants and the need to improve existing laws and procedures.[96]

13. Domestic and International Reactions: Various organizations and the Chilean Supreme Court of Justice have voiced significant concerns regarding the administrative detention and expulsion of migrants in Chile, primarily arguing that these practices violate fundamental human rights standards and due process guarantees. Their main contention is that the procedures often lack adequate legal safeguards, leading to potential arbitrary detention, denial of access to legal counsel, disregard for asylum seekers' rights, and disproportionate penalties for administrative immigration offenses, potentially conflicting with both the Chilean Constitution and international human rights conventions. Some of the criticisms and concerns are presented below:

In 2021, the Legal Clinics of the Diego Portales and Alberto Hurtado Universities, together with the Jesuit Migrant Service (JMS), denounced that the detention and imminent expulsion of Venezuelan migrants in northern Chile raised serious concerns due to procedural irregularities, including denial of access to legal counsel, detention exceeding legal mandates, and disregard for asylum seekers and families. They claimed that the action violated international human rights standards, particularly the prohibition of collective expulsions. They therefore demanded respect for due process, family unity, and the principle of non-refoulement, and urged authorities to prioritize individual assessments and avoid refoulement to dangerous situations.[97] Likewise, in April 2021, Amnesty International condemned the detention and expulsion of migrants in Chile, demanding that the Chilean government uphold migrants' human rights and ensure individualized assessments of each case, including the need for international protection.[98]

Moreover, the JMS, in response to the proposed increase in detention periods within the draft constitutional reform on immigration (Bulletin 15.438-06), contends that extending detention, a severe infringement on personal liberty, violates the principle of proportionality that should govern precautionary measures and restrictions. Specifically, they assert that it is disproportionate to impose a potentially longer detention for an administrative infraction, such as those leading to administrative expulsion, than for a criminal offense. Furthermore, the JMS argued that this proposal contravenes the principle of equality before the law, as enshrined in Article 19 No. 2 of the Constitution, since the extended detention period would exclusively apply to foreign nationals subject to expulsion orders.[99]

In July 2024, the Chilean Supreme Court of Justice highlighted critical concerns regarding Bill 15261-25, which amends Law No. 21.325, related to detention and the alignment with international protection standards. The Supreme Court criticized the proposed special rule for in flagrante delicto detention of migration offenders, arguing that it potentially conflicts with existing immediate return regulations and raised concerns about compatibility with the Political Constitution of Chile and the American Convention on Human Rights. Moreover, the Court questioned the proposed five-day extension of detention, deeming

[96] Chamber of Deputies, *Primer Informe de la Comisión de Constitución, Legislación, Justicia y Reglamento, recaído en el Proyecto de Reforma Constitucional que modifica la Carta Fundamental en materia de regulación migratoria*, 12 April 2023.
[97] *Declaración Pública Nueva expulsión masiva de personas migrantes: llamamos a respetar sus derechos y a considerar su compleja situación*, 24/04/2021, https://sjmchile.org/uncategorized/declaracion-publica-nueva-expulsion-masiva-de-personas-migrantes-llamamos-a-respetar-sus-derechos-y-a-considerar-su-compleja-situacion/
[98] Amnesty International, *Amnistía Internacional Chile, cit.*
[99] Jesuit Migrant Service, *Minuta boletín 15.438-06*, 2023.

it disproportionate for migration offenses, emphasized concerns about the potential for arbitrary detention, and the erosion of due process guarantees.[100]

14. Other: A prominent instance of *de facto* detention at Santiago de Chile International Airport occurred in January 2022, involving the detention of 23 Haitian nationals for over a month, despite their expressed intention to seek asylum. Following legal intervention, these individuals were prevented from deportation and granted entry into Chilean territory.[101]

Procedural barriers: Deadlines

Summary: A significant bureaucratic barrier to accessing asylum in Chile is the progressively restrictive timeframe for application submission, culminating in a unified seven-business-day deadline for all entries, overseen by the SERMIG, with the initial self-reporting handled by the PDI. This compressed period hinders access by limiting the time for individuals to understand the process and gather necessary documentation, with non-compliance leading to application denial and potential expulsion. While initially less stringent, these deadlines evolved through decrees in 2011 and 2022, becoming legally codified in 2024, a development justified by Chilean authorities as necessary to manage increased applications and safeguard the integrity of the refugee system, though criticized by civil society and international bodies as undermining the right to seek asylum.

1. Functioning: The primary functioning of this barrier lies in the imposition of a restrictive time limit for initiating and formalizing asylum applications in Chile. This compressed timeframe effectively prevents individuals from accessing asylum by creating an extremely narrow window to understand the complex asylum procedure, gather necessary documentation, and formally submit their claim to the SERMIG. Non-compliance with these prescribed timeframes results in the preclusion of initiating the procedure or the dismissal of the application.

2. Time: The establishment of a deadline for asylum applications evolved. In 2011, an initial timeframe began to be interpreted from existing regulations specifically for irregular entries into the country. Subsequently, a specific deadline for irregular entries was legally codified in 2022. Finally, in 2024, a unified statutory deadline of seven (7) business days was enacted, applicable to both regular and irregular entries into the national territory for the submission of asylum applications.

3. Place: The application of deadlines impediments is uniform throughout Chile; no territorial disparities have been observed in their implementation.

4. Actors: The SERMIG, as the primary authority responsible for asylum procedures, is central to the existence of bureaucratic hurdles to asylum access. The PDI contributes significantly to the specific obstacle of self-reporting for irregular entry by registering and certifying such entries. No international actors have been identified as directly involved in creating this barrier.

5. Interaction: This bureaucratic barrier primarily intersects with the expulsion of foreign nationals for non-compliance with immigration regularization requirements. Individuals entering the Republic of Chile without proper authorization are legally obligated to self-report their irregular entry to the PDI within ten (10) calendar days of arrival to obtain a certification of this violation. This certification is necessary for the asylum application, which must be filed within seven (7) business days of entering Chilean territory. Failure to meet these strict deadlines can result in the denial of the asylum application due to untimely filing,

[100] Supreme Court of Justice, *Oficio N° 241-2024 Informe de Proyecto de Ley que "Modifica la Ley N° 21.325 de Migración y Extranjería, para tipificar el delito de ingreso clandestino al territorio nacional". Antecedentes: Boletín 15261-25*, 30/07/2024.

[101] MercoPress, *Migrantes haitianos varados en aeropuerto de Santiago de Chile*, 24/01/2022, https://es.mercopress.com/2022/01/24/migrantes-haitianos-varados-en-aeropuerto-de-santiago-de-chile; Rojas T., *Varados y sin respuesta: veintena de haitianos esperan refugio chileno en Aeropuerto de Santiago*, https://www.biobiochile.cl/noticias/nacional/region-metropolitana/2022/01/24/varados-y-sin-respuesta-veintena-de-haitianos-esperan-refugio-chileno-en-aeropuerto-de-santiago.shtml

leaving the individual in an irregular status and subject to expulsion. Notably, even those who self-report remain vulnerable to expulsion orders if they fail to promptly formalize their asylum claim, as the certification of irregular entry itself can serve as grounds for such an order.

6. Development: Law No. 21.430, enacted in 2010,[102] initially permitted any person within Chilean territory, regardless of immigration status, to apply for refugee recognition without a submission deadline. Applications could be submitted at any Immigration Office or, upon entry, to the immigration authority at authorized border crossings, where information about the process would be provided, and the applicant would be asked to explain their reasons for leaving their country. Time limits for submitting asylum applications were introduced subsequently, serving to restrict access to the procedure.

In 2011, Decree No. 837, which regulates Law No. 20.430 concerning refugee protection, did not set a deadline for requesting refugee status; nevertheless, it outlines a mandatory procedure for individuals who have entered Chile irregularly. Article 35 stipulates that such individuals, having entered without documentation or with fraudulent documents, may apply for refugee status under Article 36 *bis*, but only after complying with Article 8, paragraph 1, which requires them to appear before the relevant immigration authority within ten (10) days of the violation and provide a justification for their irregular entry. Importantly, Article 8 clarifies that individuals seeking refugee status who self-report their irregular entry or residence within these ten days will not be penalized for the immigration violation until their asylum application is resolved, and those recognized as refugees may even be exempt from sanctions for later formalization or for having used migrant smuggling networks out of necessity.

A new Decree was approved in January 2022 with important amendments. Decree No. 125 altered Decree No. 837 of 2011 by introducing key changes to the asylum application process, particularly for individuals with irregular entry. The amended Article 35 now mandates that individuals who have entered clandestinely or with fraudulent documents must comply with Article 8, paragraph 1, before applying for refugee status under the newly incorporated Article 36 *bis*. This new article specifies that the asylum application must be submitted in person to the SERMIG, or through an authorized official in cases of force majeure, and a subtle but critical change in Article 35 now imposes a strict ten-day deadline from the date of irregular entry for initiating the asylum procedure for individuals who entered through unauthorized means. This change could violate the human right to seek asylum by not providing exceptions or procedures for applications submitted outside this period.

Nowadays, Article 26 of Law No. 21.655 stipulates that applications for refugee status recognition must be lodged within seven business days, commencing from the applicant's entry into the national territory. An exception is made for applications supported by sufficient evidence demonstrating alterations to the circumstances delineated in Article 2, occurring after entry into Chile, which place the applicant's life, liberty, or physical integrity at risk. In such instances, the application for recognition must be submitted within the same seven-business-day timeframe, calculated from the date of the event substantiating the application.

In those seven days, the authority assumes that the person will be able to have the necessary information that allows him to identify that his situation could be understood within the definition of refugee, access information on what the refugee procedure is like in Chile, and collect the documentary evidence corresponding to his request to appear at the SERMIG within the deadline. All this, having expressed at the border the intention to request asylum.

7. Rationale: The reduction in the deadline for submitting asylum applications appears to be based on the justification of limiting access to this protection procedure. While the initial ten-day self-reporting requirement for irregular entrants was ostensibly intended to inform authorities of the presence of a foreigner, this deadline was subsequently used to hinder access to the asylum process itself. The current

[102] Official Journal of the Republic of Chile, Thursday, April 15, 2010, No. 39.636. See also Decree 837 Approves Regulations of Law No. 20.430, which establishes provisions on Refugee Protection, October 14, 2010.

seven-working-day deadline further restricts access by imposing a deadline on all applications, arguing that individuals genuinely in need of international protection should promptly express their need for refuge.

8. Legal Status: Individuals whose asylum applications in Chile are denied due to failure to comply with the legally established deadlines will be subject to the country's immigration regulations. If they do not meet the eligibility criteria for immigration regularization, they must leave the country voluntarily. Non-compliance may result in administrative expulsion.

9. Specific Impact: There is no demonstrated particular impact of this barrier on specific groups, including children, women, LGBTQ+ people, or individuals with disabilities.

10. Reach: There are no accurate public statistics that allow us to know the number of people affected by the deadlines imposed in Chile.

11. Source: Decree No. 837, which regulates Law No. 20.430 concerning refugee protection. Decree No. 125 altered Decree No. 837 of 2011. The Procedural Manual of the Department of Refuge and Resettlement of the National Migration Service, Exempt Resolution 21.726 for the Refugee Department and regional directorates of this service, from 11 May 2023: mandatory submission of the Voluntary Declaration of Clandestine Entry to the PDI, known as self-reporting, within ten business days of unlawful entry or the commencement of irregular status. Law No. 21.655, 20 February 2024, amending Law No. 20.430 (Provisions on Refugee Protection). Article 1 introduces several modifications, notably: a requirement for direct travel to Chile from the territory where the applicant's life is at risk; a 60-day limit for travel with stopovers; and a seven-business-day deadline for submitting applications for international protection (Art. 26).

12. Justification: The Chilean authorities justify the legislative amendments, which impose stricter deadlines for both the submission of refugee status applications and the initial admissibility phase, on the grounds of a substantial increase in such applications. According to the draft legislation, this increase is attributed to the utilization of the refugee status recognition process by a significant number of foreign nationals entering the country to circumvent immigration controls or regularize their immigration status. This practice, it is argued, generates an excessive administrative burden and adversely affects the expediency, efficiency, and responsiveness of the procedure, due to the prevalence of applications lacking valid grounds, as stated in the draft's explanatory memorandum. To address these exigencies, and to "safeguard the integrity of the institution of refuge", the modifications aim to review the formal requisites established by Law No. 20.430 and its corresponding regulations, ensuring that "only those who satisfy the criteria and grounds" prescribed by national and international legal instruments access adequate protection within the national territory.[103]

13. Domestic and International Reactions: Civil society representatives argue that excessive bureaucratic hurdles have made it virtually impossible to initiate refugee status recognition processes in Chile.[104] In particular, the Jesuit Migrant Service (JMS) criticized that the new law only allows seven business days from entering the country to request asylum, "an extremely short period"[105] compared to other countries. Furthermore, the IACHR emphasized the persistent issue of the severely limited seven-business-day timeframe for

[103] Deputes Chambre, *Informe de la Comisión de Gobierno interior, nacionalidad, ciudadanía y regionalización, recaído en el proyecto de Ley que modifica la Ley N° 20.430, para establecer una etapa inicial del procedimiento de determinación de la condición de refugiado, y la Ley N° 21.325, en relación con la medida de reconducción o devolución inmediata de personas extranjeras que ingresen de forma irregular al territorio nacional*, Boletín No. 16.034-06 (S), 12/12/2023.

[104] SELA, *"No procede": Contraloría cuestiona trabas impuestas por Interior para solicitar refugio en Chile*, 25/11/2021, https://www.sela.org/no-procede-contraloria-cuestiona-trabas-impuestas-por-interior-para-solicitar-refugio-en-chile/

[105] Hilliger G. & Castillo C. (2024) "*Nueva ley que modifica el procedimiento para la determinación de la condición de refugiado*", El Mercurio Legal, 28/03/2024, Available at: https://sjmchile.org/opinion/columna-nueva-ley-que-modifica-el-procedimiento-para-la-determinacion-de-la-condicion-de-refugiado/ [last access 02/09/2025]

asylum applications,[106] bureaucratic obstacles that prevent the effective exercise of seeking and obtaining international protection.

Procedural barriers: Pre-admissibility or pre-screening interviews (Accelerated Procedure)

Summary: Chile's asylum process incorporates a preliminary admissibility stage, initially implemented through informal and legally challenged "pre-admissibility" or "pre-screening" interviews conducted by immigration authorities like the Department of Immigration and Migration (DEM) and later the National Migration Service (SERMIG). This practice, aimed at summarily rejecting "manifestly unfounded" claims, involved brief interviews and verbal rejections without the right to appeal. Despite judicial rulings against its arbitrariness, this pre-admissibility was briefly formalized in 2022 before being repealed, only to be reintroduced in February 2024 as a legally codified initial stage with defined timelines for evaluation and potential inadmissibility, a development justified by authorities as necessary to prevent misuse of the asylum system but criticized domestically and internationally, including by the IACHR, for undermining the right to seek asylum by enabling the immediate dismissal of claims without a full assessment.

1. *Functioning*: Chilean authorities have instituted a preliminary stage within the refugee status determination process. This expedited procedure facilitates the summary rejection of applications deemed manifestly unfounded or abusive. While currently a codified procedural stage, this process was previously characterized by arbitrary administrative action. Officials conducted cursory interviews with applicants, followed by verbal pronouncements of inadmissibility. As this stage lacked formal legal standing and involved only verbal rejections, applicants were denied the right to appeal.

2. *Time*: The practice of conducting pre-admissibility or pre-screening interviews for asylum applications has faced legal challenges in Chile since 2010,[107] with judicial decisions on its arbitrariness identified up to 2024. Despite these challenges, this practice was formally integrated into law as a preliminary stage of the asylum procedure in February 2024 through amendments to Law No. 20.430, and it remains in effect.

3. *Place*: The practice of conducting pre-admissibility interviews for asylum seekers has been observed across Chile, both at border crossings and within the offices of the SERMIG.

4. *Actors*: From 2010 to 2022, the Department of Immigration and Migration (DEM), and subsequently, from 2022 to the present, the SERMIG, as the principal authority overseeing asylum procedures, plays a central role in the existence of bureaucratic obstacles to accessing asylum. No international actors have been identified as directly involved in the creation of this barrier.

5. Interaction: Bureaucratic barriers in Chile primarily intersect with the summary expulsion of foreign nationals who are deported for non-compliance with immigration regularization requirements. These impediments also affect the pre-deportation detention of individuals. A notable point of interaction is the mandatory self-reporting of unlawful entry to the PDI, who must issue a certification of the individual's infraction. This certification then serves as the basis for expulsion orders due to violations of Chilean immigration law. Consequently, individuals who have self-reported but have not yet formalized asylum applications are vulnerable to expulsion orders

6. Development: The Chilean asylum system gives significant discretion to immigration officials. One of these practices is the distribution of application forms, which can further complicate matters for asylum seekers.[108] Until January 2022, Chilean regulations created a confusing "formalization" stage within the asylum application process, distinct from the legal requirements. This stage, conceived as a simple form

[106] CIDH (2024) "*Chile: CIDH expresa preocupación por reformas migratorias que restringen el derecho al asilo*", Press release No. 093/24, Available at: https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/093.asp [last access 02/09/2025]

[107] See H. Olea, 2012, *Refugiados en Chile*, cit., p. 124.

[108] See H. Olea, 2012, *Refugiados en Chile*, cit., p. 124; Human Rights Watch, Chile Events of 2023, in World Report 2024, https://www.hrw.org/world-report/2024/country-chapters/chile

submission and application reception, became problematic when officials began using it to conduct unauthorized eligibility assessments.[109] For years, the widely criticized practice of "pre-admissibility" interviews or "pre-screening" interviews, conducted without a defined legal framework, was used to screen asylum seekers[110] and verbally reject those deemed ineligible for international protection. These informal interviews, held before formal application, involved officials at the border, at the airport, or at immigration offices verbally questioning individuals about their reasons for seeking refugee status in Chile, purportedly to assess eligibility. Following these brief interrogations (five to ten minutes), authorities could issue verbal rejections, citing reasons such as non-compliance with refugee status grounds or nationality.[111] Because this illegal pre-admissibility interview was verbal and did not provide a written record of its outcome, the authorities undermined the right to appeal this denial of entry into the refugee status determination process through established administrative channels.[112] The Courts of Appeals and the Supreme Court of Justice consistently ruled against this practice, ordering the administration to submit the appropriate questionnaire to formalize the asylum application, receive it, and formally process it.[113]

Subsequent regulatory changes in January 2022 attempted to formally establish "formalization" as an admissibility phase, explicitly allowing for application denial. This was done by the creation of Article 37 *bis* -Formalization of the application.[114] This legal provision details the formalization process for asylum applications, stating that an application is formalized only if it relates to the grounds for refugee status defined in Article 2 of Law No. 20.430. If an application clearly lacks such a connection, the immigration authority must issue a report within 10 days. Based on this report, the Undersecretary of the Interior (or the National Director of Migration by delegation) can issue a reasoned resolution not to formalize the application if it is manifestly unfounded, which can be challenged through administrative appeals. However, this change was short-lived, as the article was repealed in April 2022 following constitutional challenges. Despite its brief existence, this change institutionalized an illegal admissibility screening practice and created a great deal of trouble for those seeking international protection. The article granted SERMIG officials the power to deny applications.[115]

Following the February 2024 legal amendments to Law No. 20.430, the asylum process now formally begins with a preliminary admissibility stage (Article 28 *bis*). Upon application submission, authorities first evaluate compliance with formal requirements and whether the claim is manifestly unfounded under Article 2. Pursuant to this provision, the status of refugee shall be accorded to individuals who satisfy any of the grounds established in the Geneva Convention of 1951 or the Cartagena Declaration of 1984. However, the right to recognition as a refugee under these grounds will be limited to those who "arrive directly" from the territory wherein their life or liberty is threatened, with direct arrival being construed as travel involving stopovers not exceeding sixty days in a third country, unless the Undersecretary of the Interior, in "duly qualified" cases, authorizes an extension of this period. Although the Safe Third Country (STC) concept is not explicitly codified within the statutory framework, it was a matter of express

[109] Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit., p. 143.
[110] Amnesty International, *Nadie quiere vivir*, cit., pp. 9-10.
[111] Ivi, p. 14; Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit., p. 148.
[112] C. Charles Pacheco & F. Gutierrez Merino, 2019, *Derechos de las personas migrantes, solicitantes de asilo y refugiadas ¿Procedimientos Ordenados, Seguros y Regulares? Medidas administrativas en migración y asilo bajo los estándares de los derechos humanos*, Informe Derecho Humanos Chile 2019, Universidad Diego Portales, p. 208.
[113] For example, legal actions initiated by the National Institute for Human Rights (INDH) in 2018 and 2019 enabled over 150 individuals seeking international protection in Chile to formally apply for refugee status, reversing previous denials during the pre-admissibility process by various provincial authorities. See *INDH logra que 150 personas puedan formalizar sus solicitudes de refugio*, 20/06/2019, https://www.indh.cl/indh-logra-que-150-personas-puedan-formalizar-sus-solicitudes-de-refugio/; *Chile: Corte Suprema acoge recurso de protección INDH en favor de 43 solicitantes de refugio*, https://pradpi.es/chile-corte-suprema-acoge-recurso-de-proteccion-indh-en-favor-de-43-solicitantes-de-refugio/; Chile: Justicia reconoce ilegalidad en negativa del gobierno de tramitar refugio a extranjeros, https://pradpi.es/chile-justicia-reconoce-ilegalidad-en-negativa-del-gobierno-de-tramitar-refugio-a-extranjeros/
[114] Decree 125 Amends Supreme Decree No. 837 of 2010 of the Ministry of the Interior, approving regulations of Law No. 20430, which establishes Provisions on Refugee Protection. https://www.bcn.cl/leychile/navegar?idNorma=1171123
[115] Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit., pp. 144-145.

deliberation during parliamentary proceedings. Specifically, discussions addressed the circumstances of individuals arriving in Chile via terrestrial routes, having transited through one or more intermediary states, and the rationale underlying their omission to seek international protection within those intervening jurisdictions.[116]

If formal requirements are met, the Director of the SERMING must issue an admissibility resolution within three working days. If requirements are not met, the applicant will be notified of the deficiencies and the manner and a fifteen-working-day deadline to rectify them, failing which the application will be considered withdrawn, potentially leading to expulsion. Once formal requirements are fulfilled, a technical report on whether the claim is manifestly unfounded will be prepared after a personal interview with the applicant, to be held within twenty working days from submission or rectification. If deemed manifestly unfounded, the Director will issue a reasoned inadmissibility resolution, subject to administrative appeals. This entire initial stage has a maximum duration of ninety working days. A final inadmissibility decision on the grounds of being manifestly unfounded will result in a five-year ban on future applications from the same person, unless new evidence of life-threatening circumstances in their country of origin is presented. Throughout this initial stage, the principle of non-refoulement will be upheld.

7. Rationale: Chilean authorities rationalize the establishment of an initial stage in the asylum process to protect the system from misuse by individuals attempting to bypass immigration regulations. The previously unregulated pre-admissibility interview was employed to restrict access to asylum based on an assessment of whether the applicant met the necessary criteria. The current legally established initial stage aims to expedite the process for eligible applicants while promptly dismissing applications considered unfounded.

Chilean authorities contend that many foreign nationals arriving in Chile are utilizing the asylum process not out of genuine need for protection, but rather as a mechanism to "circumvent immigration controls or regularize their immigration status". This surge in applications has reportedly overburdened the SERMIG and the Refugee Status Recognition Commission, impeding their capacity to efficiently process claims. Consequently, the establishment of an initial refugee recognition stage is intended to "safeguard the integrity of the refugee institution and ensure its application for legitimate international protection purposes".[117] This measure is aimed at facilitating timely and effective protection for those who meet the legal criteria, while also minimizing undue delays and accelerating decisions for bona fide refugees.

8. Legal Status: Individuals who are not admitted to the asylum process or whose application was rejected at the initial stage remain subject to the country's immigration regulations. If they do not meet the eligibility criteria for immigration regularization, they must leave the country voluntarily. Failure to comply may result in administrative deportation.

9. Specific Impact: There is no demonstrated particular impact of this barrier on specific groups, including children, women, LGBTQ+ people, or individuals with disabilities.

---

[116] During the legislative debate, a Member of Parliament underscored the importance of maintaining a clear distinction between the legal frameworks governing migration and refuge. The representative questioned the rationale for admitting individuals arriving from Safe Third Countries (STCs), specifically citing Peru, Argentina, and Bolivia as examples. The parliamentarian cautioned that conflating refuge with immigration could lead to "refugee tourism", thereby creating a substantial and intractable problem. Deputes Chambre, *Informe de la Comisión de Gobierno interior, nacionalidad, ciudadanía y regionalización, recaído en el proyecto de Ley que modifica la Ley N° 20.430, para establecer una etapa inicial del procedimiento de determinación de la condición de refugiado, y la Ley N° 21.325, en relación con la medida de reconducción o devolución inmediata de personas extranjeras que ingresen de forma irregular al territorio nacional*, Boletín No. 16.034-06 (S), 12/12/2023, p. 28.

[117] President of the Republic, Bulletin No. 16.034-06 Bill, initiated by Message from H.E. the President of the Republic, amending Law No. 20.430 to establish an initial stage of the refugee status determination procedure and Law No. 21.325 regarding the immediate return or reconduction measure for foreigners who enter the national territory irregularly. Santiago, 15 June 2023.

10. Reach: Precise public statistics on the number of individuals affected by this barrier are unavailable. However, between 2013 and 2024, over 40 judicial decisions addressing the practice of pre-admissibility interviews in Chile have been identified.

11. Source: Law No. 21.655 establishes an initial stage in the refugee status determination procedure. During this stage, authorities must evaluate whether the application fulfils the stipulated "formal requirements" or is "manifestly unfounded".

12. Justification: The Chilean authorities justify the legislative amendments made during the initial phase of admissibility, citing a substantial increase in such requests. According to the draft legislation, this increase is attributed to the utilization of the refugee status recognition process by a significant number of foreign nationals entering the country to circumvent immigration controls or regularize their immigration status. This practice, it is argued, generates an excessive administrative burden and adversely affects the expediency, efficiency, and responsiveness of the procedure, due to the prevalence of applications lacking valid grounds, as stated in the draft's explanatory memorandum. To address these exigencies, and to "safeguard the integrity of the institution of refuge", the modifications aim to review the formal requisites established by Law No. 20.430 and its corresponding regulations, ensuring that "only those who satisfy the criteria and grounds" prescribed by national and international legal instruments access adequate protection within the national territory.[118]

13. Domestic and International Reactions: The use of "pre-admissibility" procedures for asylum in Chile has been criticized for lacking a legal basis and hindering access to international protection.

The National Institute of Human Rights of Chile (INDH) has, since 2010, denounced the use of "pre-admissibility" procedures for refugee status determination. The INDH indicated that this practice, which lacks a legal basis, negatively impacts asylum seekers' right to access international protection, particularly those entering through the northern border.[119] Although this practice had been criticized, the Chilean authorities maintained it. In 2020, the Comptroller General's Office reasserted that the initial process for evaluating the viability of an asylum application (pre-admissibility interview) is not a mechanism contemplated in Chilean legislation. It emphasized that the authority must submit the respective form, without further formalities.[120]

Moreover, the amendment to the law in 2024 has drawn criticism. For example, the Jesuit Migrant Service (JMS) claims that the changes introduced to the law reflect greater barriers to access to the procedure, such as the incorporation of an initial stage in the procedure for determining refugee status, aimed at carrying out a preliminary analysis to exclude applications that are considered "manifestly unfounded".[121] The IACHR, in May 2024, indicated that Chile's law of 24 February 2024 undermines the fundamental right to seek and receive asylum. The Commission expressed alarm over the law's implementation of a preliminary verification phase, which enables the immediate dismissal of "manifestly unfounded" asylum claims following an interview. For the IACHR, this process bypasses the essential requirement of a formal administrative decision on the merits of the case, effectively denying individuals a proper assessment of their need for international protection.[122]

---

[118] Deputes Chambre, *Informe de la Comisión*, 12/12/2023, Cit.

[119] National Institute of Human Rights, Informe Anual 2010. Situación de Los Derechos Humanos en Chile, p. 148.

[120] General Comptroller of the Republic, 2020, *Informe final de investigación especial N° 828 de 2019, sobre presuntas irregularidades en el procedimiento de "formalización de las solicitudes de reconocimiento de la condición de refugiado" por parte del Departamento de Extranjería y Migración de la Subsecretaría del Interior*, pp. 22-23.

[121] Jesuit Migrant Service, *Entra en vigencia ley que modifica procedimiento de refugio y ley de migración en reconducciones*, 20/02/2024, https://sjmchile.org/noticias/entra-en-vigencia-ley-que-modifica-procedimiento-de-refugio-y-ley-de-migracion-en-reconducciones/

[122] CIDH, *Chile: CIDH expresa preocupación por reformas migratorias que restringen el derecho al asilo*, 07/05/2024, https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/093.asp

Procedural barriers: Obstacles to presenting the asylum application

Summary: Chile's asylum system presents significant bureaucratic barriers that impede access for individuals seeking international protection. A primary obstacle involves the mandatory self-reporting of irregular entry to the Investigative Police (PDI) and the requirement of a certificate, the absence of which has been used to deny access to the asylum procedure. This prerequisite, despite judicial challenges, has been reinforced by subsequent legal changes. Furthermore, the practice of scheduling asylum application appointments months after initial contact leaves applicants in legal uncertainty without protection. These bureaucratic hurdles, alongside issues like misinformation and limited access to application forms, effectively restrict individuals' ability to formally seek and receive refuge in Chile.

1. Functioning: Specific bureaucratic impediments obstruct the submission of asylum applications to the Chilean immigration authorities. A primary obstacle has been the mandatory self-reporting of irregular entry to the PDI and the subsequent requirement of a certification from this agency. The absence of this certificate has been utilized by authorities to deny individuals access to the asylum procedure. Additionally, more subtle bureaucratic hurdles have been employed, such as the scheduling of appointments for the formal submission of applications for dates three months or longer after the initial contact with the immigration office, leaving the applicant in a precarious legal limbo without status or protection during this extended waiting period.

2. Time: The arbitrary prevention of the submission of asylum applications in the Republic of Chile lacks a defined temporal commencement or cessation. Judicial pronouncements, identified from 2013 to the present, have predominantly addressed the prerequisite of self-reporting for irregular entry.

3. Place: Obstacles to submitting asylum applications occur throughout Chile.

4. Actors: The SERMIG, as the primary authority responsible for asylum procedures, is central to the existence of these bureaucratic hurdles to asylum access. The PDI contributes significantly to the specific obstacle of self-reporting for irregular entry by registering and certifying such entries. No international actors have been identified as directly involved in creating this barrier.

5. Interaction: Impediments to the submission of asylum applications are intrinsically linked to the risk of expulsion from the Republic of Chile. Individuals who are prevented from initiating the asylum procedure may be subject to an expulsion order if their immigration status is not regularized. This nexus is particularly evident in cases of self-reported irregular entry, wherein the certification of the infraction issued by the PDI may provide a basis for the issuance of an expulsion order, as previously detailed in the section concerning pushbacks.

6. Development: The asylum system in Chile is characterized by significant administrative obstacles that hinder access for people seeking international protection. These barriers manifest themselves in various ways, including the dissemination of misinformation suggesting the lack of asylum available in the country,[123] the refusal of authorities to provide the necessary forms for asylum applications, or to accept properly submitted written applications, among others.

A significant bureaucratic impediment is the requirement for "voluntary declaration of clandestine entry" (*declaración voluntaria de ingreso clandestino*), commonly known as self-reporting (*autodenuncia*). The evolution of self-reporting within Chile's asylum system, as outlined in Law No. 20.430 (2010) and its subsequent regulations, reveals a shift in its function and impact. Originally, in 2010, Chilean law permitted any individual within the country to seek asylum, irrespective of their immigration status. However, later regulations, particularly Decree No. 837 of 2011, established a mandatory self-reporting obligation for individuals who had entered Chile irregularly. Those entering Chile through unauthorized crossings are compelled to present themselves to the PDI to declare such entry and obtain a corresponding certificate. Despite the initial intention for self-reporting to be a separate requirement, Chilean authorities misinterpreted it, using it as a prerequisite that had to be fulfilled before an asylum application could even

[123] National Institute of Human Rights (INDH). (2022). *Informe Anual*, Cit. p. 164.

be submitted, thus creating an obstacle to accessing the refugee procedure. Failure to obtain this certificate results in the SERMIG rejecting asylum applications. Despite the requirement for this document, a 2021 investigation in Colchane indicated that official information about this procedure was virtually non-existent at the border, creating space for informal channels of information[124] among migrants.

Paradoxically, individuals complying with the self-reporting process are frequently issued expulsion orders by the PDI, as explained in the section referring to pushbacks.[125] This situation poses a significant detriment to individuals requiring refugee status. Specifically, if an expulsion order has been issued, Chilean legislation mandates the rescission of said order as a prerequisite for formalizing a refugee status application. Therefore, the practical consequence of a valid expulsion order is the denial of access to the asylum process,[126] a position that is inconsistent with the provisions and intended interpretation of Law No. 20.430.[127]

For several years, Courts of Appeal and the Supreme Court have held that this prerequisite is not established by law, thereby ordering administrative authorities to process applications for international protection. However, in 2023, a ruling by the Supreme Court of Justice introduced a subtle shift, stipulating that the administrative authority must evaluate asylum applications while retaining the right to monitor compliance with all legal requirements, including the self-reporting to the PDI. Likewise, the Supreme Court ordered the SERMIG to create and implement a procedural manual to harmonize administrative practices with the requirements of Law No. 20.430 and its regulations, reducing inconsistencies and ensuring that asylum seekers can access formal application procedures without undue obstacles.[128] Subsequent legal changes through Decree No. 125 (2022) and Law No. 21.655 (2024) reinforced this self-reporting as a necessary first step for those with irregular entry seeking asylum in Chile.

Another identified obstacle is the practice of scheduling appointments for asylum applications. These appointments, recorded on slips of paper with specific dates and times, were typically scheduled three to eight months after the migrant's initial visit to the immigration office and did not detail the process required by the individual (refugee or other immigration status).[129] Furthermore, these appointments were scheduled for the pre-admissibility interview, a stage not recognized by law, which subjected applicants to waiting periods of several months for a brief interview intended to determine their potential eligibility for the refugee procedure.[130] Even though individuals were technically permitted to submit asylum applications, the imposition of extended waiting periods had the practical effect of leaving them without protection. This delay in processing meant asylum seekers lacked crucial official documentation confirming their status. Consequently, their access to fundamental rights was jeopardized, most notably the principle of non-refoulement, leaving them vulnerable to expulsion and in violation of international standards. This problematic situation has been challenged through various cases brought before the Chilean judicial system, highlighting the discrepancy between the right to apply for asylum and the practical barriers erected by lengthy administrative delays.

A further documented hurdle is the requirement to present oneself in person at an Immigration Office to obtain the requisite asylum application form. These offices are often situated exclusively in urban centres, operating only during standard business hours and, sometimes, serving a limited daily quota of individuals.

---

[124] See Carolina Stefoni C., Jaramillo M., Bravo A. & Macaya-Aguirre G. (2023) Colchane. The construction of a humanitarian crisis in the border area of northern Chile, Estudios Fronterizos, Vol. 24, p. 15.
[125] Amnesty International, *Nadie quiere vivir*, cit., p. 12.
[126] H. Olea, 2012, *Refugiados en Chile*, cit., p. 123.
[127] Bolados, R. 2021, *Ley de Refugio en Chile: arbitrariedad en su aplicación práctica*, Diario Constitucional, https://www.diarioconstitucional.cl/articulos/ley-de-refugio-en-chile-arbitrariedad-en-su-aplicacion-practica/; Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit., p. 146.
[128] Third Chamber of the Supreme Court, Rol Nº 115.005-2022, 23 March 2023.
[129] General Comptroller of the Republic, 2020, *Informe final*, pp. 14 -18; Araneda M.A., *"La ley de refugio desapareció": Los 191 recursos judiciales en contra del Servicio Nacional de Migraciones*, 2022, https://doble-espacio.uchile.cl/2022/07/05/la-ley-de-refugio-desaparecio-los-191-recursos-judiciales-en-contra-del-servicio-nacional-de-migraciones/
[130] C. Charles Pacheco & F. Gutiérrez Merino, 2019, *Derechos de las personas*, cit., p. 212.

This situation was further exacerbated in April 2021 when the Ministry of the Interior directed the closure of public service procedures in 54 provincial governorates, including Arica and Tarapacá, impacting asylum applications and other immigration processes. This directive required applicants to travel to the national office in Santiago. However, in November 2021, the Comptroller General of the Republic (CGR) ruled the directive contrary to national refugee protection laws and international treaties.

7. Rationale: The Chilean State asserts that the self-reporting requirement is essential to establish a record of entry in the National Registry of Foreigners, verify accurate identification, ensure the validity and authenticity of travel documents, and confirm the voluntary nature of entry.[131] Concerning the scheduling of appointments for the submission of asylum applications, the justification provided is that this system is necessary to ensure orderly service delivery to applicants and to allow the administrative bodies adequate time for the processing of applications.

8. Legal Status: Individuals who fail to formalize their asylum application due to bureaucratic obstacles are not protected and must regularize their immigration status or leave the country.

9. Specific Impact: There is no demonstrated particular impact of this barrier on specific groups, including children, women, LGBTQ+ people, or individuals with disabilities.

10. Reach: There are no accurate public statistics that allow us to know the number of people affected by this bureaucratic barrier imposed in Chile.

11. Source: Voluntary declaration of clandestine entry, or "self-reporting": Decree No. 837, which regulates Law No. 20.430 concerning refugee protection. Decree No. 125 altered Decree N° 837 of 2011. The Procedural Manual of the Department of Refuge and Resettlement of the National Migration Service, Exempt Resolution 21.726: mandatory submission of the Voluntary Declaration of Clandestine Entry to the Investigative Police (PDI). Law No. 21.655, 20 February 2024, amending Law No. 20.430 (Provisions on Refugee Protection).

12. Justification: Chilean authorities contend that a substantial portion of the applications are being lodged by foreign nationals primarily to bypass immigration controls or to regularize their immigration status, rather than due to a genuine need for protection. This trend creates an undue administrative burden, negatively impacting the speed, efficiency, and effectiveness of the asylum procedure due to the high volume of applications lacking legitimate grounds.[132]

13. Domestic and International Reactions: Civil society representatives argue that excessive bureaucratic hurdles have made it virtually impossible to initiate refugee status recognition processes in Chile.[133] In 2020, the Comptroller General's Office addressed the problematic delay in initiating asylum procedures. The Office found that the practice of using a summons receipt to postpone the start of the asylum process by over three months was not provided for in Chilean regulations and exposed asylum seekers to the risk of expulsion, violating the principle of non-refoulement.[134]

15. Other: Communication failures are widespread, with a poor notification system and limited accessibility to the SERMIG office, which forces applicants to rely on in-person consultations for case updates. Consequently, a substantial number of asylum applications are resolved through withdrawals or abandonments, denying applicants a formal decision and hindering access to crucial complementary

[131] National Migration Service, *Manual de procedimiento del Departamento de Refugio y Reasentamiento del Servicio Nacional de Migraciones*, Resolución exenta No. 21, 11/05/2023.
[132] Deputes Chambre, *Informe de la Comisión de Gobierno interior, nacionalidad, ciudadanía y regionalización, recaído en el proyecto de Ley que modifica la Ley N° 20.430, para establecer una etapa inicial del procedimiento de determinación de la condición de refugiado, y la Ley N° 21.325, en relación con la medida de reconducción o devolución inmediata de personas extranjeras que ingresen de forma irregular al territorio nacional*, Boletín No. 16.034-06 (S), 12/12/2023.
[133] SELA, *"No procede": Contraloría cuestiona trabas impuestas por Interior para solicitar refugio en Chile*, 25/11/2021, https://www.sela.org/no-procede-contraloria-cuestiona-trabas-impuestas-por-interior-para-solicitar-refugio-en-chile/
[134] General Comptroller of the Republic, 2020, *Informe final*, pp. 14 -18.

protection.[135] Furthermore, the absence of specific protocols for vulnerable applicants, such as stateless persons and those with language barriers, creates significant inequities. Stateless individuals are left without a formal recognition process, and language support is insufficient for many asylum seekers, despite policy provisions.[136]

The absence of information on legal assistance for asylum seekers is another identified issue in Chile. Despite the availability of "information booklets" (*cartillas informativas*) outlining the asylum procedure, rights, obligations, and relevant public bodies, these materials do not include contact details for international or civil organizations that could offer applicants guidance on their cases.[137] Likewise, delays in processing asylum applications have presented a persistent obstacle since 2010. The National Institute of Human Rights of Chile reported at that time that the process could take up to two years, indicating a significant barrier to timely access to protection.[138] In addition to the bureaucratic barriers mentioned above, transversal gender-based discrimination, racism, and xenophobia on the part of Chilean authorities and society have also been pointed out as general obstacles.[139]

III. SELECTING BARRIERS

Given the imperative to ensure effective access to asylum, further legal scrutiny is warranted concerning the implementation of pushback measures and the scope of immediate return to Bolivia. The recent bilateral agreement between Chile and Bolivia raises significant concerns regarding the potential for refoulement of third-country nationals, thereby precluding their access to asylum procedures within Chilean territory. The legality of these return practices remains untested in judicial proceedings.

Moreover, the persistent and pervasive nature of bureaucratic impediments to asylum access necessitates in-depth legal analysis. These barriers, which have been progressively codified through legislative amendments, constitute a substantial obstacle to the exercise of the right to seek asylum. The prevalence of judicial challenges related to procedural irregularities in asylum applications before both first and second instance courts underscores the gravity of this issue.

[135] Jesuit Migrant Service, *Informe seguimiento a la política nacional de migraciones y la Ley de Refugio en Chile*, 2024, p. 20.
[136] Ivi, p. 21.
[137] General Comptroller of the Republic, 2020, *Informe final*, cit., p. 2.
[138] National Institute of Human Rights, *Informe Anual 2010. Situación de Los Derechos Humanos en Chile*, p. 148.
[139] S. Priya Morley et al. 2021, A Journey of Hope: Haitian Women's Migration to Tapachula, Mexico, p. 45.

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

Pushbacks: The specific operation of this barrier is to prevent the entry of persons into the territory of the Republic of Chile or to summarily expel those with an irregular status, thus denying them access to asylum. This is evidenced in cases where Chilean authorities have denied entry at border controls without conducting individualized assessments of protection needs, thereby preventing the initiation of asylum procedures, which require the applicant's presence in Chilean territory to submit the application. Furthermore, documented cases of summary expulsion or immediate return of foreigners who have crossed the border irregularly demonstrate a lack of adequate consideration of potential protection requirements and the opportunity to submit an asylum application. In cases of expulsion, persons with an irregular migratory status within Chilean territory are issued expulsion orders for immigration violations, such as unauthorized border crossings, and are ordered to leave the country. While in cases of immediate return, the measure is implemented within ten kilometres of the Chilean border, people who attempt to cross or have crossed and are within the 10-kilometre limit are taken to the police station for identification and processing, and subsequently transferred to the border of the country they entered from, specifically Bolivia, to be handed over to the corresponding authorities

Type of body: Court of Appeals and Supreme Court

Procedural barriers: Obstacles to presenting the asylum application: Specific bureaucratic impediments obstruct the submission of asylum applications to the Chilean immigration authorities. A primary obstacle has been the mandatory self-reporting of irregular entry to the PDI and the subsequent requirement of a certification from this agency. The absence of this certificate has been utilized by authorities to deny individuals access to the asylum procedure. Additionally, more subtle bureaucratic hurdles have been employed, such as the scheduling of appointments for the formal submission of applications for dates three months or longer after the initial contact with the immigration office, leaving the applicant in a precarious legal limbo without status or protection during this extended waiting period.

Type of body: Court of Appeals and Supreme Court

Procedural barriers: Pre-admissibility or pre-screening interviews: Chilean authorities have instituted a preliminary stage within the refugee status determination process. This expedited procedure facilitates the summary rejection of applications deemed manifestly unfounded or abusive. While currently a codified procedural stage, this process was previously characterized by arbitrary administrative action. Officials conducted cursory interviews with applicants, followed by verbal pronouncements of inadmissibility. As this stage lacked formal legal standing and involved only verbal rejections, applicants were denied the right to appeal.

Type of body: Court of Appeals and Supreme Court

Lack of cases related to one or more selected barriers

Immediate returns actions for irregular entry are not heard by Chilean courts. Such decisions must be appealed from abroad before the authority that issued the order (the Immigration Department), according to Chilean law. However, there is one court ruling regarding a person who, through a legal representative, filed a lawsuit in Chile due to the impossibility of appealing the immediate returns decision due to a defect

in the electronic system designed for this purpose and the impossibility of accessing the Chilean Consulate in Bolivia.[140]

B. Institutional settings

Pushbacks:

- **First instance judicial or quasi-judicial body**: Court of Appeals (*Corte de Apelaciones*)
- **Second instance judicial or quasi-judicial body**: Supreme Court (*Corte Suprema*)

Procedural barriers:

- **First instance judicial or quasi-judicial body**: Court of Appeals (*Corte de Apelaciones*)
- **Second instance judicial or quasi-judicial body**: Supreme Court (*Corte Suprema*)

Executive bodies involved in asylum access adjudication

In Chile, the adjudication of asylum claims is primarily administered through a set of executive bodies, each with distinct but interrelated functions defined under national legislation and influenced by international standards. These institutions operate within a framework that has evolved significantly over the past two decades, most notably through the enactment of Law No. 20.430 on the Protection of Refugees (2010), Law No. 21.325 on Migration and Immigration (2021), and Law No. 21.655 (2024), which introduced critical procedural reforms.

At the core of the refugee status determination system is the National Refugee Commission (*Comisión de Reconocimiento de la Condición de Refugiado*), established by Law No. 20.430 (Article 20). This commission is the principal body charged with adjudicating applications for refugee status in Chile. Its mandate includes not only the determination of refugee status in accordance with international and domestic legal standards but also the coordination of public policies aimed at protecting refugees and asylum-seekers. It plays a role in identifying and facilitating durable solutions for recognized refugees. The composition of the Commission underscores its inter-institutional character, as established by Article 21 of Law No. 20.430. It is chaired by the Undersecretary of the Interior or their designated representative and includes, as voting members, two representatives from the Ministry of the Interior appointed by the Minister of the Interior, and two representatives from the Ministry of Foreign Affairs appointed by the Minister of that portfolio. In addition, a representative of the United Nations High Commissioner for Refugees (UNHCR) is entitled to participate in the Commission's meetings in an advisory capacity, without voting rights.

The National Migration Service (*Servicio Nacional de Migraciones- SERMIG*), created by Law No. 21.325, is tasked with managing the broader migration framework, within which the asylum process is situated. This agency is responsible for receiving asylum applications, informing applicants of procedural requirements, and conducting preliminary assessments of claims (Law No. 20.430, Articles 26 et seq.). It also holds the authority to issue administrative decisions declaring an application "manifestly unfounded," a decision that is often based on a technical evaluation prepared by the National Refugee Commission. In addition, the Service serves as a coordinating body for government interaction with civil society, local governments, and international organizations involved in migration and asylum matters. It works in close conjunction with the Ministry of the Interior in executing migration policy and overseeing compliance with legal norms governing refugee protection.

Law enforcement agencies, namely the Chilean investigative police force (*Policía de Investigaciones de Chile - PDI*) and *Carabineros de Chile*, also have operational responsibilities at the initial stages of the asylum process. These authorities may be the first point of contact for individuals seeking asylum at the border or within

[140] Supreme Court, case *No. 12.157-2022*, adjudicated on 27 December 2022. (Court of Appeals of Iquique, *No. 124-2022*, adjudicated on 14 April 2022.

national territory. Their duties include referring applicants to the appropriate migration authorities and ensuring the proper documentation and biometric registration of asylum seekers. Although they do not participate in the adjudication process, their role in initial reception can significantly affect whether individuals gain access to the formal asylum procedure.

In Chile, the involvement of executive bodies in asylum access adjudication, particularly when confronted with various barriers, is complex and often interconnected, reflecting the multi-faceted nature of migration management.

Regarding pushbacks and summary expulsions, which involve preventing entry or returning individuals who have attempted to cross borders, the primary executive bodies involved are the SERMIG and the PDI, along with *Carabineros de Chile*. These agencies are at the forefront of border control and enforcement. Their competence lies in applying migration and asylum laws at the border, including initial screenings and decisions on entry or expulsion. Recent legislative changes, particularly Law No. 21.655 (February 2024), aim to reinforce border control capacity and allow for the immediate return of individuals (*reconducción inmediata*). While not directly adjudicating asylum, their operational decisions at the border can effectively deny access to the asylum procedure. The Ministry of the Interior and Public Security ultimately oversees these border control efforts, setting the policy framework for such operations.

The construction of the border trench, as a physical barrier at the northern border, is primarily a policy decision driven by the Ministry of the Interior and Public Security in coordination with other relevant ministries, reflecting national security and migration control objectives. While these are not directly involved in adjudication, they represent a significant physical barrier to asylum access, with the executive branch deciding on their implementation and deployment of border forces, which then becomes the responsibility of Carabineros and PDI to enforce.

Detention of asylum seekers falls under the purview of the SERMIG for administrative detention related to migration status, with law enforcement agencies like PDI and Carabineros responsible for the physical custody and management of detention centres. The Ministry of the Interior and Public Security exercises ultimate oversight over detention policies. Chilean law, specifically the Migration and Immigration Law No. 21.325, outlines the conditions and duration of administrative detention, though recent legislative proposals have sought to expand its scope and duration, raising concerns about arbitrary detention. The National Refugee Commission may become indirectly involved if a detained individual is seeking asylum, as their asylum claim should, in principle, suspend expulsion proceedings, influencing the duration of detention.

Finally, procedural barriers are primarily managed by the SERMIG and the National Refugee Commission. The SERMIG is responsible for receiving applications, informing applicants of requirements and deadlines, and conducting preliminary assessments, including identifying "manifestly unfounded" claims. The National Refugee Commission then conducts technical evaluations and interviews, and issues reports that form the basis of the final decision. The amendments by Law No. 21.655 (February 2024) had intensified procedural barriers by introducing a seven-day deadline for asylum applications after entry, and an initial validation phase allowing for the rapid rejection of applications found to be fraudulent or not meeting refugee criteria without a full administrative decision. These changes could impact the due process rights of asylum seekers, with both bodies playing a critical role in their implementation.

International or regional organizations involved in asylum access adjudication

In Chile, international and regional organizations do not directly adjudicate asylum claims, as this remains the sovereign competence of the Chilean state through its executive bodies, primarily the National Refugee Commission and the SERMIG. However, these organizations play a crucial and influential role in supporting, advising, and monitoring Chile's asylum system, thereby indirectly impacting asylum access and adjudication.

UNHCR, while based in Santiago, primarily focuses its operations on the northern border regions of Arica y Parinacota and Tarapacá through a robust network of institutional partnerships. The office offers remote

information and guidance on refugee status determination and available services. Collaborating with partners in Santiago (capital), Arica, and Iquique (northern border with Bolivia and Peru), UNHCR delivers humanitarian aid and psychosocial support to vulnerable refugees and asylum seekers. Additionally, UNHCR conducts protection monitoring to assess risks and integration challenges, provides technical assistance to national authorities for legal framework enhancement, and engages with communities to foster peaceful coexistence. The office also undertakes communication campaigns to promote welcoming environments and collaborates with the private sector to improve employment opportunities and facilitate access to decent work for refugees and asylum seekers, aligning with its broader livelihood strategy.[141]

Regional organizations, such as the IACHR, are not directly involved in individual asylum adjudication in Chile. However, the IACHR plays a vital role in monitoring, promoting, and defending human rights in Chile, including the right to seek and be granted asylum. Its competence lies in issuing reports, press releases, and advisory opinions on human rights situations, including those related to migration and asylum.

C. Legal context and legal system

Legal system

The legal system of Chile is firmly embedded within the civil law tradition, aligning it with the legal frameworks of most Latin American countries. This foundational characteristic signifies that codified legislation constitutes the principal source of law, rather than judicial precedent. The Political Constitution of the Republic of Chile, originally enacted in 1980 and subsequently amended on numerous occasions, remains the supreme legal authority. It delineates the organization of the state, enshrines fundamental rights, and establishes the separation of powers among the executive, legislative, and judicial branches.

Chile's judiciary is organized hierarchically, culminating in the Supreme Court (*Corte Suprema*), which functions as the court of last resort. Subordinate to the Supreme Court are the seventeen Courts of Appeal (*Cortes de Apelaciones*), one in each region,[142] which exercise appellate jurisdiction over decisions from lower tribunals and are responsible for knowing as a first instance the remedy of protection (*Recurso de Protección*).[143] At the foundational level are the trial courts, many of which have subject-matter specialization, including civil, criminal, family, labor, tax, and customs jurisdictions. While judicial decisions in Chile do not have binding precedent in the common law sense, the jurisprudence of higher courts, particularly the Supreme Court, carries substantial persuasive authority and is typically followed by lower courts. In addition, doctrinal writing by legal scholars plays an important interpretive and developmental role within the system, further shaping legal understanding and application.[144]

International legal frameworks, sources, and legal grounds

Chilean courts predominantly rely on national legislation when adjudicating cases concerning asylum access barriers. This domestic legal framework, as previously established, explicitly acknowledges and integrates the core principles and rights articulated in major international refugee instruments. While the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, both ratified and incorporated into Chilean law, are less frequently cited by the Courts of Appeal and the Supreme Court than domestic law, other international instruments also see occasional use. The American Convention on Human Rights (ACHR- Pact of San José) and the Mexico Declaration and Plan of Action are sometimes invoked to

[141] UNHCR, ACNUR en Chile, https://help.unhcr.org/chile/acnur-en-chile/

[142] Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Santiago, San Miguel, Rancagua, Talca, Chillán, Concepción, Temuco, Valdivia, Puerto Montt, Coyhaique and Punta Arenas. See https://www.pjud.cl/post/tribunales-del-pais

[143] The remedy of protection is the most common legal action to litigate in the courts, the barriers to accessing asylum, as will be seen later in this section.

[144] See ¿Qué es el Poder Judicial?, https://www.pjud.cl/post/que-es-el-poder-judicial

bolster arguments for enhanced international protection within Latin America and are notably present in dissenting opinions favouring asylum seekers.[145] Conversely, the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), despite Chile being a party to both, are rarely referenced. This limited engagement is significant, as these unutilized instruments offer additional legal grounds for courts to assess the legality of asylum procedures, particularly regarding due process and the absolute prohibition of torture and other cruel, inhuman, or degrading treatment.

Membership in regional treaties

Regional human rights instruments, in particular the 1984 Cartagena Declaration and the ACHR, play a central role. Article 22(7) of the ACHR recognizes the right to seek and receive asylum, while Article 22(8) prohibits expulsion of persons to countries where their life or liberty is in danger due to various protected features. However, the invocation of these, as well as universal human rights instruments, usually comes from legal intermediaries. Some Chilean courts integrate these provisions when reviewing administrative actions that prevent access to asylum or result in indirect refoulement, such as border denial or detention without due process for asylum seekers. In such cases, judicial challenges are often based on the constitutional supremacy of these international obligations, leading courts to order authorities to allow entry into the territory and/or process asylum applications.

For instance, rulings *No. 36795-2021* and *No. 36991-2021*, decided by the Second Chamber of the Supreme Court on June 7 and June 11, 2021, respectively, emphasize that administrative expulsion decisions, even when rooted in national immigration statutes, must meet a higher burden of proof and adhere to principles of proportionality, reasonableness, and due process, including the right to be heard and present evidence. Crucially, the Court highlights the applicability of the 1984 Cartagena Declaration along with the 1951 Refugee Convention and its 1967 Protocol, to reinforce the fundamental principles of *non-refoulement* and non-rejection at the border, asserting that these international norms, recognized as *jus cogens*, apply regardless of the individual's entry status or whether formal refugee status has been granted.

Moreover, in ruling *No. 10876-2022*, adjudicated by the Supreme Court on 21 April 2022, the Court addressed a writ of amparo concerning individuals who had entered the country irregularly and were subsequently subjected to the immediate return to Bolivia. The concurring opinion put greater emphasis on the interpretation of domestic law in light of international human rights instruments. It stressed that Article 131, paragraph 2, of Law No. 21.325 (immediate return- *"reconducción inmediata"*) must be interpreted in accordance with Chile's international treaties. It specifically cited the 1984 Cartagena Declaration and the Pact of San José. Crucially, this opinion asserted that these instruments establish principles of defence, review of measures, prior judicial decisions, *non-refoulement*, and non-rejection at the border, regardless of whether refugee status has been formally recognized or entry was regular. It emphasized that these are principles of international human rights law, derived from the 1951 Refugee Convention and Article VII of its 1967 Protocol, and recognized as *jus cogens* in the Mexico Declaration and Plan of Action. Furthermore, it noted that Law No. 20.430 on Refugee Protection and its Regulation No. 837 (Articles 1, 6, 26, 32, and 35, respectively) also reflect this international scope, rendering the legality of entry irrelevant given the urgent and precarious circumstances often forcing individuals to flee their home countries. The concurring opinion concluded that maintaining measures under such circumstances, particularly in the face of widespread irregular migration due to political persecution and economic hardship, would necessarily violate the individuals' physical, psychological, and personal security.

It should be noted that in Chile, national judicial bodies, including the Supreme Court and Courts of Appeal, base their decisions regarding barriers to asylum predominantly on domestic law. In the current analysis, no judicial decisions have been identified in which courts have explicitly referred to foreign precedents or norms when deciding cases related to obstacles to asylum.

[145] For instance, see dissenting opinions in Supreme Court's rulings *No. 14.398-2021*, 25 February 2021 and No. *14.394-2021*, 02 March 2021.

As indicated above, Chilean judges predominantly base their decisions on barriers to asylum on domestic legislation, rather than on precedents from international or supranational courts. Although his reasoning may be aligned with that of the Inter-American Court of Human Rights (IACtHR), specific references to inter-American case law are often missing.

Citation of international human rights standards established by supranational courts

In Chile, the courts sometimes resort to international human rights standards from supranational tribunals, particularly the IACHR, when addressing barriers to asylum. This practice is based on Article 5, paragraph 2, of the Political Constitution, which grants ratified international human rights treaties a constitutional or supralegal status. This increasing emphasis on conformity with international human rights standards obliges the courts to align national laws and administrative actions with Chile's international human rights obligations. When resolving issues such as forced returns, prolonged detention, or restrictive procedural requirements, Chilean judges rely on the expanded definition of refugee in the Cartagena Declaration and the jurisprudence of the IACHR as a highly persuasive authority for interpreting fundamental rights, including the right to seek and receive asylum and the absolute principle of non-refoulement. For example, in *case No. 36991-2021*, adjudicated by the Supreme Court on 16 November 2021, the court referenced the expanded Cartagena Declaration in cases of massive human rights violations and the principle of *non-refoulement*.

Similarly, concurring and dissenting opinions within Supreme Court jurisprudence are markedly more explicit in their invocation of Inter-American legal precedents. For instance, in rulings *Rol No. 14.392-2021*, adjudicated on 25 February 2021, and *Rol No. 14.396-2021*, adjudicated on 02 March 2021, the dissenting opinions cited the IACHR Resolution 2/18 regarding the Forced Migration of Venezuelans. This resolution expressly characterizes the Venezuelan diaspora as a direct consequence of systemic human rights violations inflicted upon its nationals. The dissent argued that this resolution constitutes sufficient international precedent to warrant the application of the universal principle of reception for protected persons within Chile. This obligation is predicated upon the principles of non-return and *non-refoulement* at the border, as enshrined in the 1984 Cartagena Declaration on Refugees. Adding that, this legal framework is further reinforced by "the relevant UNHCR Guidance Note, which urges States to rigorously observe the principle of *non-refoulement* and encourages the adoption of protection mechanisms that afford Venezuelan nationals legal residency and appropriate safeguards". The same arguments were used in the concurrent decisions of the Supreme Court. The same arguments were used in the concurrent decision of the Supreme Court, *Rol No. 14.494-2021*, adjudicated on 01 March 2021.

Moreover, in ruling *Rol No. 138.326-2020*, adjudicated by the Supreme Court on 26 July 2021, the panel explicitly relies on Inter-American precedents to resolve the tension between restrictive domestic immigration regulations and international human rights obligations. Confronted with the legal question of whether pre-existing expulsion orders preclude foreign nationals from formally seeking refugee status under Chilean Law No. 20.430, the court circumvented domestic administrative barriers by invoking the jurisprudence of the IACtHR, specifically citing the case of *Gutiérrez Family v. Plurinational State of Bolivia* [*sic*- the correct case is *Pacheco Tineo v. Bolivia*]. Relying on this precedent, the Chilean court reaffirmed the paramount nature of the right to seek asylum and the principle of *non-refoulement* as enshrined in Articles 22.7 and 22.8 of the American Convention on Human Rights. Crucially, the court adopted the IACtHR's expansive interpretation of *non-refoulement*, which extends protective safeguards to any individual whose life, integrity, or liberty is at risk, irrespective of their formal migratory or asylum-seeker status.

While the State has legitimate interests in border control, Chilean courts, guided by the jurisprudence of the IACtHR, meticulously examine measures such as summary returns or prolonged detention to ensure they do not disproportionately infringe upon the right to seek asylum or liberty. This approach ensures that national interests are pursued within the framework of internationally recognized human rights and that the courts act as a crucial counterweight to executive power. Although Chile differs from the constant direct citation of foreign jurisprudence characteristic of other systems, the persuasive authority of supranational courts in the Chilean civil law system has arguably gained ground in matters of asylum and

human rights, reflecting a shared understanding of universal human rights and a commitment to their interpretation most favourable to asylum seekers.

D. Laws and norms at the domestic level

Refugee Convention and/or the related New York Protocol

Chile is a signatory State to both the 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees. Chile acceded to both instruments on 28 January 1972, with the Convention entering into force for Chile on 27 April 1972. These international instruments form the bedrock of Chile's legal framework for refugee protection. The 1951 Convention and its 1967 Protocol are not merely aspirational documents; they are directly applicable and possess a hierarchical status within the domestic legal order, specifically due to Article 5, second paragraph of the Chilean Political Constitution. This provision mandates that state organs, including all judicial bodies, must respect and promote the essential rights guaranteed by international treaties ratified by Chile. This constitutional embedding means that the provisions of the Refugee Convention and Protocol are supreme to ordinary legislation and are binding on all executive and judicial authorities.

Consequently, when judicial bodies in Chile adjudicate on asylum access, they are directly guided by these instruments. The core principles of the Convention, such as the definition of a refugee based on a well-founded fear of persecution, and most crucially, the principle of *non-refoulement* (Article 33 of the 1951 Convention), are invoked. For instance, in cases involving administrative expulsion orders, judicial bodies will scrutinize whether such orders violate the principle of *non-refoulement* by potentially returning an individual to a territory where their life or freedom would be threatened. Courts will halt expulsions and mandate that the individual's asylum claim be duly processed, ensuring that the state adheres to its international obligations.

As an example of this influence, *Protection Action No. 38896-2024* stands out, concerning a procedural barrier (the refusal to formalize the asylum application). In its judgment of 04 September 2024, the Supreme Court emphasized that:

> "a material act of refusal to initiate the proceedings regulated, […], affects the right to equality before the law, guaranteed in the No. 2 of article 19 of the Political Constitution of the Republic, in preventing it, by means of de facto, access to the possibility of obtaining the protection to which the State of Chile has committed itself by means of the ratification of the Convention relating to the Status of Refugees […]."[146]

Furthermore, the Convention's provisions on the rights of refugees, including access to justice, education, work, and public assistance, also inform judicial decisions regarding the conditions and treatment of asylum seekers and recognized refugees in Chile. While the national Refugee Law No. 20.430 of 2010 already incorporates many of the Convention's standards and even includes the broader definition from the 1984 Cartagena Declaration, the direct applicability and constitutional hierarchy of the 1951 Convention and 1967 Protocol mean that any ambiguity or potential conflict in national legislation must be resolved in favour of the international human rights standard. Judicial bodies, therefore, act as a vital safeguard, ensuring that executive actions and domestic laws remain consistent with Chile's commitments under these foundational international refugee instruments, thereby directly influencing the practical access to asylum and the protection afforded to those seeking refuge within its borders.

While the Geneva Convention serves as Chile's foundational text for asylum rights, its interpretation has at times introduced obstacles to these very rights. For instance, in *Protection Action No. 102899-2022*, the Court of Appeals of Santiago on 4 January 2023, narrowly construed Article 31.1 of the 1951 Geneva Convention. The court reasoned that this article, which exempts refugees from penal sanctions for illegal

[146] Supreme Court, *Protection Action No. 38896-2024*, adjudicated by the Supreme Court on 04 September 2024, § 15.

entry if they arrive directly from a threatened territory and present themselves without delay to authorities with justified cause, inherently requires "self-reporting" for irregular entry as a prerequisite for formalizing a refugee application in Chile. It deemed the Chilean legislator's ten-day timeframe for self-reporting as a reasonable interpretation of the international standard of "within the shortest possible time", emphasizing the urgency inherent to international protection. Consequently, the court concluded that any foreigner entering Chile clandestinely who intends to seek refuge must first report this violation to the PDI.[147] This decision was, however, overturned by the Supreme Court (*No. 5869-2023*, 31 May 2023), which found that a material act of refusing to initiate a regulated procedure, such as a refugee application, constitutes an arbitrary and illegal act. Such a refusal, the Supreme Court held, effectively hinders access to the protection Chile is obligated to provide under the ratified Convention relating to the Status of Refugees, thereby violating the constitutional right to equality before the law as guaranteed in Article 19, No. 2, of the Political Constitution of the Republic.

The principle of non-refoulement

The principle of *non-refoulement* is comprehensively embedded within the Chilean national legal system, recognized at constitutional and statutory levels, and consistently affirmed by jurisprudence. Its elevated status stems from Article 5, second paragraph, of the Political Constitution of the Republic of Chile, which integrates essential human rights from ratified international treaties into the exercise of sovereignty. Given Chile's ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which explicitly enshrine non-refoulement in Article 33, this constitutional provision grants the principle a constitutional or supralegal hierarchy, obligating all state organs. Furthermore, domestic legislation explicitly recognizes this principle; Article 3 of Law No. 20.430 on the Protection of Refugees (2010) includes the principle of *non-refoulement* and non-punishment for illegal entry, while Article 4 elaborates on *non-refoulement*, prohibiting the expulsion or return—including denial of entry at the border—of an asylum seeker or refugee to a country where their life or personal freedom would be in danger, or where there are founded reasons to believe they could be subjected to torture or cruel, inhuman, or degrading treatment. Moreover, Law No. 21.325, the Migration and Immigration Law (2021), also acknowledges general principles of international law, including non-refoulement, particularly concerning expulsion and the fundamental rights of migrants.

Finally, the Supreme Court and Courts of Appeal, consistently uphold the principle of *non-refoulement* through the "Remedy of protection" (*recurso de protección*), suspending or reversing administrative expulsion orders and mandating a full assessment of asylum claims. Rulings such as *No. 36795-2021* (7 June 2021) and *No. 36991-2021* (11 June 2021) by the Second Chamber of the Supreme Court reinforce that *non-refoulement* and non-rejection at the border, recognized as *jus cogens*, apply irrespective of entry status or formal refugee determination. Likewise, in *writ of amparo No. 667-2022*, adjudicated by the Court of Appeals of Santiago (30 March 2022), the court annulled the "return acts" (*actas de reconducción*) against two individuals who had illegally crossed the Chilean border and were slated for return to Bolivia. In this instance, the court recognized the principles of defence, review of measures, and prior judicial decisions, *non-refoulement*, and non-rejection at the border, regardless of whether refugee status was recognized or not, and whether or not they entered the national territory regularly.

[147] See also Court of Appeals of Santiago, *No. 83545-2022*, 06 December 2022. Furthermore, Chilean immigration authorities have also affirmed a restrictive approach to refugee status applications, as evidenced in rulings *No. 1299-2022* (Court of Appeals of Santiago, 13 December 2022) and *No. 294-2024* (Court of Appeals of Puerto Montt, 20 May 2024). In these cases, the authorities maintained that the "self-reporting" does not undermine the applicants' rights, citing Article 22 of the 1951 Geneva Convention, which permits recognition procedures to align with national legislation. Critically, the authorities highlighted Article 31 of the 1951 Geneva Convention itself, emphasizing its provision that applicants must present themselves without delay to authorities and offer justified cause for their irregular entry or presence. This interpretation underscores the obligation for foreigners who have entered Chile illegally or clandestinely to promptly report their presence to immigration authorities and provide a valid explanation for their irregular status as a prerequisite for formalizing a refugee claim. In both instances, the appellate courts initially rendered judgments adverse to the applicants; however, these decisions were subsequently reversed by the Supreme Court, which ultimately afforded the applicants the right to pursue asylum.

The right to asylum

In Chile, the right to seek asylum is firmly established across all legal tiers. At the constitutional level, Article 5, second paragraph of the Political Constitution of the Republic of Chile indirectly elevates this right by mandating respect for inherent human rights, including those guaranteed by ratified international treaties. As Chile is a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and has incorporated the 1984 Cartagena Declaration into its national legal framework, the right to seek and receive asylum, as articulated in these instruments, gains a supreme hierarchical position, ensuring its direct enforceability by Chilean courts. Domestically, Article 1 of Law No. 20.430 on the Protection of Refugees (2010) explicitly extends its provisions to refugee status applicants or refugees within national territory. Article 2 of the same law defines eligibility for refugee status, encompassing the five grounds of the Geneva Convention and the expanded definition of the Cartagena Declaration. However, recent legislative amendments from February 2024 introduce a limitation: only those arriving directly from a territory where their life or freedom is threatened are eligible for refugee status.[148] While Law No. 21.325 on Migration and Immigration (2021) addresses broader migration issues, it also acknowledges relevant international human rights principles. Finally, Chilean judicial bodies, particularly the Supreme Court and Courts of Appeal, consistently uphold the right to asylum, challenging administrative decisions that obstruct asylum access and ensuring due process and fair claim assessments, thereby solidifying this right into enforceable legal remedies.

Entitlements that asylum confers on refugees

The recognition of the right to asylum, whether through formal refugee status or during the asylum application process, triggers a comprehensive set of entitlements designed to ensure protection and facilitate integration, primarily governed by Law No. 20.430 on the Protection of Refugees (2010). Article 3 includes the principles of non-refoulement, non-punishment for illegal entry, confidentiality, non-discrimination, the most favourable treatment possible, and family unity. Article 4 elaborates on non-refoulement, prohibiting the expulsion or return, including denial of entry at the border, of an asylum seeker or refugee to a country where their life or personal freedom would be in danger, or where there are founded reasons to believe they could be subjected to torture or cruel, inhuman, or degrading treatment. This protection extends to situations of widespread, blatant, or massive human rights violations. Should asylum status not be granted, individuals may still apply for a temporary stay permit under existing immigration legislation.

Moreover, Article 5 addresses expulsion, stating that it can only occur exceptionally for national security or public order reasons, always adhering to legal procedures. In such cases, the refugee has the right to present exculpatory evidence and appeal the decision administratively and judicially and must be granted thirty days to seek admission to another country. Article 6 (as amended by Law 21.655, Article 1 No. 3, a) and b) dictates that refugees are exempt from criminal or administrative penalties for irregular entry or

[148] "Article 2.- Concept of Refugee. Persons who find themselves in any of the following situations shall have the right to refugee status:
1. Those who, due to well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, are outside their country of nationality and are unable or unwilling to avail themselves of the protection of that country due to such fear.
2. Those who have fled their country of nationality or habitual residence and whose life, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disturbed public order in that country.
3. Those who, lacking nationality and for the reasons set forth in the preceding paragraphs, are outside the country in which they had their habitual residence and are unable or unwilling to return to it.
4. Those who, although they did not have refugee status at the time of leaving their country of nationality or habitual residence, fully meet the conditions for inclusion as a result of events that occurred after their departure.
Only those who arrive directly from the territory where their life or freedom is threatened shall be entitled to refugee status in accordance with paragraphs 1 and 2. Those arriving directly on a journey with stopovers shall be deemed to have arrived directly, provided that their stay in a third country has not exceeded sixty days. In qualified cases, the Undersecretary of the Interior may extend this period."

residence, provided they present themselves to authorities within ten days of the infraction, citing a justified reason.

Confidentiality is a key tenet under Article 7, ensuring the protection of personal data and the secrecy of the asylum application process at all stages. Article 8 mandates non-discrimination in the application of the law, prohibiting distinctions based on race, colour, sex, age, marital status, religion, nationality, social origin, disability, political opinion, or any other status. Finally, Article 9 establishes the right to family reunification, allowing the spouse, cohabiting partner, ascendants, descendants, and minors under the refugee's guardianship to be recognized as refugees by extension, provided they are not excludable under Article 16. The Undersecretary of the Interior makes these reunification decisions, considering genuine dependency and cultural values.

Furthermore, the Constitution recognizes in Article 19 equality before the law (n.2) and equal protection of the law in the exercise of their rights (n.3) from which free legal assistance is derived for those who cannot afford private defence.[149]

Main sources of international refugee law

The adjudication of asylum access is fundamentally shaped by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, alongside the 1984 Cartagena Declaration on Refugees, all of which are deeply integrated into the domestic legal order. The 1951 Convention, ratified by Chile on 28 January 1972. The 1984 Cartagena Declaration, while not a binding treaty in the same vein, significantly expands the definition of a refugee to include those fleeing generalized violence or severe public disorder, and this broader definition has been explicitly incorporated into Chilean domestic law via Article 2 of Law No. 20.430 on the Protection of Refugees (2010). This legal framework guides the National Refugee Commission and the Migration National Service (*SERMIG*) in processing asylum claims.

Other human rights obligations

In Chile, beyond the specific provisions of the 1951 Refugee Convention and its 1967 Protocol, a comprehensive array of international human rights obligations applies to refugees and asylum seekers, profoundly influencing asylum access adjudication. These obligations stem from various international and regional human rights treaties, complementing and reinforcing refugee law to ensure a holistic, human rights-based approach. Key instruments include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by Chile. The ICCPR's provisions on the right to life (Article 6), prohibition of torture (Article 7), right to liberty and security of person (Article 9), prohibition of expulsion (Article 13) and right to due process (Article 14) are directly applicable; for example, Article 13 is invoked by Chilean courts to challenge arbitrary expulsion from Chilean territory (case No. 4292-2018, adjudicated by the Supreme Court on 21 March 2018).

For child asylum seekers, the Convention on the Rights of the Child (CRC) is significant, mandating that the best interests of the child (Article 3) be a primary consideration in Court's rulings, influencing judicial decisions on issues such as detention and access to essential services. Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), particularly its Article 3 establishing the non-refoulement obligation in the context of torture, provides an additional layer of protection. For instance, in case *No. 43091-2019*, adjudicated by the Court of Appeals of Santiago on 21 August 2019, the court ruled in favour of a group of Cuban citizens seeking asylum, challenging the authorities' refusal to formalize their refugee applications. The ruling addressed the case of one applicant facing an expulsion order due to irregular entry, emphasizing that the principle of *non-refoulement*—enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and implied in the American Convention on Human Rights and explicitly recognized in

[149] Informe Anual sobre Derechos Humanos en Chile 2004, Universidad Diego Portales, pp. 17-18.

Chilean law—prevents the return of individuals to a country where their life or safety is threatened, or where there are substantial grounds for believing they would be subjected to torture, regardless of their entry method. The court concluded that the administrative body's actions created an impermissible barrier to a crucial human right, ordering the immediate reception and processing of all pending refugee applications to restore the rule of law.

The incorporation of these human rights obligations into the Chilean legal order is facilitated by Article 5, paragraph 2, of the Constitution, which grants ratified international treaties a constitutional or supralegal hierarchy, making them directly applicable by domestic courts. This broad human rights framework empowers courts to ensure that executive actions align with international standards, thereby enhancing protection for asylum seekers and refugees.

Finally, these international instruments have been applied by Chilean courts to overturn decisions in cases of refugee status determination. For instance, in case *No. 45.969-2020*, adjudicated by the Court of Appeals of Santiago on 24 September 2020, the Court overturned the Interior Undersecretary's denial of asylum to a family seeking refuge from female genital mutilation (FGM) practices by a secret society in their home country. This reversal deemed the administrative decision arbitrary and illegal, as it infringed upon the family's constitutional rights to psychological integrity and equality before the law, while also contravening several international human rights instruments. Specifically, the court cited Article XXVII of the American Declaration of the Rights and Duties of Man on the right to seek and receive asylum; Articles 8.1 (right to a fair trial), 22.7 (right to seek and receive asylum), and 22.8 (*non-refoulement*) of the American Convention on Human Rights; and Articles 1 and 2 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which defines gender-based violence, including that perpetrated or tolerated by the state. Further supporting the decision were the preamble of the UN Declaration on the Elimination of Violence Against Women, General Comment No. 3 (2003) on the Convention on the Rights of the Child emphasizing state obligations and the best interests of the child (Article 3, paragraph 1), Article 33 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol on non-refoulement, the UN General Assembly Resolution of 17 February 2015, acknowledging FGM as a grave threat, and UNICEF's reports on FGM as a fundamental and harmful violation of girls' rights. The court underscored the severe risk posed by FGM and the state's duty to provide protection, even from non-state actors, prioritizing the best interests of the child, and affirming the declarative nature of refugee status and the principle of non-refoulement. This decision mandated the recognition of the family's refugee status, despite the government's argument that the fear was unfounded and economic in nature, which a dissenting judge echoed in their argument against the court's overturning of the administrative decision. This judgment was upheld by the Supreme Court in 2021 (*No. 131.738-2020*, 20 July 2021).

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

The Political Constitution of the Republic of Chile (1980, as amended), particularly Article 19, enumerates fundamental rights that apply to all persons within Chilean territory, including asylum seekers. These rights, such as the right to life and physical integrity (Article 19 No. 1), the right to equality before the law (Article 19 No. 2), due process (Article 19 No. 3), and the right to liberty and personal security (Article 19 No. 7), directly influence how asylum applications are handled.

Administrative Law specifically governs the actions of executive bodies involved in asylum adjudication, primarily the Migration National Service (SERMIG) and the National Commission for Refugees. Law No. 19.880, which establishes bases for administrative procedures that govern acts of administrative organs of the State (2003), sets out general rules for administrative processes, including deadlines, notification requirements (e.g., Article 45), and avenues for administrative appeals (e.g., Articles 59-61). This law ensures transparency and accountability in the asylum determination process. The Regulation of Law No. 20.430 (Supreme Decree No. 837 of 2010) and the Migration and Immigration Law No. 21.325 (2021), along with its specific regulations, provide the detailed administrative procedures for applying for asylum, conducting interviews, gathering evidence, and rendering decisions.

Furthermore, Criminal Law plays a role primarily in regulating offenses related to irregular entry or stay, and in cases of human trafficking or migrant smuggling. While Chilean law generally affirms the principle of non-criminalization of irregular migration for asylum seekers, judicial bodies are involved in distinguishing between genuine asylum claims and criminal offenses.

Membership in a regional organization

Chile's engagement with regional and international organizations, particularly the Organization of American States (OAS) and its Inter-American Human Rights System, significantly shapes its approach to asylum beyond the 1951 Refugee Convention. As a founding member of the OAS, Chile is bound by the ACHR, which it ratified, serving as a crucial legal instrument complementing refugee protection. Notably, Article 22 of the ACHR, specifically Article 22(7) recognizing the right to seek and receive asylum and Article 22(8) prohibiting expulsion to territories where life or liberty is threatened due to specific persecutory grounds, provides broader human rights guarantees directly applicable to asylum seekers and reinforces the non-refoulement principle.

The IACtHR, whose contentious jurisdiction Chile has accepted, plays a vital role in interpreting and enforcing the ACHR; its jurisprudence, while not direct precedent, carries significant persuasive authority for Chilean judicial bodies, guiding them in scrutinizing domestic administrative practices and national laws, even recent restrictive ones like Law No. 21.655, against broader human rights obligations. Furthermore, the 1984 Cartagena Declaration on Refugees, though not a binding treaty, has been explicitly integrated into Chilean domestic law through Law No. 20.430 on the Protection of Refugees (2010), thereby broadening the definition of "refugee" to include those fleeing generalized violence, internal conflicts, or massive human rights violations, and expanding the scope of asylum access beyond the stricter criteria of the 1951 Convention.

The role that soft law in asylum access adjudication

In Chile, soft law instruments serve a pivotal function in both the interpretation and operationalization of national legislation, aligning domestic implementation with international best practices. Although these instruments are not typically cited as explicit legal authority by the Courts of Appeal or the Supreme Court, their embedded principles demonstrably inform legal argumentation and judicial interpretations. This influence is particularly salient in the judicial review of administrative decisions, notably through legal remedies such as the remedy of protection or habeas corpus. Soft law thereby facilitates the crucial transition from abstract legal norms to their concrete application; a process vividly illustrated in the complexities of asylum adjudication.

A compelling illustration of this dynamic is observed in case *No. 1266-2020*. Here, the plaintiffs referenced Opinion No. 892N19 of the Comptroller General of the Republic of Chile (11 January 2019). This opinion stipulates that "both Law 20.430 and its regulations establish the requirements and procedures necessary to request and process refugee applications, without requiring interviews prior to their receipt". The Court of Appeals of Antofagasta, in its decision *No. 1266-2020* (7 May 2020), acknowledged and integrated this reasoning. Consequently, the Court ordered the authorities to provide the plaintiffs, within five business days, with the requisite forms and documentation to formalize their application for refugee status recognition.

In relation to soft-law instruments of the Inter-American system, for example, in *writ of amparo No. 667-2022*, adjudicated by the Court of Appeals of Santiago (30 March 2022), the court referred to the Declaration and Plan of Action of Mexico, indicating that these instruments had expressly recognized the right to defence, the review of the measure, and the need for a judicial decision prior to the expulsion measure, as well as the principles of *non-refoulement* and non-rejection at the border, irrespective of whether refugee status was recognized or not, and whether or not they had regularly entered the national territory. Likewise, in ruling *Rol No. 14.392-2021*, adjudicated on 25 February 2021, a dissenting opinion cited the IACHR Resolution 2/18 regarding the Forced Migration of Venezuelans, the 1984 Cartagena Declaration on Refugees, "the relevant UNHCR Guidance Note, which urges States to rigorously observe the principle

of *non-refoulement* and encourages the adoption of protection mechanisms that afford Venezuelan nationals legal residency and appropriate safeguards", as well as, the 1994 San José Declaration.

E. Legal standing

In Chile, litigants confronting barriers to asylum access can utilize various legal procedures and remedies before the Courts of Appeals and the Supreme Court, essential for ensuring administrative accountability and upholding asylum seekers' rights within its civil law system. Likewise, the remedy of protection and the writ of amparo or habeas corpus:[150]

- Action of Protection (*Recurso de Protección*), a constitutional action under Article 20 of the Political Constitution of the Republic of Chile, safeguarding fundamental rights guaranteed by the Constitution and international human rights treaties in force. This expeditious remedy is frequently employed before Courts of Appeals (with potential appeal to the Supreme Court) to challenge arbitrary or illegal administrative acts by state organs, such as the National Migration Service (SERMIG), that threaten or violate rights like the right to life, personal liberty, due process, or the right to seek asylum, notably used to suspend expulsion orders and enforce the principle of non-refoulement.[151]

  In Chile, the Action for Protection provides individuals with a crucial legal avenue to seek judicial protection against arbitrary or illegal actions by public authorities or private citizens that violate fundamental rights. This procedural tool acts as an essential safeguard for a broad range of rights. Its popularity among lawyers stems from its significant procedural advantages—it is a swift, concentrated, and inquisitorial process, starkly contrasting with the slow, formal, and cumbersome nature of ordinary judicial procedures. Recognized as an autonomous and independent constitutional process, the Action for Protection stands apart from typical legal remedies and ordinary civil, criminal, or administrative proceedings. It operates on its own terms, originating in the Courts of Appeals and serving as a distinct and fundamental right to judicial protection that is indispensable in the absence of an effective administrative litigation system in the country.[152]

- Habeas corpus, or the writ of amparo, is the jurisdictional remedy established by the Constitution to restore the rule of law and ensure due protection for the affected party when personal liberty or individual security has been deprived, disturbed, or threatened by arbitrary or illegal action. This constitutional action, provided for in Article 21 of the Political Constitution,[153] has the main

[150] See Diego Portales University "*Informe Anual sobre Derechos Humanos en Chile 2004*", Universidad Diego Portales, Santiago, pp. 12-13.

[151] Article 20. Anyone who, due to arbitrary or illegal acts or omissions, suffers deprivation, disturbance or threat in the legitimate exercise of the rights and guarantees established in article 19, numbers 1, 2, 3rd paragraph five71, 4, 5, 6, 9th final paragraph, 11, 12, 13, 15, 16 regarding the freedom to work and the right to free choice and free contracting, and the provisions of the fourth paragraph, 19, 21, 22, 23, 24 and 25, may, by himself or through anyone on his behalf, appeal to the respective Court of Appeals, which shall immediately adopt the measures it deems necessary to reestablish the rule of law and ensure due protection of the affected party, without prejudice to any other rights that may be asserted before the corresponding authority or courts. A remedy for protection will also be available in the case of Article 19, No. 8, when the right to live in a pollution-free environment is affected by an illegal act or omission attributable to a specific authority or person.

[152] See Nogueira H. (2007) "*El Recurso de Protección en el Contexto del Amparo de los Derechos Fundamentales Latinoamericano e Interamericano*". Revista Ius et Praxis, Vol. 13(1), pp. 75-134.

[153] Article 21. Any individual arrested, detained, or imprisoned in violation of the provisions of the Constitution or the laws may, either personally or through someone else acting on their behalf, appeal to the court designated by law, so that the court may order that legal formalities be observed and immediately adopt the measures it deems necessary to restore the rule of law and ensure due protection for the person affected. This court may order that the individual be brought before it, and its decree shall be strictly obeyed by all those in charge of prisons or places of detention. Once informed of the case, it shall order the individuals immediate release or cause the legal defects to be remedied or bring the individual before the competent judge, proceeding in all cases briefly and summarily, and correcting these defects itself or reporting them to the appropriate person so that they may be corrected. The same remedy, and in the same manner, may be brought in favour of any person who unlawfully suffers any other deprivation, disturbance, or threat to their right to personal liberty and individual security. In such cases, the

characteristics of an informal procedure, an inquisitorial, brief, summary, and concentrated nature, with broad and preferential jurisdiction by the respective Courts of Appeal in the first instance.[154]

Beyond constitutional actions, individuals can pursue administrative appeals against decisions by the SERMIG or the National Refugee Commission, regulated by Law No. 19.880 on administrative procedures (2003), and specific provisions in Law No. 20.430 on the Protection of Refugees (2010) (e.g., Article 50 for hierarchical appeals) and Law No. 21.325, the Migration and Immigration Law (2021). While the National Refugee Commission functions in a quasi-judicial capacity, its decisions are subject to internal administrative appeals and ultimate judicial review. The new preliminary validation stage for asylum applications under Law No. 21.655 also implies an initial administrative review function, though it has raised due process concerns.

F. The influence of international Courts

In Chile, while judicial decisions are primarily grounded in domestic law, it is demonstrable that the jurisprudence of the IACtHR significantly influences judicial interpretation concerning barriers to asylum access. This influence does not arise from directly binding precedents, but rather from the IACtHR's authoritative interpretations and the principle of conventionality control. Chilean courts, particularly the Supreme Court, increasingly interpret domestic law and administrative actions in accordance with their international human rights obligations. These obligations, especially those derived from the ACHR, are frequently elucidated by the IACtHR's jurisprudence and Advisory Opinions.

For example, the IACtHR's jurisprudence on the principle of non-refoulement, building upon Article 33 of the 1951 Refugee Convention, has been further elaborated by Advisory Opinions such as OC-21/14 (2014), concerning the rights of children and adolescents in migration, and OC-25/18 (2018), specifically addressing asylum. These opinions reinforce non-refoulement as an absolute principle, applicable irrespective of migratory status and extending to grave risks beyond persecution.

Judges of Chile's Supreme Court and Courts of Appeals frequently draw upon these IACtHR standards when reviewing "remedies of protection" (*acciones de protección*) and other remedies challenging administrative expulsion orders or arbitrary procedures that obstruct the initiation of asylum applications. Although Chilean judges may not explicitly cite Inter-American precedents, their reasoning often exhibits elements that align with specific IACtHR cases. A notable illustration is the Pacheco Tineo Family v. Plurinational State of Bolivia (2013) case, where the IACtHR's ruling on the right to seek and receive asylum (ACHR Article 22(7)), non-refoulement (ACHR Article 22(8)), due process (ACHR Article 8), and judicial protection (ACHR Article 25) demonstrably influenced the Chilean Supreme Court judges' interpretation, leading to a less restrictive view of immigration laws and a greater inclination to safeguard the right to seek asylum.

Jurisprudence of supranational courts shaping procedural protections or the interpretation

While the jurisprudence of supranational courts, particularly the IACtHR, may implicitly influence decisions of the Chilean Courts of Appeals and Supreme Court, it is not consistently cited explicitly in their judgments. Nevertheless, plaintiffs and their legal representatives frequently make explicit reference to Inter-American precedents to bolster their arguments, as evidenced in the summaries of arguments[155] within judicial decisions and in submitted briefs.[156] The most frequently cited precedent in this context is

respective court shall order the measures indicated in the preceding paragraphs that it deems appropriate to restore the rule of law and ensure due protection for the affected party.

[154] Henríquez M. (2024) "*Novedades en la tramitación de la acción de amparo*", El Mercurio Legal, 28/05/2024, https://derecho.uahurtado.cl/web2021/wp-content/uploads/2024/05/Columna-Miriam-Henriquez_-Novedades-en-la-tramitacion-de-la-accion-de-amparo.pdf

[155] See, for instance, Court of Appeals of Antofagasta, ruling No. 1266-2020, 7 May 2020.

[156] See, for instance, the arguments of the National Institute of Human Rights in Constitutional Protection Action No. 55.371-2024.

the *Pacheco Tineo Family v. Plurinational State of Bolivia* case (2013), which addresses the fundamental right to asylum and the critical principle of *non-refoulment* and non-rejection at the border.

G. Comparative insights

There is a perceptible jurisprudential discrepancy between the Chilean Supreme Court and the Courts of Appeals regarding the resolution of barriers to access asylum. The Courts of Appeals tend to adopt a more rigid interpretative stance, basing their reasoning on strict adherence to national immigration legislation and, consequently, upholding the actions of administrative or police authorities. In contrast, the Supreme Court adopts a broader and less restrictive interpretative approach that, while not contravening domestic law, systematically prioritizes facilitating access to asylum, while recognizing the jurisdiction of the administrative authority to evaluate such requests.

Empirical evidence substantiates this divergence. An analysis of 292 appellate court rulings between 2013 and 2024 concerning "bureaucratic barriers" to asylum reveals a significant imbalance: 218 decisions were rendered against asylum seekers, with only 74 affirming their right to access the asylum procedure. A striking majority of these appellate inadmissibility declarations were subsequently overturned by the Supreme Court, affirming the applicants' right to pursue asylum. It is noteworthy, however, that in a limited number of instances, the Supreme Court upheld the appellate courts' decisions, siding with Chilean authorities against asylum seekers.[157]

This recurring divergence can be attributed, in part, to the differing institutional contexts of these judicial bodies. Courts of Appeal, operating within specific territorial jurisdictions, may be more susceptible to localized political and social pressures. In contrast, the Supreme Court, by virtue of its national mandate and its role as the ultimate guarantor of constitutional principles, is arguably less exposed to such localized influences. This detachment allows the highest court to adopt a broader and more contemporary interpretation of not only statutory law but also other contextual factors that inform legislative intent and constitutional rights, thereby fostering a more rights-protective approach to asylum access.

Divergences between national courts and supranational rulings regarding asylum access

In Chile, while national judicial bodies, particularly the Supreme Court and Courts of Appeal, generally strive to align with supranational instruments, especially those from the IACtHR, divergences can occur. These discrepancies often stem from differing legal interpretations, the inherent tension between national sovereignty and international human rights obligations, or challenges in the practical application of new domestic legislation.

One significant area of divergence lies in the scope of due process guarantees for asylum procedures. The IACtHR, in its jurisprudence (e.g., *Pacheco Tineo Family v. Plurinational State of Bolivia*, 2013, and *Advisory Opinion OC-25/18*, 2018), consistently emphasizes robust procedural rights. However, some identified Supreme Court decisions have reversed rulings from the Courts of Appeals, siding with administrative authorities. For instance, in *ruling No. 2214-2023* (7 June 2023), the Court of Appeals upheld the plaintiff's appeal for protection, finding that the administrative authority had failed to fulfil its duty to receive the asylum application and submit it for immediate evaluation. Conversely, the Supreme Court, in *ruling No. 124571-2023* (28 June 2023), reversed the Court of Appeals' ruling, reasoning that it was not proven that the appellant had approached the authorities to initiate such a procedure.

There is no legal justification for such a difference in interpretation. It appears to stem from the individual position of the judge presiding over the panel at the time, who may hold a stricter view in the application of immigration and refugee law.

[157] Analysis presented by the author at the ADIM 2025 conference.

Alignment or divergence from the broader principles established by international bodies

In Chile, national judicial bodies, particularly the Supreme Court and Courts of Appeal, generally align with the broader principles of asylum established by international entities such as UNHCR and UN human rights treaty bodies, including those overseeing the Convention Against Torture (CAT). This alignment is significantly influenced by the constitutional supremacy of ratified international human rights treaties and the judiciary's active role in exercising conventionality control.

The most prominent example of this alignment is the consistent application of the principle of non-refoulement, as enshrined in Article 33 of the 1951 Refugee Convention and reinforced by Article 3 of the Convention Against Torture (CAT). Chilean courts frequently intervene to suspend or revoke expulsion orders that could endanger an asylum seeker's life, liberty, or integrity. In doing so, they explicitly reference Chile's international obligations and align with the absolute nature of non-refoulement upheld by UNHCR.

For example, in *judgment No. 3.253-2022* (4 February 2022), the Supreme Court revoked an expulsion order and granted the applicant a reasonable period to regularize his immigration status, taking into consideration the principle of non-refoulement and non-rejection at the border, even for those who have not yet been recognized as refugees. Similarly, in *writ of amparo No. 667-2022*, adjudicated by the Court of Appeals of Santiago (30 March 2022), the court annulled the "return orders" (*actas de reconducción*) against two individuals who had illegally crossed the Chilean border and were slated for return to Bolivia. In this instance, the court permitted the protected persons to enter Chilean territory to continue the process of regularizing their immigration status until it was fully processed.

Another area of strong alignment is commitment to due process in asylum procedures. Although national legislation, such as Law No. 20.430 and Law No. 21.655, outlines specific processes, the judiciary ensures adherence to fundamental human rights guarantees, guided by the jurisprudence of the IACtHR, which carries significant persuasive authority in Chile.

Best practices or lessons learned from the adjudication of asylum barriers

In Chile, the adjudication of asylum barriers, while facing challenges from legislative changes and migratory pressures, demonstrates key strengths, particularly within its judicial branch. A significant best practice is the judiciary's consistent and robust application of the principle of non-refoulement via the "Remedy of protection" (*recurso de protección*), effectively safeguarding individuals from return to places where their life or liberty is at risk without a fair asylum assessment, thereby upholding a fundamental tenet of international refugee law. The prompt and accessible nature of this constitutional mechanism enhances its effectiveness in preventing irreparable harm. Closely related, the judiciary's interpretive role, drawing on Article 5, second paragraph of the Political Constitution, ensures that domestic laws, including recent restrictive amendments like Law No. 21.655, are harmonized with Chile's international human rights obligations, particularly under the American Convention on Human Rights. This "conventionality control" serves to mitigate potential adverse impacts of new procedural requirements on asylum seekers' rights to due process, to be heard, and to an effective remedy.

A further commendable practice in Chile is the collaborative synergy between UNHCR, civil society organizations, and Chilean university legal clinics. This multifaceted cooperation is invaluable, as their specialized advice, legal assistance, and advocacy collectively contribute to enhanced access to asylum procedures, foster improved quality and equity within the asylum process, and actively work to identify and dismantle existing barriers to asylum.

H. Role of expert testimony

To date, analysis of decisions by Chilean Courts of Appeal and the Supreme Court indicates that expert testimony does not consistently emerge as a key element influencing judicial outcomes related to asylum barriers in Chile.

However, in a significant decision regarding refugee status determination (RSD), the Santiago Court of Appeals overturned the Undersecretary of the Interior's denial of asylum to a family fleeing the practice of female genital mutilation (FGM) in Sierra Leone (*Judgment No. 45.969-2020*, 24 September 2020). The Court's analysis relied on expert testimony and information from UNICEF detailing the prevalence of FGM in Sierra Leone, the prevailing conditions within the country, and the State's inadequate protection against the practice in certain communities. The Court determined that the minor girls in the family faced a well-founded fear of being subjected to FGM, leading it to revoke the previous denial and grant the family refugee status. This landmark ruling was subsequently affirmed by the Supreme Court in 2021 (*Ruling No. 131.738-2020*, 20 July 2021).

I. Future Directions

Chile's asylum law is undergoing significant changes driven by recent legislative enactments and evolving migration policies, which are poised to increase litigation and pressure on judicial bodies to reconcile new restrictions with international human rights obligations. A pivotal development is Law No. 21.655 (February 2024), amending Law No. 20.430 (2010) and Law No. 21.325 (2021), introducing an initial validation stage allowing for early rejection of "manifestly unfounded" or fraudulent applications by the head of the National Migration Service based on a technical report from the Refugee Status Recognition Committee. This streamlined process raises due process concerns, likely leading to increased "remedy of protection" (*recursos de protección*) challenging these rejections and forcing courts to balance administrative efficiency against constitutional and international human rights guarantees of due process and effective remedies. Furthermore, Law No. 21.655 imposes strict requirements for direct entry from risk territories and a seven-day application deadline post-arrival, also disqualifying applicants with over 60 days' prior stay in another country. These stringent conditions risk increasing technical rejections, compelling judicial bodies to interpret them in light of asylum seekers' practical realities and to prevent them from disproportionately limiting the fundamental right to seek asylum or leading to de facto refoulement. Moreover, the new law's provisions for the immediate return of irregular entrants deemed ineligible for refugee status also heighten the risk of violating the principle of non-refoulement if adequate safeguards are not guaranteed, making courts the primary recourse for individuals facing such returns.

II. IDENTIFICATION OF LEADING DECISIONS

Identification information of the selected decisions (number of the case):

Pushbacks: At land: 1) *Ruling No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court (Criminal Chamber) on 02 March 2021.

At the airport: 1) *Ruling No. 4292-2018*, adjudicated by the Second Chamber of the Supreme Court (Criminal Chamber) on 21 March 2018.

2) *Ruling No. 154.846-2020*, adjudicated by the Second Chamber of the Supreme Court (Criminal Chamber) on 04 January 2021.

Procedural barriers: Obstacles to presenting the asylum application: *Ruling No. 115.005-2022*, adjudicated by the Third Chamber of the Supreme Court (Constitutional Affairs Chamber) on 23 March 2023.

Procedural barriers: Pre-admissibility or pre-screening interviews: *Ruling No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta, 07 May 2020.

A. Description of the barriers in the selected decisions

Pushbacks: At land: In *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 2 March 2021, the Court of Appeals held that the expulsion of foreign nationals who had entered the country irregularly had been lawfully established through both legislative and regulatory instruments. The Court of Appeals found that the administrative authority acted within the bounds of its legally conferred powers and in strict adherence to fundamental legal norms as well as applicable special legislation. In particular, the ruling cited Articles 2, 3, 15 No. 7, 17, and 69 of Decree Law No. 1.094 on Immigration, its implementing regulations, and Decree No. 818 issued by the Ministry of the Interior.

The Supreme Court reversed the prior judgment of the Court of Appeals, adopting a different interpretation of the applicable legal framework. The majority emphasized the broad discretionary powers granted to the administrative authority—in this case, the Regional Intendancy—in matters of immigration control. According to the majority, the Intendancy acted within its legal mandate. Notably, the Supreme Court interpreted Article 69 in a manner distinct from the Court of Appeals, arguing that this provision did not mandate a prior criminal conviction as a prerequisite for administrative expulsion due to unlawful entry. Furthermore, the Court's reasoning centred on a formalist approach, emphasizing compliance with domestic immigration law and procedural requirements. It implicitly rejected the Court of Appeals' contention that the expulsions violated principles of due process, concluding that a prior judicial proceeding was not constitutionally required in this context.

The establishment and enforcement of the barrier involved administrative bodies operating under the Ministry of the Interior, including the Immigration Department and the Iquique branch of the Investigative Police (PDI), likewise the Regional Intendancy of Tarapacá. The Supreme Court's role was to uphold the expulsion orders imposed on the affected individuals.

Pushbacks: At the airport: 1) The Supreme Court in *case No. 4292-2018*, adjudicated on 21 March 2018, in reviewing an appeal concerning the denial of entry for 62 Haitian citizens, found that the Chilean Investigative Police's actions were illegal and arbitrary. The Court noted that the reasons for denying entry—insufficient funds, lack of defined stay, absence of return tickets, and unproven family ties—were based on articles 44(2) and 64(2) of Decree Law No. 1094 and article 138(2) of Supreme Decree No. 597. However, the Court highlighted that the administrative authority's broad powers must be exercised with reasonableness and respect for individual rights. The Court found that the Police's report lacked specific factual descriptions of each individual's conduct to justify the denial of entry. In this regard, the Court cited Article 13 of the International Covenant on Civil and Political Rights, concluding that international law prohibits collective expulsions without an individual examination for each person. Additionally, the Court deemed the term "insufficient funds" to be undefined in law and noted that requiring proof of family ties contradicted the invoked tourist status and was not a legal prerequisite for entry.

The actors involved in the establishment and enforcement were the Department of Immigration and International Police of the Airport of the Investigative Police of Chile (PDI), which is responsible for controlling the entry and exit of foreigners and preventing those who do not comply with legal requirements from entering or leaving the national territory.

2) The Supreme Court in *case No. 154.846-2020*, adjudicated on 04 January 2021, identified an informally established barrier to entry for the individual seeking asylum. The Court's ruling explicitly addresses the actions of the police officials at airport, rather than a formal legal provision or decree specifically designed to prevent asylum seekers from initiating their claims. The barrier arose from the police's failure to adhere to established legal principles regarding the processing of asylum requests at the point of entry. The Court's decision to revoke the prior ruling by the Court of Appeals of Santiago and grant the writ of amparo further underscores that the barrier was not a result of formal legal structures but rather a misapplication or disregard of existing legal frameworks by the border authorities.

The primary actors involved in the establishment of this informal barrier were the Investigative Police of Chile (PDI) at the airport. Their actions, or inactions, in not immediately forwarding the asylum seeker's

information to the National Refugee Commission, effectively created an obstacle to the individual's ability to formally request refuge. The Court highlighted that these officials have a duty to process such requests and provide necessary information, acknowledging that the administrative authority's broad powers must be exercised with reasonableness and respect for individual rights.

Procedural barriers: Obstacles to presenting the asylum application: In *ruling No. 115.005-2022* (23 March 2023), the Third Chamber of the Supreme Court concluded that the Migration Service's refusal to provide the necessary forms and information, and to initiate a regulated procedure, constituted an arbitrary and illegal act, violating the right to equality before the law. The Court found the Migration Service's interpretation of the regulations to be erroneous, leading to widespread judicialization of similar cases. Consequently, the Supreme Court mandated the Migration Service to correct its interpretation and establish a protocol to ensure proper processing of asylum requests, including providing forms and information, and requiring irregular entrants to register with the Investigations Police as a prerequisite for formalizing their asylum claims.

Procedural barriers: Pre-admissibility or pre-screening interviews: In *ruling No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta, 07 May 2020, the Court considered that the barrier to formalizing asylum applications was informally established. This impediment arose from the continuous actions of the administrative authorities of the Antofagasta region, who prevented the processing of applications according to the established procedure. The practice involved not immediately formalizing applications but rather ignoring them, which created a "pre-admissibility" stage not contemplated in the law.

The actors involved in establishing this barrier were the officials of the Department of Foreign Affairs and Migration of the Provincial Governorate of Antofagasta.

Administrative obstacles faced by the applicant(s) in the cases reviewed

Pushbacks: At land: The ruling in *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, does not explicitly highlight administrative delays or procedural complexities as central obstacles raised by the applicants. However, a legal analysis of the context and implications of the decision suggests that certain structural and procedural elements inherent in the administrative framework may have functioned as indirect barriers to accessing asylum or other forms of international protection.

The Supreme Court confirmed the legality of the expulsion orders, emphasizing that the administrative authority operated within the bounds of Chilean law. Nevertheless, the individuals affected were not afforded access to legal representation and were denied the procedural guarantees necessary to effectively contest the expulsion measures. Although the Court affirmed the procedural correctness of the administrative actions, its emphasis on formal compliance neglects the possibility of systemic rigidity and the absence of individualized evaluations in the expulsion process. The reliance on specific legal provisions by the administrative authority, without evident consideration of the applicants' protection needs or potential asylum claims, raises serious concerns regarding the sufficiency of procedural safeguards for those seeking international protection.

Pushbacks: At the airport: In *case No. 4292-2018*, adjudicated by the Supreme Court on 21 March 2018, the applicants encountered administrative impediments that directly impeded their formal entry and stay, consequently affecting the judicial proceedings. The Court, in its reasoning, underscored that the administrative actions, particularly the collective refusal of entry without individual assessment, lacked a proper factual account for each person's conduct. This indicated a procedural intricacy or deficiency within the administrative process that failed to adequately consider individual circumstances. These observations suggest that the administrative procedures were inflexible and did not accommodate the applicants' specific situations or offer transparent, easily accessible criteria.

By overturning the initial decision that had affirmed the administrative actions, the Supreme Court effectively recognized that these obstacles hindered the applicant" fundamental rights and compromised the fairness of the process. Although the case primarily pertained to the denial of tourist entry rather than

formal asylum claims, the judicial intervention underscored that excessively restrictive or procedurally flawed administrative barriers can be contested and invalidated when they violate constitutional guarantees, thereby indirectly influencing the broader capacity of individuals in vulnerable circumstances to obtain legal status or protection.

2) In *case No. 154.846-2020*, adjudicated by the Supreme Court on 04 January 2021, the applicant faced the failure of police officials at the airport to immediately transmit the details of his asylum request to the National Refugee Commission (*Comisión de Reconocimiento de la Condición de Refugiado*). This procedural limitation directly impacted the adjudication process by preventing the timely and proper initiation of the asylum application. The Court found that the police, upon the applicant's entry into national territory, should have promptly brought the asylum request to the attention of the National Refugee Commission to ensure the effective protection of rights, as recognized by international instruments.

The delay in processing his request meant that his situation remained unresolved, and his right to seek refuge was effectively suspended or ignored at the initial point of contact with the Chilean authorities. The Court, in ultimately granting the writ of amparo, recognized that the applicant was in a "regular migratory situation" and that his asylum request "necessarily must be given processing". In this regard, the Court ordered the police authority to allow the applicant's entry into national territory for the prompt processing of his asylum request.

Procedural barriers: Obstacles to presenting the asylum application: In *case No. 115.005-2022* (adjudicated by the Supreme Court on 23 March 2023), the applicant demonstrably faced significant administrative obstacles that severely impacted the adjudication process and his ability to access asylum. The primary limitation was the verbal refusal by officials of the National Migration Service (*Servicio Nacional de Migraciones- SERMIG*) to provide the asylum application form, effectively preventing the formal initiation of his request. This arbitrary denial was compounded by the fact that no written record of his presence or intention to apply for asylum was created, and he was denied the opportunity to seek reconsideration from a superior.

This administrative impediment directly violated minimum guarantees of due process and established administrative procedures. The applicant was compelled to resort to alternative, less direct channels, such as sending a formal letter via email to the head of the section, to even attempt to formalize his request. Even when a response was received, it merely set a new appointment for an interview without providing the requested form. During this pre-screening interview, an unidentified official again verbally denied his eligibility for asylum, citing his irregular entry and lack of self-reporting, without providing any official documentation of this rejection.

These limitations profoundly impacted the adjudication process by creating an initial, insurmountable barrier to entry into the asylum system itself. The failure of the administrative authority to follow regulated procedures, including the provision of forms and the proper recording of the request, meant that the applicant's asylum claim could not even begin to be formally assessed according to established legal frameworks (Law No. 20.430 and its regulations).

Procedural barriers: Pre-admissibility or pre-screening interviews: In *case No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), the applicants encountered several significant administrative obstacles. Primarily, they faced an inability to formalize their asylum requests and the refusal to provide the necessary forms and other documents required to formalize their refugee status applications. Furthermore, the authorities failed to respond to the applicants' written requests to access the refugee status determination procedure. The provincial government of Antofagasta also implemented a "pre-admissibility" stage that was not legally established, effectively ignoring initial requests and imposing an unauthorized screening process. Adding to these difficulties, the administrative department required applicants to appear in person for appointments, which were then subject to significant delays, sometimes extending for several months. These limitations severely impacted the adjudication process and the applicants' ability to access asylum. This bureaucratic obstruction led to a prolonged state of uncertainty and vulnerability for the applicants.

Challenges related to their legal standing or capacity to bring the case

Pushbacks: At land: In *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, the court's records do not directly indicate that the applicants faced challenges related to their legal standing or capacity to bring the case. The case proceeds with a review of the writ of amparo (*recurso de amparo*), which implies that the applicants' right to bring such a case was recognized. The primary challenge, as evident from the ruling, was the court's assessment of the administrative authority's actions, and the subsequent revocation of the initial favourable sentence. The legal challenge revolved around the interpretation of the administrative authority's adherence to the law and the applicability of international human rights principles concerning non-refoulement and the condition of refugees. The court ultimately sided with the administrative authority's actions being within its legal bounds, thereby rejecting the appeal. This indicates that the challenge was not one of legal standing to initiate the case, but rather a profound disagreement on the substantive legal arguments and the interpretation of applicable law concerning their right to remain in the country.

Pushbacks: At the airport: In the Supreme Court's *ruling No. 4292-2018*, dated 21 March 2018, the applicants did not encounter impediments concerning their legal standing or capacity to initiate the proceedings. The writ of amparo (*recurso de amparo*) was formally presented by their legal representatives, thereby affirming their right to bring such an action. The central challenges in the case did not stem from the applicants' ability to file the appeal, but rather from the substantive arguments disputing the legality and arbitrary nature of the administrative authority's conduct. The Supreme Court's decision to accept the writ and overturn the prior ruling indicates that the fundamental issue pertained to the administrative authority's failure to adhere to appropriate legal procedures and international human rights standards when denying entry. Consequently, the challenges at hand primarily concerned the lawfulness and justification of the administrative actions themselves, rather than the applicants' capacity to commence legal proceedings.

2) In the Supreme Court's *ruling No. 154.846-2020*, adjudicated on 04 January 2021, the applicant did not encounter impediments concerning his legal standing or capacity to bring the case. The Supreme Court directly addressed the merits of the appeal concerning the denial of entry and the asylum request, implying that the applicant's legal standing to bring the action was not contested or was successfully established.

Procedural barriers: Obstacles to presenting the asylum application: In case *No. 115.005-2022* (adjudicated by the Supreme Court on 23 March 2023), the applicant did not appear to face direct challenges related to his legal standing or capacity to bring the case.

Procedural barriers: Pre-admissibility or pre-screening interviews: In *case No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), the applicants did not face direct challenges related to their legal standing or capacity to bring the legal action itself. The case was brought on their behalf by a regional head of the National Institute of Human Rights (INDH), who acted as their legal representative.

Hearing

Pushbacks: At land: In *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 2 March 2021, there is no public record indicating that the applicants were afforded an opportunity to be heard by the court, either at the initial instance or during the appellate review.

Pushbacks: At the airport: In *case No. 4292-2018*, adjudicated by the Second Chamber of the Supreme Court on 21 March 2018, there is no public record indicating that the applicants were afforded an opportunity to be heard by the court, either at the initial instance or during the appellate review.

2) In *case No. 154.846-2020*, adjudicated by the Supreme Court on 04 January 2021, there is no public record indicating that the applicant was afforded an opportunity to be heard by the court, either at the initial instance or during the appellate review.

Procedural barriers: Obstacles to presenting the asylum application: The public records of case *No. 115.005-2022* (Adjudicated by the Supreme Court on 23 March 2023), make no reference to whether the

applicant was heard in the first or second instance by the court. However, it is presumed that he was not heard, as these types of proceedings are usually decided based on the arguments presented by the affected party's counsel and the defendant, rather than on the applicant's oral arguments.

Procedural barriers: Pre-admissibility or pre-screening interviews: The public records of *case No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), make no reference to whether the applicants were heard by the court. However, it is presumed that they were not heard, as these types of proceedings are usually decided based on the arguments presented by the affected party's counsel and the defendant, rather than on the applicant's oral arguments.

Legal aid

Pushbacks: At land: In *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, the individuals subject to expulsion orders were afforded pro bono legal representation by counsel affiliated with the Jesuit Migrant Service and the Legal Clinic for Migrant Care at Alberto Hurtado University. This legal assistance was instrumental in articulating the affected individuals' circumstances, leading to a favourable initial ruling that resulted in the revocation of the expulsion orders. However, this initial success was ultimately overturned by the Supreme Court, which rendered a final judgment in favour of the administrative authorities.

Pushbacks: At the airport: In *case No. 4292-2018*, adjudicated by the Second Chamber of the Supreme Court on 21 March 2018, the applicants were afforded pro bono legal representation by the Immigrant Action Movement. This legal assistance proved instrumental in articulating the affected individuals' circumstances, ultimately leading to a favourable ruling by the Supreme Court.

2) In *case No. 154.846-2020*, adjudicated by the Supreme Court on 04 January 2021, the applicant was afforded pro bono legal representation by the National Institute of Human Rights (*Instituto Nacional de Derechos Humanos*). This legal assistance proved instrumental in articulating the plaintiff's circumstances, ultimately leading to a favourable ruling by the Supreme Court.

Procedural barriers: Obstacles to presenting the asylum application: In *case No. 115.005-2022* (Adjudicated by the Supreme Court on 23 March 2023), the applicant was afforded pro bono legal representation by the National Institute of Human Rights (*Instituto Nacional de Derechos Humanos*). This legal assistance proved instrumental in articulating the plaintiff's circumstances, ultimately leading to a favourable ruling by the Court of Appeal and the Supreme Court.

Procedural barriers: Pre-admissibility or pre-screening interviews: In *case No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), the applicants were afforded pro bono legal representation by the National Institute of Human Rights (*Instituto Nacional de Derechos Humanos*). This legal assistance proved instrumental in articulating the plaintiffs' circumstances, ultimately leading to a favourable ruling by the Court of Appeal and the Supreme Court.

Vulnerability

Pushbacks: At land: In *case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, neither the Court of Appeals nor the Supreme Court directly addressed the potential vulnerability of the individuals involved. Nevertheless, the dissenting opinion within the Supreme Court's decision, through its engagement with international and Inter-American legal instruments, implicitly recognized the applicants' precarious circumstances. Specifically, the dissenting judges referenced Resolution 2/18 of the Inter-American Commission on Human Rights concerning the forced migration of Venezuelan citizens, thereby acknowledging the dire conditions leading to their displacement. Furthermore, the dissenting analysis underscored the applicability of the principles of non-refoulement and non-rejection at the border, asserting their relevance irrespective of formal refugee status recognition or the regularity of entry into the national territory. This consideration of the compelling factors driving their departure and the urgent, often irregular, nature of their arrival implicitly confirmed an understanding of their vulnerability, stemming from a lack of viable alternatives and immediate necessity. Despite this

advocacy for a more humanitarian approach grounded in international protection principles, the majority ruling ultimately upheld the administrative authority's strict adherence to domestic immigration statutes, thereby reversing the initial favourable judgment.

Pushbacks: At the airport: In *ruling No. 4292-2018*, adjudicated by the Second Chamber of the Supreme Court on 21 March 2018, the potential vulnerability of the individuals involved was not directly addressed by either the Court of Appeals or the Supreme Court. Nevertheless, the court found that the authorities failed to specify the concrete migratory situation of each of the 62 Haitian nationals, leading to the conclusion that the measure to deny them entry was illegal and arbitrary, violating their freedom of movement. The court emphasized that the attributes of state administrative bodies are granted by law in direct function of the public service they provide. In this sense, the legitimate exercise of these attributes demands respect for human rights and a necessary reasonableness in the authority's decision. Moreover, the court cited Article 13 of the International Covenant on Civil and Political Rights, which prohibits collective expulsions and requires an individual examination for each person, highlighting that the action taken in this case constituted a collective expulsion rather than a simple refusal of entry to the territory.

2) In *ruling No. 154.846-2020*, adjudicated by the Supreme Court on 04 January 2021, the applicant was not explicitly labelled "vulnerable", yet the Court's reasoning implicitly recognized his precarious situation. His asylum request stemmed from the severe social and political crisis in Venezuela, including his involvement in peaceful movements that resulted in violent clashes with state security forces and subsequent threats, as well as his desire to reunite with family in Chile, further underscoring his vulnerable status. The Court's decision was significantly influenced by Article 3 of Law No. 20.430, which safeguards asylum seekers and upholds principles such as non-refoulement, prohibition of rejection at the border, and family unity. Additionally, Article 9 of the same law concerns family reunification and the extension of refugee status to immediate family members. By invoking these provisions, the Court indicated that the applicant's circumstances merited special consideration beyond typical migratory procedures.

Procedural barriers: Obstacles to presenting the asylum application: In *case No. 115.005-2022* (23 March 2023), the Supreme Court implicitly recognized the applicant's vulnerability as an individual seeking refugee status who faced an "unjustified refusal" to formalize his application. This vulnerability stemmed from his irregular migratory status and the administrative barriers he encountered, which the Court found to violate his constitutional guarantees under Article 19, No. 2 (Equality before the law).

Procedural barriers: Pre-admissibility or pre-screening interviews: In *case No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), the Court noted that these individuals were in a state of "complete helplessness and uncertainty", which affected their psychological stability. Furthermore, it was emphasized that the authorities' actions violated the principle of non-refoulement, exposing the applicants to the risk of returning to places where their lives, security, or freedom were threatened by generalized violence, aggression, or massive human rights violations.

B. Impact of the judicial or quasi-judicial body's decision

Pushbacks: At land: As of the current date, no subsequent Supreme Court decisions have been identified that cite *ruling No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 2 March 2021, as a precedent. However, in cases involving immediate removal from the country, especially of individuals with family ties in the country, Chilean courts have maintained the need to conduct a prior contentious procedure and guarantee due process before proceeding with the expulsion of the foreigner. For example, see Court of Appeals of Temuco, writ of amparo *No. 145-2021* (20 May 2021), upheld by the Supreme Court (*ruling No. 36.991-2021*, 11 June 2021).

Pushbacks: At the airport: As of the current date, no subsequent Supreme Court decisions have been identified that explicitly cite *ruling No. 4292-2018*, adjudicated by the Second Chamber of the Supreme Court on 21 March 2018, as a precedent. Nevertheless, in *case No. 6.339-18*, adjudicated on 17 April 2018,

the Supreme Court upheld a ruling from the Court of Appeal of Santiago against authorities for preventing an individual's entry into the territory as a tourist. The denial of entry was based on a lack of contacts and insufficient funds, and the individual was held in an unauthorized airport area without legal counsel. As in the previous case, the court found the police's actions illegal and arbitrary, concluding that denying entry based on "insufficient money" lacked a clear legal definition and a pre-established rational criterion. Furthermore, "lack of family ties" was not considered a legal prerequisite for tourist entry. The court determined that the police's actions were a violation of the individual's freedom of movement, as there was no legal justification for the actions taken.

2) As of the current date, no subsequent Supreme Court decisions have been identified that cite *ruling No. 154.846-2020*, adjudicated on 04 January 2021, as a precedent.

Procedural barriers: Obstacles to presenting the asylum application: *Ruling No. 115.005-2022*, adjudicated by the Third Chamber of the Supreme Court on 20 March 2023, has certainly influenced the jurisprudence of the Courts of Appeal and the Supreme Court of Chile regarding the requirement to file a "self-reporting" for illegal entry in asylum application procedures. In such cases, the courts have maintained the position that the administrative authority must receive the asylum application and subsequently analyse whether it meets the requirements established by law, including the "self-reporting". Examples include the following cases:

In *case No. 378-202*, adjudicated by the Court of Appeals of Copiapó on 17 October 2024, an applicant was initially prevented from formalizing her refugee request by the National Migration Service because she lacked a "Foreigner Offender Card" for illegal entry. This document required a separate, multi-step process involving online self-reporting and an in-person visit to the Investigative Police (PDI), which, by the time it was obtained, caused her to miss the legal deadline for her asylum application. The Court of Appeals dismissed her subsequent protection action, citing untimeliness and a lack of sufficient evidence for the alleged refusal, further noting that the Migration Service had already implemented a new, more accessible protocol for refugee applications following a Supreme Court ruling (*No. 115.005-2022*). However, this decision was ultimately overturned by the Supreme Court (*No. 56729-2024*, 27 November 2024). The Supreme Court determined that the verbal denial of the application form and information, particularly to an irregular entrant, was an arbitrary and illegal act that violated the constitutional right to equality before the law. While acknowledging the importance of irregular entrants registering with the Investigative Police for identity verification, the high court emphasized that the migration authority's role is to provide the necessary forms and information for the refugee application process itself. This allows for subsequent administrative checks to ensure all legal requirements, including prior police registration, are met. This situation had previously arisen in the case of another individual who only had a "self-report" for illegal entry. On that occasion, the Court of Appeals of Copiapó (*No. 302-2024*, 06 August 2024) ruled against the applicant, and the Supreme Court (*No. 38896-2024*, 04 September 2024) subsequently overturned the ruling, ordering the acceptance of the refugee application form and its corresponding processing.

C. Consistency with previous jurisprudence

Pushbacks: At land: *Ruling No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, diverges from its own prior judgment No. 14.494-2021, issued on 01 March 2021. The latter case also pertained to a cohort of Venezuelan citizens who had been subjected to an expulsion order from the nation in the absence of a preceding administrative procedure.

Pushbacks: At the airport *Ruling No. 4292-2018*, adjudicated by the Supreme Court on 21 March 2018, is, to date, the first decision found regarding a collective expulsion at the airport. However, the possibility of other prior decisions cannot be ruled out.

2) *Ruling No. 154.846-2020*, adjudicated by the Supreme Court on 04 January 2021, aligns with the decision analysed above in *case No. 4292-2018*. Both decisions prioritize the obligation of border authorities to

conduct an individualized assessment of individuals and to respect national legislation and Chile's international commitments regarding international protection.

Procedural barriers: Obstacles to presenting the asylum application: The ruling in *case No. 115.005-2022* (23 March 2023) demonstrates partial consistency with other national cases concerning the "self-reporting" barrier for irregular entry. For instance, in *case No. 24.725-2020* (05 June 2020), the Supreme Court overturned a Court of Appeals' decision, deeming the migration authority's refusal to accept and forward an asylum request to the relevant commission as illegal and arbitrary. The central point of contention in that case was the authority's insistence that individuals who entered the country irregularly must first "self-report" to the Investigative Police (PDI) as a prerequisite for initiating an asylum claim. The Court meticulously reasoned that Law No. 20.430, which specifically governs refugee protection, does not impose such a requirement, and any general immigration law provisions to that effect would be superseded by the more specific and recent refugee legislation. Furthermore, the Court clarified that the regulation regarding irregular entry through illicit networks (Article 8 of the Refugee Law's Regulation) is intended to prevent penalties, not to establish a prior condition for asylum seeking. By withholding necessary application forms and conditioning the asylum process on an extra-legal "self-reporting", the administrative authority acted outside its legal powers, thereby creating an illegal and discriminatory barrier that violated the right to equality before the law. Consequently, the Court mandated the immediate acceptance and processing of the asylum request, emphasizing strict adherence to the formal procedures outlined in Law No. 20.430.

However, *ruling No. 115.005-2022* (23 March 2023) subtly diverges from *ruling No. 24.725-2020* (05 June 2020) by stipulating that, after the initiation of the procedure for international protection, administrative authorities are obligated to verify adherence to all requirements for granting such a declaration. This includes ensuring "that the applicant has previously appeared before the Chilean Investigative Police" in accordance with national legislation. Through this concluding statement, the Supreme Court, for the first time, acknowledged the validity of "self-reporting" for irregular entry as a requirement applicable even to asylum seekers, albeit not as a prerequisite for initiating the application, but as a condition subject to evaluation by the National Refugee Commission. Likewise, the 2023 decision slightly diverges from Supreme Court *Rulings No. 12.836-2022* (19 May 2022) and *No. 25.563-2022* (18 August 2022). The court in the 2023 decision firmly asserted that Law No. 20,430 contains no provision requiring foreigners who have entered the country irregularly to "self-report" as a precondition for formalizing their asylum application. It further clarified that the Immigration Law also lacks any express stipulation to this effect. Even if such a requirement were implicitly suggested, the court emphasized the principle that special regulations should prevail over general ones, without prejudice to the application of the criterion of temporality. In the case under consideration, Law No. 20.430 is deemed special not only because it specifically addresses the protection of refugees but also because it is a subsequent law, thereby taking precedence.

Divergences

Pushbacks: At land: In February 2021, Chilean authorities issued collective expulsion orders against Venezuelan citizens who had entered the country via its northern border irregularly. Both cases were initially heard by the Iquique Court of Appeals, which ruled in favour of the plaintiffs, citing violations of their rights. However, the Second Chamber of the Supreme Court of Justice subsequently rendered differing decisions: *No. 14.494-2021* (01 March 2021) and *No. 14.396-2021* (02 March 2021).

A key factual distinction between the two cases is that in the earlier ruling, the expulsion orders for six individuals had already been executed at the time the judgment was rendered. While the specific reporting judges are not identified in either decision, it is plausible that different judges presided over each case, potentially contributing to the divergent outcomes.

Notably, both Supreme Court rulings included two dissenting votes. In the more recent case (2 March 2021), the dissenting Justices favoured the plaintiffs, emphasizing Chile's international obligations under both international and inter-American human rights frameworks. Conversely, in the earlier case (01 March

2021), the dissenting votes supported the administrative authorities' actions, asserting compliance with the existing legal framework.

Pushbacks: At the airport: To date, no divergent Supreme Court decisions have been found addressing the issue of refusal of foreign citizens at airports in Chile.

Procedural barriers: Obstacles to presenting the asylum application: As previously noted, *ruling No. 115.005-2022* (23 March 2023) subtly diverges from *ruling No. 24.725-2020* (05 June 2020). The later decision stipulates that, subsequent to the initiation of the international protection procedure, administrative authorities are obligated to verify adherence to all requirements for granting such a declaration. This includes ensuring that the applicant has previously appeared before the Chilean Investigative Police in accordance with national legislation. Through this concluding statement, the Supreme Court, for the first time, acknowledged the validity of "self-reporting" for irregular entry as a requirement applicable even to asylum seekers. Notably, this is not a prerequisite for initiating the application, but rather a condition subject to evaluation by the National Refugee Commission.

The Court's assessment in this ruling centred on the necessity of complying with immigration regulations that empower the Investigative Police (PDI) to conduct immigration checks. This reasoning had previously been articulated in dissenting opinions by one judge in earlier Supreme Court decisions. These dissenting opinions emphasized the individual's need to "self-report" to the police authorities as a means for "the regularization of their illegal entry" (referencing dissenting votes in *rulings No. 12472-2022* and *12836-2022*, 19 May 2022). Furthermore, Chilean law, specifically Law N° 20.430, mandates that all refugees adhere to the nation's Constitution, laws, and public order regulations. In this context, foreigners seeking refugee status, even those who have entered irregularly, must apply through the National Migration Service by submitting a personal written form. This process requires "prior presentation to the Chilean Investigative Police within ten days of entry for control and registration", a requirement that, while not a prerequisite for initiating the refugee application, remains subject to evaluation by the National Refugee Commission (referencing dissenting votes in *rulings No. 16100-2022* and *No. 25277-2022* from 09 August 2022; *rulings No. 48836-2022* and *46943-2022* from 18 August 2022; and *rulings No. 44265-2022* and *44267-2022*, from 07 September 2022).

Divergence and binding precedent

In Chile, there is no legal precedent, so while decisions regarding barriers to asylum access are reviewed on appeal by the Supreme Court, this does not establish a precedent on the matter. There are lines of jurisprudence that the courts may follow, but they are not binding except in the specific case where the decision was made.

Pushbacks: At land: *Case No. 14.396-2021*, adjudicated by the Second Chamber of the Supreme Court on 02 March 2021, was indeed decided by a higher instance in Chile. However, as explained above, it did not set a precedent that other courts must follow.

Pushbacks: At the airport: *Cases No. 4292-2018*, adjudicated on 21 March 2018, and *No. 154.846-2020*, adjudicated on 04 January 2021, were indeed decided by a higher instance in Chile. However, as explained above, it did not set a precedent that other courts must follow. In both cases, the lower court's decisions were overturned, and the Court ordered the authorities to accept the individuals' entry into the territory and, in the second case, explicitly to apply for refugee status.

Procedural barriers: Obstacles to presenting the asylum application: *Case No. 115.005-2022*, adjudicated by the Third Chamber of the Supreme Court on 23 March 2023, was indeed decided by a higher instance in Chile. As explained above, it did not set a precedent that other courts must follow; nevertheless, subsequent decisions accept "self-reporting" as an element to be evaluated in asylum applications.

Procedural barriers: Pre-admissibility or pre-screening interviews: *Ruling No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), was upheld by the Supreme Court (*No. 62.684-2020*, 8 June 2020). However, as explained above, it did not set a precedent that other courts must follow.

Alignment or differences with resolutions on similar barriers

Pushbacks: At land: To date, no other judicial decisions have been found that address collective expulsions, unlike the *case No. 14.396-2021*, adjudicated by the Third Chamber of the Supreme Court on 02 March 2021.

Pushbacks: At the airport: *Rulings No. 4292-2018*, adjudicated on 21 March 2018, and *No. 154.846-2020*, adjudicated on 04 January 2021 differ from the decisions made by the appellate courts, as indicated above. In both cases, the Supreme Court placed greater emphasis on the application of national norms and international commitments to protect the individual, prioritizing them over administrative formalities and arbitrariness. For the Supreme Court, authorities at the country's entry points, in this case the airport, should not assume powers not provided for by law and should conduct an individual assessment of each person and their conditions before denying them admission to the country. It also emphasized that it is not permissible to collectively reject a group of individuals or use unclear concepts such as insufficient financial means to justify denying them admission to the country.

Procedural barriers: Obstacles to presenting the asylum application: Supreme Court *Ruling No. 115.005-2022*, adjudicated on 23 March 2023, addresses a significant procedural hurdle in Chilean asylum appeals: the "self-reporting" barrier. Between 2013 and 2024, this practice proved to be the most challenging obstacle in Chilean appeals courts, cited by plaintiffs in at least 155 lawsuits as impeding their access to asylum. Initially, Courts of Appeal displayed varied responses; they sided with applicants in 30 rulings but upheld the authorities' stance in the majority of cases (125 rulings). However, the Supreme Court subsequently overturned most of these appellate decisions. The high court's reasoning was that self-reporting of illegal entry should not be considered a prerequisite for submitting an asylum application, thereby dismantling a significant barrier to protection.[158]

Procedural barriers: Pre-admissibility or pre-screening interviews: *Ruling No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), was upheld by the Supreme Court (*No. 62.684-2020*, 8 June 2020). For that reason, this convergence establishes a binding precedent for the lower courts and administrative authorities in Chile. The "pre-admissibility stage" or "pre-screening interview" emerged as the second most frequent obstacle in Chilean court decisions concerning asylum applications between 2013 and 2024. In at least 59 documented instances, applicants alleged that their asylum requests were not formally processed but instead verbally rejected following the application of an extra-legal pre-admissibility or pre-screening interview by authorities. This practice, lacking a basis in established law, effectively barred access to the formal asylum process for numerous individuals. Similar to the "self-reporting" obstacle, Courts of Appeal largely sided with Chilean authorities regarding the "pre-admissibility" stage barrier. However, the Supreme Court subsequently reversed the majority of these unfavourable decisions, echoing its stance on procedural fairness in asylum applications. [159]

Evolutive/restrictive approach to asylum barriers

Pushbacks: At land: The Supreme Court's decision in *case No. 14.396-2021*, adjudicated on 02 March 2021, reflects a restrictive approach to asylum barriers, particularly when contrasted with the more expansive view taken by the Court of Appeals of Iquique and the dissenting opinions within the Supreme Court itself. The Supreme Court's ruling emphasizes the administrative authority's strict adherence to national immigration laws and regulations, even in cases where the initial criminal charges for irregular entry were withdrawn.

The core of the Supreme Court's reasoning is that the administrative authority acted within its prescribed powers, basing its actions on specific articles of Decree Law No. 1094 on Immigration and its regulations, and Decree No. 818 of the Ministry of Interior. The Court found that the desistance of penal action and the lack of investigation did not affect the administrative faculties, implying that the administrative process

[158] Author's own data, presented at the ADIM 2025 Conference, Viterbo, Italy, May 28-30, 2025.
[159] Author's own data, presented at the ADIM 2025 Conference, Viterbo, Italy, May 28-30, 2025.

of expulsion can proceed independently of criminal proceedings. The ruling ultimately prioritizes the formal legality of administrative action in the context of border control, thereby reinforcing existing asylum barriers rather than evolving towards a more expansive interpretation of protection.

The dissenting votes, however, highlight a different perspective, emphasizing Chile's international human rights commitments. They specifically refer to IACHR Resolution 2/18 concerning the forced migration of Venezuelan persons, and the principles of non-refoulement and non-rejection at the border as outlined in the Cartagena Declaration of 1984. The dissent argues that the circumstances of departure from countries of origin can be urgent and precarious, sometimes necessitating irregular entry, and that such facts should be considered in the context of international protection. This reflects an evolutive approach that integrates international human rights law to broaden the scope of protection, moving beyond a purely formal interpretation of national immigration statutes.

Pushbacks: At the airport: The Chilean Supreme Court's rulings in case *No. 4292-2018* (21 March 2018) and case *No. 154.846-2020* (4 January 2021) demonstrate a progressive and rights-oriented evolution in the judicial approach to immigration barriers, with indirect but significant implications for asylum considerations. These decisions underscore a human rights-centric interpretation of immigration law, prioritizing individual assessment and legal certainty over broad administrative discretion. The Court consistently asserts that administrative bodies derive their authority from the law to serve the public interest, and their legitimate exercise of power necessitates adherence to human rights principles and reasonableness in decision-making. This judicial stance directly challenges a restrictive view that might prioritize state sovereignty over individual rights, marking a departure from frameworks that previously afforded extensive discretionary powers to immigration officials. The emphasis on clear legal definitions and predictable entry criteria signals a move toward a more transparent and less arbitrary system of border control.

Furthermore, in *ruling No. 4292-2018*, the Court explicitly cited Article 13 of the International Covenant on Civil and Political Rights, which prohibits collective expulsions and mandates individual examination for each person. This incorporation of international human rights law highlighted the illegality of the collective denial of entry without individual assessment, even when disguised as a refusal rather than an expulsion. Such reliance on international obligations supports an evolutive approach, interpreting national legal frameworks in alignment with broader human rights principles and thereby moving away from a purely restrictive focus on national immigration controls. Although this particular decision did not directly address asylum claims, its emphasis on individual rights, due process, and the rejection of arbitrary administrative actions in border control fosters a judicial environment increasingly favourable to fair hearings for individuals seeking protection. By imposing stricter requirements on authorities for justifying and individually assessing entry denials, the ruling implicitly strengthens procedural safeguards that are crucial in an asylum context.

Concurrently, *ruling No. 154.846-2020* reinforces this protective stance toward individuals seeking international protection, moving beyond strict administrative formalities. This decision actively limits the discretion of administrative authorities at entry points, preventing them from exercising powers not explicitly granted by law and ensuring a more thorough and rights-based evaluation of asylum claims. The Court's consistent emphasis on fundamental principles such as non-refoulement, the prohibition of rejection at the border, and family unity, as enshrined in Law No. 20.430, further solidifies this evolutive approach, clearly prioritizing humanitarian claims over administrative hurdles. The absence of divergent Supreme Court decisions on this matter to date further reinforces the consistent application of this evolutive judicial perspective.

Procedural barriers: Obstacles to presenting the asylum application: *Ruling No. 115.005-2022*, adjudicated by the Third Chamber of the Supreme Court on 23 March 2023, represents a nuanced and arguably more restrictive approach to asylum barriers when compared to previous judicial decisions regarding the same barrier. While the ruling ultimately favours the applicant by ordering the initiation of his refugee procedure, its emphasis on "self-reporting" for irregular entry to the Chilean Investigative Police (PDI) as a

requirement, even if not a prerequisite, signals a shift. This contrasts with a more expansive or protective stance that might have entirely dismissed such a requirement for asylum seekers, recognizing their often involuntary and desperate circumstances.

The court's decision explicitly states that administrative authorities, once an international protection procedure is initiated, are obligated to verify compliance with all requirements, including "that the applicant has previously appeared before the Chilean Investigative Police". This "self-reporting" requirement for irregular entry, previously a point of contention often relegated to dissenting opinions, is now, for the first time, explicitly acknowledged by the Supreme Court as a valid condition to be evaluated by the National Refugee Commission. This indicates a move towards a more stringent interpretation of administrative procedures within the asylum framework.

The Supreme Court's approach, as articulated in the decision and echoed in previous dissenting opinions, prioritizes upholding immigration regulations that empower the Investigative Police (PDI) to conduct checks and maintain a national registry of foreigners. This perspective views such measures as essential for "secure, orderly and regular migration" and for preventing illicit trafficking and human exploitation. This emphasis on state control and security concerns introduces a more restrictive stance on asylum access, embedding a procedural hurdle that, while not immediately disqualifying, adds complexity and a potential for rejection for individuals arriving in urgent and clandestine circumstances. The requirement for "self-reporting" is further problematic as it potentially violates the guarantee of non-self-incrimination and risks leading to an expulsion order, which is particularly detrimental to asylum seekers. Under Article 32 of Law 20.430, such a sanction must be rescinded for a refugee application to be formalized, effectively barring individuals with an existing expulsion order from initiating the asylum process.[160]

Procedural barriers: Pre-admissibility or pre-screening interviews: *Ruling No. 1266-2020*, adjudicated by the Court of Appeals of Antofagasta (07 May 2020), aligns well with an evolutive approach to asylum barriers. The Court of Appeals of Antofagasta, by directly addressing and dismantling the informally established "pre-admissibility" barrier created by the administrative authority, demonstrates a willingness to interpret and apply existing legal frameworks in a manner that expands access to asylum. The Court recognized that the administrative practice of denying forms and requiring unauthorized interviews prior to formal application receipt was an arbitrary and illegal act that infringed upon constitutional rights, specifically the right to equality before the law and the right to seek international protection. This judicial stance actively pushes back against restrictive administrative interpretations and practices that create de facto obstacles to asylum seekers.

The Court's reliance on principles from the Comptroller General of the Republic of Chile's opinion, which clarified that no prior interviews are required for refugee applications under Law 20.430 and its regulations, further underscores this evolutive approach. By using this soft law instrument to challenge and correct the administrative body's restrictive interpretation, the Court effectively strengthened the procedural safeguards for asylum seekers. The order for authorities to provide the necessary forms within a tight five-day timeframe also highlights a commitment to prompt and effective access to the asylum process, directly counteracting the administrative delays and complex procedures faced by the applicants.

[160] Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit., p. 146.

PART 3: SOCIO-LEGAL FACTORS

This third part of the Report is divided into four sections: I) Procedures in asylum access adjudication; II) Judicial or quasi-judicial bodies in asylum access adjudication; III) Other actors in asylum access adjudication; IV) Socio-political context.

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Barriers to accessing asylum whose legality cannot be assessed by judicial bodies

In Chile, all barriers to access to asylum can, in theory, be reviewed judicially through various legal actions. However, obstacles such as immediate return to the territory of a third country (such as Bolivia) can, in principle, only be appealed before the administrative authority that issued the measure and from foreign territory. Nevertheless, as indicated in Part II, there are court rulings that have addressed the issue, although they do not refer to cases of asylum applications. In this regard, we can mention the ruling of the Court of Appeals of Iquique *No. 124-2022*, of 14 February 2022, where a citizen returned from Chile to Bolivia complained that she could not appeal the return order because the Chilean Consulate in Bolivia did not attend to her and there was no online system for filing the appeal. The Court of Appeals denied the action, but the Supreme Court, in its decision *No. 12.157-2022* of 26 December 2022, partially upheld the plaintiff's claim, ordering the National Immigration Service to provide an expedited channel for receiving the appellant's complaint, with the legal deadline for filing it to be counted only from the date on which she was actually able to submit it.

Time

While filing a legal action against administrative actions or omissions that create barriers to asylum in Chile is possible, the time limits can present a significant challenge due to the consequences such barriers have on individuals.

Pushbacks: Time constraints pose a significant challenge for asylum seekers who face rejection at the border and immediate expulsion. Without immediate legal intervention, they may be prevented from entering the territory or removed from it before they can file an asylum claim and receive an individual assessment.

The writ of habeas corpus, the most common legal action to address these issues, is not subject to formal filing requirements. The only condition is that no other legal action has been initiated. Fundamentally, there are no time limits for filing a writ of habeas corpus while the deprivation, threat, or disturbance of liberty persists.[161]

Procedural barriers: Administrative barriers also represent a significant temporal challenge. People who cannot apply for asylum due to bureaucratic obstacles run the risk of becoming irregular migrants, which could result in expulsion orders. Likewise, those who already have an active expulsion order, for example due to irregular entry into the country, may be immediately removed from the country. Therefore, timely legal action is crucial to obtaining protection.

As explained in Part II, the Remedy for Protection (or Protection Action) is a common constitutional guarantee used to challenge administrative acts or omissions. Although the Chilean Constitution does not specify a time limit for filing this action, the Supreme Court has established a deadline that has varied from

[161] Library of the National Congress of Chile, *Ley Fácil. Guía legal sobre Recurso de amparo*, 11/10/2016, Available at: https://www.bcn.cl/portal/leyfacil/recurso/recurso-de-amparo

15 to 30 days. The current deadline is 30 days from the date of the act or omission.[162] This deadline operates as a statute of limitations, meaning it automatically bars the claim after the period has passed, without requiring a court ruling on the matter. This differs from a statute of prescription, which must be declared by a court. While this deadline intends to provide legal certainty and finality to administrative actions, its justification is questionable, especially concerning fundamental, non-patrimonial rights.[163]

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 in Chile. The Legal Assistance Corporation, the Jesuit Migrant Service (SJM), and legal clinics at various universities provide free legal assistance to individuals with insufficient financial resources, including those involved in human mobility processes. A critical, albeit indirect, barrier to justice can be the overload of free legal services.

Spatial and geographical issues

Geographical limitations could make it difficult to initiate constitutional protection actions in Chile (Remedy of protection -*Recurso de proteccion*- or Habeas corpus). These judicial actions must be filed before the Court of Appeals competent for the place where the arbitrary or unlawful act or omission occurred. Since these courts are located in provincial capitals, the plaintiff or his or her representative must submit a written appeal to that court. Although legal representation is not mandatory, the distance to the competent court could represent a logistical barrier.

Pushbacks: 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. In ruling *No. 24.456-2020* (16 March 2020), the Supreme Court addressed the case of a family group that attempted to enter Chile by land and request asylum. The Chilean authorities denied their entry, citing a policy against granting refugee status to Colombian citizens. The group was then forcibly returned to Peru. After a failed attempt to enter Chile through Bolivia, they were again denied entry and pressured to sign a document stating they did "not need international protection". On their third attempt, they successfully entered Chile, but the authorities refused to initiate the asylum process, instead demanding that they self-report their illegal entry. The Supreme Court ruled in favour of the applicants, stating that self-reporting was an extra-legal requirement

For instance, Parts I and II of this report analysed the collective expulsion that occurred on Chile's northern border during 2021. That year, the Court of Appeal of Iquique adjudicated different cases of collective expulsion, like *writ of Amparo No. 36-2021* (17 Feb. 2021), granted by the Court of Appeal and overturned by the Supreme Court with its ruling writ of Amparo *Rol No. 14.396-2021*, 02 Mar. 2021. The Supreme Court used the same arguments as in its previous ruling, *writ of Amparo Rol No. 14394-2021*, dated 25 February 2021, regarding the expulsion of 68 Venezuelan citizens. As in this case, the CA of Iquique ruled in favour of the expelled individuals. However, the second chamber of the Supreme Court overturned the ruling and ruled in favour of the administrative authority. In another case, the Court of Appeal of Iquique, *writ of Amparo No. 33-2021*, 19 Feb. 2021, the court also granted the constitutional guarantee. On this occasion, the Supreme Court upheld the previous decision and used the same arguments in its subsequent ruling writ of Amparo *No. 14.495-2021*, 2 Mar. 2021

[162] Supreme Court, *Texto refundido del auto acordado sobre tramitación y fallo del recurso de protección de las garantías constitucionales*, Acta No. 94-2015, Santiago 17 July 2015, Art. 6.
[163] See Nogueira H. (2007) "*El Recurso de Protección*", cit.

Thanks to the immediate intervention of the legal clinics, judges were able to review both cases of expulsions and act to protect the rights of the people who had been expelled without any guarantees of protection.

Procedural barriers: Currently, territorial or spatial considerations have shown no particular bearing on the ability to pursue litigation against administrative impediments, beyond the general constraint outlined in the introduction to this section.

Practices to overcome these challenges

To mitigate potential impediments to accessing justice in Chile, UNHCR collaborates primarily with several organizations to furnish legal counsel to migrants and asylum seekers, concentrating its efforts in regions experiencing high numbers of arrivals. Its principal partnership is with the Jesuit Migrant Service in the northern border provinces of Antofagasta, Arica, Parinacota, and Tarapacá.

Furthermore, university-affiliated legal clinics extend local and national assistance. These clinics played a pivotal role during significant events, notably the mass expulsions that transpired on the northern border in 2021. On that occasion, the legal clinics of Chile's major universities and various non-governmental organizations collectively filed constitutional guarantee actions to halt the removal of those individuals from the national territory.

Implications of difficulties accessing justice in asylum access adjudication

In Chile, difficulties in accessing justice can impact the types of cases the courts can hear and resolve. This is especially true in cases of border rejections or immediate returns, where legal action must be taken swiftly to prevent a person's expulsion from the country. If a person is expelled, they can only file a lawsuit from outside Chile, which severely limits the capacity of Chilean courts to process these cases.

In relation to other barriers such as administrative obstacles, limitations to accessing justice relate to the availability of legal assistance to file lawsuits.

B. Legal aid

Procedural aspects in law and in practice for obtaining legal representation

Judicial Assistance Corporations (*Corporaciones de Asistencia Judicial*), National Institute of Human Rights (INDH), university legal clinics, and some NGOs offer legal assistance for cases of human mobility in Chile, so interested individuals can contact them for guidance and legal representation.

Pushbacks: Chile's immigration law (Law 21.325) guarantees certain legal protections for foreigners facing expulsion, including the right to legal aid. As outlined in Article 141, individuals subject to an expulsion order can challenge the decision before the Court of Appeals, and this appeal automatically suspends the deportation process. Crucially, the law explicitly states that foreigners facing expulsion have the right to legal defence through the Judicial Assistance Corporations (*Corporaciones de Asistencia Judicial*), receiving the same level of assistance as Chilean citizens. Furthermore, Article 147 mandates that when an expulsion order is served, the police must personally inform the individual of their rights, including the legal remedies available to them, the specific court to file their appeal, and the contact information for the nearest Judicial Assistance Corporation.

Free legal aid

In Chile, free legal aid is available, primarily for individuals who lack the financial means to hire a private lawyer. This service is guaranteed by the Chilean Constitution, which ensures the right to legal defence for all persons. The primary institution for providing free legal aid is the Corporations for Judicial Assistance (*Corporaciones de Asistencia Judicial*). These are public, non-profit entities overseen by the Ministry of Justice. They are the main point of contact for low-income individuals seeking legal assistance.

Likewise, although it is not among its main functions, the National Institute of Human Rights (INDH) can provide legal support to challenge barriers to access asylum in Chile. The INDH is an autonomous public law corporation established by Law No. 20,405 to promote and protect the human rights of all people in Chile. Its mandate is rooted in constitutional and legal norms, international treaties ratified by Chile, and general principles of law. Crucially, the INDH is independent and does not fall under the authority of any of the three branches of state power, even though it is funded by public resources.[164]

Due to its resources, Chile's government historically has played the leading role in providing direct legal services to the poor, and since 1981 the Corporation for Judicial Assistance has been the state's primary tool for legal aid work. Today the four Corporations are responsible for all thirteen administrative regions of the country, including the Metropolitan Region and its five million Santiago residents[165]

It should be noted that after 2001, legal aid in Chile, which was previously provided through a mandatory legal training scheme for law graduates, underwent significant changes. This traditional model, which relied on unpaid law students to provide services, became just one of several ways to offer legal assistance to vulnerable people. While the legal training component remained a key part of the system, particularly for criminal, labour, and family law, its dominance faded with the establishment of more specialized services. The creation of the Criminal Public Defender service was a major turning point, as it shifted the focus from a generalist, student-led approach to a more specialized, professional one. Other reforms followed, such as the creation of the Workers' Defence Office, which provided a professional alternative for labour cases. These changes were driven by broader judicial reforms that required a higher level of specialization from legal practitioners. As a result, the original legal training model became a default option for legal needs not covered by these newer, specialized services. It continues to serve as an economical way for the state to provide legal representation and as a training ground for future lawyers.[166]

Additionally, as mentioned above, university legal clinics and some NGOs offer legal assistance for cases of human mobility, so interested individuals can contact them for guidance and legal representation.

Main challenges asylum seekers face in obtaining legal representation

While specific analyses on the shortcomings of legal representation in asylum access adjudication in Chile are scarce, it's reasonable to infer that access to legal assistance for migrants faces two primary challenges, common in the region: insufficient human resources distributed across the national territory and the overburdening of existing services. This problem is acutely felt because the main land entry zones into Chile are geographically remote from the urban centres where these crucial legal services are usually situated.

Implications of the availability, quality, and accessibility of legal aid

Legal representation is not technically required to file actions safeguarding constitutional rights in Chile. However, individuals need legal counsel before filing a lawsuit, especially given their unfamiliarity with the Chilean legal system. Consequently, the work of NGOs and civil society organizations becomes essential in providing legal guidance to people in human mobility processes, particularly those seeking international protection.

[164] INDH, About us, https://www.indh.cl/en/about-us/
[165] Michael A. Samway, Access to Justice: A Study of Legal Assistance Programs for the Poor in Santiago, Chile, 6 Duke Journal of Comparative & International Law 347-370 (1996), p. 357.
[166] Fuenzalida Cifuentes, P. A. Legal aid through legal training: Chile, a case study. Doctoral Thesis: Doctor of Philosophy (PhD), University of Bristol, 25 Jan 2022.

C. Lodging the appeal

Relevant procedural aspects regarding the registration/lodging of the appeal

Pushbacks: In Chile, the appeal process for a writ of amparo (habeas corpus) remains a subject of ongoing debate and jurisprudential development, particularly concerning procedural formalities and deadlines. While some courts have accepted appeals via email (Supreme Court, 9 January 2014, *Rol No. 11.469-2013*), this method is not consistently recognized. The appeal period is also contested, with some arguing for a strict 24-hour deadline, while the Supreme Court's jurisprudence generally favors a five-day window following notification of the decision, regardless of holidays (Supreme Court, 8 September 2015, ruling *No. 9770-2015*; Supreme Court, 19 November 2015, *ruling No. 26.910-2015*). According to the internal rules of the Supreme Court, the Criminal Chamber is the designated body to hear these appeals. These appeals are typically decided without oral arguments unless the chamber, upon a well-founded request from the parties -including a shared agreement among the appellant, the appellee, and any other parties involved-deems it necessary to hear them. This general rule of reviewing appeals without oral argument is also a point of discussion.[167]

Procedural barriers: An appeal can be made to the Supreme Court against a ruling by the Court of Appeals regarding a Remedy of Protection in Chile. This is a crucial step for a party that has had its case rejected, accepted, or deemed inadmissible. The appeal must be filed within five business days of the notification of the ruling. To be admissible, the appeal must clearly state the factual and legal grounds for the challenge and the specific requests made to the Supreme Court. Unlike a typical appeal, cassation is not an available remedy.[168]

Upon receipt, the Supreme Court typically reviews the appeal summarily, unless the court decides to hear oral arguments from the parties. While current practice does not guarantee a hearing, many believe that a law regulating the remedy of protection should mandate oral arguments on appeal to ensure the right to a defence and an opportunity for parties to counter each other's arguments at the appellate level. To facilitate its review, the Supreme Court can also request additional information as it deems necessary. All notifications concerning the appeal process at the Supreme Court are made through the daily log.[169]

Implications of the procedure in law and practice for lodging the appeal

The primary procedural implication for asylum seekers appealing an adverse decision in Chile centres on the Remedy of protection (*Recurso de Protección*), which is essential in transforming administrative access barriers or imminent expulsions into urgent constitutional cases heard by the judiciary. This procedural step is critical because it grants a suspensive effect on removal orders, directly protecting the fundamental right of non-refoulement while the case is reviewed. The procedural difficulty, however, lies in geographic barriers, as asylum seekers at remote entry points struggle to access the urban centres necessary to file the appeal and secure the legal counsel, often provided by legal clinics, NGOs, required to successfully navigate the complex legal system.

While Courts of Appeal can vary in their initial rulings, the Supreme Court has established key precedent by explicitly incorporating Inter-American human rights standards into the review process, compelling lower judicial bodies to prioritize international protection principles over restrictive domestic administrative regulations, particularly when an immediate threat to the asylum seeker's safety is involved. For instance, in *ruling No. 7426-2022*, the Court of Appeals of Talca ruled that the administrative requirement imposed by the National Migration Service was neither illegal nor arbitrary. In that case, the plaintiffs had referred to the due process parameters established by the IACHR, which must be followed during the stages of application, analysis, and actual recognition of refugee status. However, the court denied the protection and indicated that, because refugee status is not an automatic right but the result of

[167] Henríquez M. (2024) "*Novedades en la tramitación",* cit.
[168] Supreme Court, *Texto refundido,* cit.
[169] Nogueira H. (2007) "*El Recurso de Protección"*, cit.

a specific administrative process, the petitioners possessed no "indubitable right" that had been violated by the Service's refusal to accept their applications without the required police documentation. The Supreme Court, with *ruling No. 99047-2022*, 12 October 2022, overturned this decision.

D. Hearing

Generally, the judicial review of constitutional guarantees in Chile, primarily through the Remedy of Protection (*recursos de protección*) and writ of amparo (*habeas corpus*), is characterized by a predominantly written procedure that does not typically entail oral hearings (*audiencias*).

Pushbacks: Habeas corpus actions, as a rule, do not stipulate mandatory oral hearings unless the presiding court specifically decides otherwise. However, in cases involving the deprivation of liberty, the procedure mandates a public oral hearing, which may be conducted either in person or via telematic (online) means. The possibility of holding hearings by videoconference arose during the COVID-19 pandemic. At that time, the use of electronic means and videoconferencing was authorized for hearings, "as long as it does not constitute an obstacle to the exercise of the basic principles set forth, and the rights of the interveners and parties, as well as the provisions of Article 10 of Law No. 21.226, are fully respected". In this regard, it is necessary to guarantee, among other things, free communication between the attorney and the accused, as well as to ensure adequate preparation of the defence.[170]

Procedural barriers: In the Chilean judicial system, actions for the protection of constitutional guarantees (*recursos de protección*) are procedural in nature and do not legally require an oral hearing. Courts of both first and second instance adjudicate these claims exclusively on the basis of the documents and legal arguments submitted by the parties -in written form- and the applicable legislation. This summary, document-based procedure is a key feature of the process, allowing for expedited decisions on alleged constitutional rights violations.

Implications of the procedure in law and practice regarding the hearing

One of the challenges for asylum seekers in Chile appealing adverse administrative decisions lies in the legal preference for written procedures in the judicial review mechanism. Since courts resolve constitutional guarantees (remedy of protection, writ of amparo, and habeas corpus) based primarily on the documents submitted by the parties, the absence of an oral hearing eliminates the crucial opportunity to assess the applicant's credibility and personal testimony, focusing attention on the technical and legal sufficiency of the written file. This procedure, while intended to be expeditious, creates a significant practical barrier for asylum seekers who may lack the essential support of a qualified attorney necessary to prepare a successful and technically accurate appeal.

E. Deliberation

The constitutional actions mentioned above (Remedy for Protection and Habeas Corpus) are resolved by the respective Courts of Appeal, which are composed of an odd number of judges (Justices). There is no set number of judges for all Courts of Appeal, as this varies depending on their size or importance. The number of judges can vary from four or three to even ten or more judges. There is a judge responsible for issuing the decision on the case, following discussion by the panel of judges. The decision is approved by a simple majority of the convened judges. Any concurring or dissenting votes must be indicated at the time of the decision, and they may also record their vote in writing to be incorporated into the judgment.

[170] Vera J. (2020) "*Los Juicios orales mediante conexión remota y el derecho de defensa*", Revista de Ciencias Penales Sexta Época, Vol. XLVII, pp. 373 -398.

This same procedure is followed in the second instance (Supreme Court), where the judges of the respective chamber review the case and decide by majority. At this level, concurring or dissenting votes are also possible.

To date, no discrepancies between practice and the law have been identified.

Implications of the procedures in law and practice regarding the deliberation

The deliberation procedure for judicial actions concerning asylum access in Chile is inherently shaped by its reliance on collegiate courts (panels), such as the Courts of Appeal and the Supreme Court, rather than single-judge decisions. Although a single judge is assigned to draft and propose the ruling, its final adoption requires majority approval by the panel or chamber. This collegiate structure theoretically promotes greater consistency and mitigates individual judicial bias in outcomes. Given that these constitutional actions are predominantly written proceedings without mandatory oral hearings, the deliberation hinges heavily on the quality of the written submissions and the reporting judge's technical summary. Consequently, the panel's review typically focuses on procedural control -determining whether the administrative denial of access was arbitrary or illegal- rather than entering into the substantive adjudication of the asylum claim itself.

F. Review of decisions

In Chilean asylum access adjudication, the judicial review process, primarily through the Remedy of Protection (*Recurso de Protección*) and related writ of Amparo (Habeas Corpus), involves some critical procedural aspects, although legal representation is not mandatory. As mentioned before, a key element is the contested deadlines, particularly for the writ of Amparo, where jurisprudence wavers between a strict 24-hour limit and a more prevalent five-day window following notification of the decision, regardless of holidays, reflecting ongoing jurisprudential debate. Similarly, an appeal against a Court of Appeals ruling on a Remedy of Protection must be filed with the Supreme Court within five business days of notification, clearly articulating the factual and legal grounds.

To date, no other discrepancies have been identified between legislation and practice.

Implications of the functioning of judicial review mechanisms

The Supreme Court of Chile, acting as the appellate authority for constitutional actions, possesses plenary power to uphold, overturn, or modify rulings issued by the Courts of Appeals, enabling a comprehensive re-examination of the case on its merits without statutory limitations. However, its influence on future asylum adjudication remains limited by the fact that Chile does not adhere to the doctrine of binding precedent (*stare decisis*). Although Supreme Court reasoning carries significant persuasive authority for lower courts, its decisions are only legally applicable to the specific case being resolved. This systemic characteristic permits divergent interpretations of the same legislation by different chambers within the same Court of Appeals, and explains why subsequent rulings from lower courts may, in practice, differ from or even contradict the principles previously established by the Supreme Court in similar matters.

G. Procedures in decentralized states

Chile is a unitary state characterized by a high degree of centralization. Consequently, the procedural aspects in law for judicial review of asylum access, primarily through the constitutional guarantees, are uniformly established by national legislation and the Supreme Court's internal rules, meaning they do not vary procedurally by territory (region or province).

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

The divergence between formal legal procedure and concrete practice could undermine access to justice and, consequently, access to asylum in Chile. While legal representation is not mandatory for filing constitutional appeals, the need for a technically sound written submission for success, coupled with the lack of mandatory oral hearings, creates a *de facto* requirement for expert legal advice. This practical necessity creates a profound geographic access barrier, as asylum seekers at remote border crossings are often unable to obtain timely legal assistance from distant urban centres to file an urgent appeal. Furthermore, the absence of binding precedent means that judicial panels in different regions may issue divergent interpretations of migration and asylum law, allowing for territorial inconsistency in judicial outcomes despite the formal uniformity of the national legal system. Consequently, these procedural practices may limit access to judicial review.

Jurisprudence of judicial bodies shaping procedural protections or interpretations

The jurisprudence of Chilean courts has significantly shaped procedural protections and the interpretation of asylum law, often invalidating restrictive executive practices through the application of constitutional and supranational norms. This is particularly evident in the Courts of Appeals' handling of the remedy of protection against administrative barriers and the use of writ of Amparo (Habeas Corpus) against summary expulsions. Chilean jurisprudence actively reinforces the right to seek asylum by striking down barriers imposed by executive bodies like the National Migration Service (SERMIG). The judiciary focuses on procedural legality and constitutional guarantees, consistently reversing expulsion orders issued without a prior and effective assessment of the applicant's need for protection, thus reinforcing the core principle of *non-refoulement*. Furthermore, courts have compelled the executive to accept and process applications initially blocked due to alleged irregular entry or non-compliance with administrative formalities, acting as a crucial check on the executive's gatekeeping function. This judicial stance is strongly supported by the principle of conventionality control, explicitly invoked by the Supreme Court to mandate that domestic law be interpreted in accordance with supranational obligations, such as the ACHR and the IACtHR's interpretation. These rulings, often referencing non-refoulement as a fundamental element irrespective of immigration status, are paramount in strengthening procedural protections, including the right to an adequate defence and appeal.

Although the IACtHR has not ruled on any asylum cases directly against Chile, its jurisprudence has had a clear influence on Chilean 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 cases involving collective expulsions, *de facto* detention, and immediate removals. In these instances, Chilean 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. For instance, regarding the collective expulsion, the Court of Appeals of Iquique in *rulings No. 36-2021*, *No. 38-2021* (adjudicated on 17 February 2021), and *No. 33-2021*, adjudicated on 19 February 2021, indicated that the expulsion orders were not preceded by a procedure in which the protected persons could have challenged the attributed entry, exercised their right to defence, or presented the arguments they deemed appropriate against the expulsion order, thereby violating the guarantee of a legally processed, rational, and fair procedure before the expulsion orders.

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 Chilean Constitution created the Judiciary as an autonomous and independent branch (Article 76). Likewise, the Organic Code of Courts (COT) established that the judicial branch is composed of both ordinary and special courts. The ordinary courts include the Supreme Court, Courts of Appeals, trial courts for criminal matters, local courts, and guarantee courts. Special courts, on the other hand, include family courts, labour courts, labour and social security collection courts, and military tribunals during peacetime. (Article 5)

Moreover, in Chile's institutional design, the Constitutional Court shares its role as guardian of the Constitution with the higher courts of the ordinary judiciary (Courts of Appeals and Supreme Court). These courts are responsible for protecting fundamental rights when they are violated by current legislation[171] or by administrative actions or omissions, primarily through the use of the remedy of protection. Bearing in mind that constitutional actions for protection and habeas corpus are decided in the first instance by the Courts of Appeals and in the second instance by the Supreme Court, the following analysis of the organs of the judicial branch will be limited to those instances.

- *First instance judicial bodies:* Court of Appeals (*Cortes de Apelaciones*), Judiciary

  There are 17 Courts of Appeals, located in the different regions of the country. These courts are responsible for 465 first-instance courts, distributed throughout Chile. However, for cases involving constitutional guarantees (Habeas Corpus and Remedy for Protection), the Courts of Appeals are the first instance.

  By 2025, the composition of each Court of Appeal is as follows: C.A. Arica: Two chambers; C.A. Concepción: Six chambers; C.A. Coyhaique: One chamber; C.A. Chillán: Two chambers; C.A. Iquique: One chamber; C.A. Antofagasta: Two chambers; C.A. Copiapó: One chamber; C.A. La Serena: Two chambers; C.A. Puerto Montt: Two chambers; C.A. San Miguel: Six chambers; C.A. Santiago: Twelve chambers; C.A. Punta Arenas: Two chambers; C.A. Rancagua: Two chambers; C.A. Talca: Two chambers; C.A. Temuco: Two chambers; C.A. Valdivia: Two chambers; C.A. Valparaíso: Five chambers.[172]

- *Second instance judicial bodies:* Supreme Court (*Corte Suprema*), Judiciary

  The Supreme Court is at the head of the Judicial Branch, and under it are 17 Courts of Appeal, located in the different regions of the country. The Supreme Court holds the highest supervisory authority over all national courts, except for the Constitutional, Electoral, and Regional Electoral Tribunals.

  It operates through specialized chambers or as a full court, with either an ordinary or extraordinary session. The court itself determines whether it will function in an ordinary or extraordinary capacity. The ordinary session includes three specialized chambers: Civil, Criminal, and Constitutional/Administrative. The extraordinary session adds a fourth chamber for labor and social security matters. The specific cases heard by the full court versus the specialized chambers are determined by law. For instance, the chambers handle appeals for cassation, nullity, and remedies such as amparo and protection. The full court hears cases of national significance, including appeals on the removal of senators and deputies, claims of lost nationality, and other

[171] Couso J.A. The Judicialization of Chilean Politics: The Rights Revolution That Never Was, Sieder R., Schjolden L., and Angell A. (eds) The Judicialization of Politics in Latin America, Palgrave Macmillan, 2005, p. 117.
[172] Judiciary, *Monitor de salas*, Available at: https://salas.pjud.cl/monitor/monitor.php#

matters designated by law. The full court also exercises disciplinary and administrative oversight over the entire judicial system and provides reports to the President on justice administration.[173]

Implications of the institutional configurations

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 Chile.

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

In Chile, the role of judicial bodies in asylum cases is mainly to address legal questions and ensure the correct application of the national law, rather than to evaluate the substantive merits of an asylum claim. Their primary function is to focus on legal and procedural matters.

Once a court issues a binding ruling, the case is re-send to the administrative authorities for appropriate action. For instance, courts have compelled authorities to formalize and process asylum applications that were previously stalled by administrative barriers. They have also mandated that the administration develop instructions or manuals for the proper implementation of asylum legislation.

In certain instances, the judiciary has intervened to suspend collective expulsions at the border, requiring authorities to comply with court orders and guarantee due process for each individual. Furthermore, the Supreme Court has interpreted asylum legislation, at times expanding protections for asylum seekers by declaring certain administrative practices arbitrary, and at other times affirming the legality of others, such as the practice of the self-reporting for irregular entry.

Implications of the available types of remedies on asylum access adjudication

In Chile, asylum seekers primarily rely on two judicial remedies: the Remedy for Protection or Protection Action (*Recurso de Protección*) and the Writ of Habeas Corpus or Writ of Amparo (*amparo*). Remedy for Protection is commonly used to challenge administrative decisions, such as a denial of access to asylum procedures, summary deportations, or delays in refugee status determination 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. 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, Chilean 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

In Chile, the judiciary's independence is a foundational principle enshrined in Article 76 of the Constitution. This article grants courts the exclusive authority to hear and resolve legal cases, as well as to enforce their judgments. It explicitly prohibits the President and the Legislative from exercising judicial functions, reviewing court decisions, or reviving concluded cases, thereby safeguarding the judiciary's impartiality. This principle of independence is reciprocal, meaning the judiciary is also barred from interfering with the powers of other government branches, as stipulated in Article 4 of the Code of Organic

[173] Judiciary, *Organización y Funciones*, Available at: https://www.pjud.cl/post/organizacion-y-funciones

Courts, ensuring a clear separation of powers. Additionally, courts are endowed with the power of enforcement (*imperio*) to compel compliance with their rulings. They can issue direct orders to law enforcement and utilize other necessary means to execute their decisions, ensuring their autonomy and effectiveness.[174]

Despite the constitutional guarantee and its history of constitutional and democratic rule, Chile's courts have historically shown a consistent lack of positive judicial independence. For much of the 20th century, before, during, and after the Pinochet dictatorship, Chilean judges were hesitant to defend citizens' rights and exercise judicial review, even though both the 1925 and 1980 constitutions granted them this power. This behavior remained unchanged even during periods of significant political fragmentation and competition. The explanation for this judicial passivity lies in a deeply ingrained institutional ideology of apoliticism. This ideology, rooted in legal positivism, trained judges to see themselves as "slaves of the law" and to strictly separate their function from politics, with a focus on private law rather than public law matters. This professional identity, combined with a hierarchical structure where promotions were controlled by senior judges, discouraged lower-court judges from challenging the executive branch.[175]

Autonomy of the managing authority of the judicial body

In general, the managerial autonomy of administrative authorities within the Chilean judicial bodies is structurally limited and highly centralized, owing to the Supreme Court's direct superintendence over the system. This centralization is established constitutionally, as Article 82 of the Political Constitution of the Republic (CPR) grants the Supreme Court the power of superintendence (directive, correctional and economic) over all national tribunals. Administratively, while the Administrative Corporation of the Judicial Branch (*Corporación Administrativa del Poder Judicial* -CAPJ) is the key executive body responsible for managing human, financial, and technological resources, as stipulated by Title XIV, Article 506 of the Organic Code of Courts (*Código Orgánico de Tribunales* -COT), its governance is firmly subordinated to the highest judicial authority. Critically, the CAPJ's Superior Council (Article 507, COT) is chaired by the President of the Supreme Court and exclusively composed of four other Supreme Court Justices, a structure that effectively places administrative control in the hands of the judiciary's leadership. This model, frequently critiqued as corporative and technobureaucratic, severely restricts the *de jure* autonomy of the CAPJ's professional managers, attenuating the internal independence of those responsible for operational outcomes through a vertical structure that prioritizes the Supreme Court's direct and absolute command over the administrative and economic affairs of the entire judicial system.

Financial independence of the judicial bodies

In general, the Judicial Branch's Administrative Corporation (*Corporación Administrativa del Poder Judicial* -CAPJ) is an institution that provides essential support to the courts in Chile, managing the human, physical, financial, and technological resources of the judicial branch. Its core mission is to provide high-quality service and contribute to a more effective justice system for the public. The CAPJ is overseen by a Superior Council, which is headed by the President of the Supreme Court and includes four additional Supreme Court justices elected by their peers for two-year terms. At the central level, the administration is led by a director, a deputy director, and various department heads. Regionally, the corporation operates through 17 zonal administrators who are distributed across the country's different judicial territories.[176]

Independence concerning human resource decisions

In general, the independence concerning human resource decisions in the Chilean judicial bodies is defined by a mixed system of meritocracy and political co-option for adjudicators, contrasted with a strictly subordinate managerial corp. The selection and appointment of the highest-ranking adjudicators, such as Ministers of the Supreme Court, involve the Supreme Court proposing a list (*quina*) to the President of the

[174] Judiciary, *¿Qué es el Poder Judicial?*, Available at: https://www.pjud.cl/post/que-es-el-poder-judicial
[175] See Hilbink L (2010) Judges beyond Politics in Democracy and Dictatorship, Cambridge University Press; Hilbink L. (2012). The Origins of Positive Judicial Independence. World Politics, Vol. 64, pp. 587-621.
[176] Judiciary, *¿Qué es CAPJ?*, https://www.pjud.cl/post/que-es-capj

Republic, who chooses a nominee subject to Senate approval (Article 78 of the Political Constitution), demonstrating shared political-judicial authority. Conversely, the career path for most lower judges (*jueces de letras*) adheres to a hierarchical judicial career model, where appointments often arise from *ternas* (lists of three candidates) proposed by the immediate superior court (Court of Appeals) and formalized by the President, following a rigorous training program at the Judicial Academy (Articles 252 and 254 of the Organic Code of Courts -COT). The promotion, evaluation, and transferability of judges are largely managed internally through a system of annual confidential qualifications and judicial career ranks (Articles 262 and 277 bis of the COT), which are essential for ascending the hierarchy, yet this process is itself subject to the superintendence of the highest courts, leading to concerns about internal independence. In stark contrast, executive managers, including the Director and Deputy Director of the Administrative Corporation of the Judiciary (CAPJ), are positions of exclusive trust of the Supreme Court, which can remove them at its discretion (Article 509 of the COT), which can undermine their job security and independence.

Internal independence of the judicial bodies

In general, the Chilean judiciary, while constitutionally independent from the political branches under Article 76 of the Political Constitution and Article 12 of the Organic Code of Courts (COT), faces significant challenges regarding its internal independence due to its hierarchical, centralized, and corporative structure. The core mechanism enabling the influence of higher-ranked adjudicators is the superintendence power - directive, correctional and economic- granted to the Supreme Court by Article 82 of the Political Constitution (a power partially delegated to the Courts of Appeals in their respective jurisdictions), which allows the superior courts to issue regulations (*Autos Acordados*) to govern the administration of justice and even determine aspects of disciplinary procedure, beyond mere jurisdictional review. This administrative control, coupled with the reliance of lower-court judges on favourable evaluations and proposals from their superiors for career advancement in the judicial rank (Articles 273 and 277 bis of the COT), creates a mechanism through which the managerial and disciplinary authority of higher-ranked adjudicators and bodies like the Administrative Corporation of the Judicial Branch (CAPJ)—despite its specialized staff—can exert pressure that potentially influences the independence of decision-making in the lower courts, ensuring conformity to prevailing judicial or administrative guidelines.

Implications of various aspects of the independence of judicial bodies

In general, the structural and internal limitations on judicial independence in Chile could impact the consistency and firmness of outcomes, particularly concerning the judiciary's crucial function of overturning executive decisions. While Article 76 of the Political Constitution (CPR) establishes the exclusive judicial power to judge and execute judgments, and Article 12 of the Organic Code of Courts (COT) affirms the judiciary's independence from other authorities, the internal hierarchy and concentrated administrative control in the Supreme Court (Article 82 of the CPR) can foster a culture of deference among lower-court adjudicators, who fear that challenging perceived superior criteria could negatively affect their promotions or evaluations (Articles 273 and 277 *bis* of the COT).

This hierarchical dependence diminishes the horizontal control function of the judiciary, potentially leading to inconsistent jurisprudence and an outcome where the reversal of an executive act, while legally permissible through constitutional actions, may be driven less by a pure interpretation of law and more by the necessity of aligning with the institutional direction set by the superior courts, thereby affecting the stability and predictability of the judicial safeguard against arbitrary administrative action.

Independence of the whole judicial system

The general independence of the Chilean judicial system, rooted in the exclusivity of the judicial function (Article 76 of the Political Constitution- CPR) and its autonomy from external authorities, is not formally deviated from in the area of asylum adjudication, as the same ordinary courts are responsible for reviewing executive actions through the constitutional actions (such as remedies for protection and Habeas Corpus). However, a functional deviation occurs because the legality of specific administrative barriers, such as the

detention of migrants or the refusal to accept an asylum application, is assessed by courts that may be highly susceptible to internal independence deficits (Courts of Appeal). The hierarchical and corporatist nature of the judiciary means that lower courts, while technically independent in their rulings, can be influenced by the criteria provided by the Supreme Court, which wields powerful disciplinary and promotion controls (Article 82 of the CPR and Articles 273 and 277 *bis* of the COT), thereby fostering institutional conformity that could subtly compromise the rigor of judicial review, especially in politically sensitive areas such as border rejections, summary removals, or the reversal of executive decisions on pre-removal detention, where national security narratives compete with the strong constitutional and conventional guarantee of the right to seek asylum.

C. Centralization/decentralization

As mentioned above, bearing in mind that constitutional actions for protection and habeas corpus are decided in the first instance by the Courts of Appeals and in the second instance by the Supreme Court, the following analysis of the organs of the judicial branch will be limited to those instances.

- *First instance judicial bodies:* Title V, Article 54 of the COT establishes the existence of seventeen Courts of Appeals (*Cortes de Apelaciones*), each having jurisdiction over one or more regions, with seats located in Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Santiago, San Miguel, Rancagua, Talca, Chillán, Concepción, Temuco, Valdivia, Puerto Montt, Coihaique, and Punta Arenas. The common courts of first instance (such as the Courts of First Instance, the Courts of Guarantee, and the Family Courts) established in the different communes are below the Courts of Appeals and exercise the exclusive function of judging and executing sentences (Article 76 of the Political Constitution and Article 1 of the Organic Code of Courts - COT) within their legally assigned territory.
- *Second instance judicial bodies:* The Supreme Court is a centralized body located in Santiago de Chile (Metropolitan Region). It exercises jurisdiction throughout Chile.
- *Third instance judicial bodies:* Supreme Court.

Implications of the centralization/decentralization of judicial bodies

While the Chilean judiciary maintains a decentralized structure for its seventeen Courts of Appeal, distributed throughout the national territory, as specified in Article 54 of the Organic Code of Courts (COT), the system's centralized governance and budgetary process can generate significant geographic implications for equal access to justice. The reliance on the centrally controlled Administrative Corporation of the Judiciary for resource allocation, despite the existence of local units, often results in a heterogeneous allocation of resources and personnel, which can exacerbate delays and compromise service quality in remote or sparsely populated regions. This structural tension between geographic dispersion (decentralization of judicial bodies) and administrative centralization (control of resources and career paths) can create effective inequality in access, where the mere physical presence of a Court of Appeal in a regional capital does not guarantee judicial service of equal quality to that found in the well-resourced jurisdiction of Santiago.

Chile is constitutionally defined as a unitary state whose government is decentralized and territorially deconcentrated (Article 3 of the CPR). Consequently, the structure of the national judicial system does not vary significantly by region or state; instead, it maintains a uniform, hierarchical structure across the entire national territory, with its organization and attributes strictly defined by a single law. For instance, the seventeen Courts of Appeals (*Cortes de Apelaciones*), established under Article 54 of the Organic Code of Courts (COT), operate identically in their functions—including hearing appeals and constitutional remedies—regardless of whether they are located in the centralized Santiago Metropolitan Region or in remote areas like the Magallanes Region, ensuring jurisdictional uniformity and predictability that is characteristic of a centralized, unitary legal framework.

Since Chile is constitutionally defined as a unitary state whose government is decentralized and territorially deconcentrated (Article 3 of the Political Constitution- CPR), meaning there are no legislative or structural variations between regions regarding the fundamental organization of the judicial bodies. Consequently, there are no direct implications on asylum access adjudication stemming from variations in judicial structure across states or regions. The uniformity of the judicial system, with its hierarchy established under the Supreme Court's superintendence (Article 82 of the CPR) and the standardized structure of the seventeen Courts of Appeals (Article 54 of the COT), ensures that all adjudicators responsible for hearing constitutional remedies against asylum barriers apply the same national and international laws (Law No. 20.430) under the same formal procedural rules throughout the country, preventing the kind of structural fragmentation that might otherwise lead to inter-state disparities in access to judicial protection.

D. Specialization

The judicial bodies in Chile responsible for deciding access to asylum, primarily through constitutional remedies, are not institutionally specialized; jurisdiction remains in the hands of the ordinary courts—the Courts of Appeal and the Supreme Court—which are generalist and hear all constitutional, civil, and criminal matters. However, it could be argued that the volume of litigation related to barriers to access to asylum, particularly the defence of fundamental rights guaranteed by Article 20 of the CPR (protection of constitutional guarantees), has led to a de facto partial procedural specialization of certain Courts of Appeal. This is due to frequent exposure to these cases, especially in some regions with a high number of asylum seekers, which can foster experience among individual judges in the application of Law No. 20.430 and international human rights standards, even though the structural organization of the judiciary remains entirely generalist.

Access to specialized training in asylum

Judges and other judicial professionals involved in addressing barriers to access to asylum in Chile have access to specialized training, organized primarily by the Judicial Academy, the official judicial selection and training body. This training is generally offered within the framework of the Advanced Training Program, which includes courses on topics such as "International Migration, Immigration, and International Protection Law" or "Human Rights of Migrants and Subjects of International Protection", sometimes in collaboration with international organizations such as UNHCR. While this specialized training in asylum and international protection law is not mandatory for all practicing judges, it is regularly offered to both judges (from the Primary Scale) and other professionals (such as specialized court staff and members of the Secondary Scale), with a primary focus on the correct application of international standards, including the principle of non-refoulement, and on the interpretation of national legislation, such as Law No. 20,430, to guarantee access to asylum procedures.

Adjudicators and other professionals involved in adjudicating asylum access barriers in Chile lack formal, mandatory specialization, although they gain experience through case concentration and voluntary training. Since jurisdiction over constitutional remedies against asylum barriers rests with the Courts of Appeal and the Supreme Court, legal specialization does not vary according to the structure of the judicial body, but rather according to the case file management of the Chambers that handle public law matters. Specialized knowledge is provided primarily by the Judicial Academy and other institutions (e.g., universities, NGOs) through continuing education courses and diplomas, open to both adjudicators and legal/administrative professionals (including lawyers and social workers from the Judicial Assistance Corporation). While attendance is not mandatory for adjudicators who hear asylum cases, this voluntary training is often based on judicial needs assessments and focuses on the proper application of Law No. 20.430 and international human rights standards to ensure due process and access to the system.

Discrepancies between the specialization provided on paper and the actual specialization

It could be argued that there is a discrepancy within the Chilean judicial system regarding the specialization of the bodies responsible for adjudicating access to asylum, as there is a lack of *de jure* specialization that contrasts with the *de facto* specialization driven by procedural necessity. While the Organic Code of Courts (COT) does not establish specialized courts or chambers for migration, but rather requires a generalist structure where the Courts of Appeal hear constitutional actions (Article 20 of the CPR) against barriers to asylum, the high volume of such litigation has required informal specialization of some Courts of Appeal, and systematically of the Third Chamber of the Supreme Court. This procedural consistency creates specialization for adjudicators and clerks in those specific sections, allowing them to gain experience and familiarity with Law No. 20.430 and relevant international jurisprudence.

The lack of formal specialization in the Chilean judiciary regarding access to asylum can impact the consistency and quality of decisions, although this effect varies within the decentralized system. Since all Courts of Appeal (Article 54 of the Code of Civil Procedure) are competent to hear constitutional challenges against asylum barriers (Article 20 Political Constitution), untrained judges must interpret the complex intersection of Law No. 20.430 with international standards, leading to heterogeneous results and legal uncertainty, particularly regarding the validity of executive actions. This inconsistency is often observed across different Courts of Appeal, with some adopting more protective, rights-based interpretations (often subsequently upheld by the Supreme Court), while others show greater judicial deference to the executive branch's restrictive immigration policies. The concentration of cases in the Third Chamber of the Supreme Court acts as a centralizing force that corrects the most glaring inconsistencies. However, in some decisions, the Supreme Court itself has opted for a more restrictive position, aligning itself with the administrative authorities.

E. Human resources

- *First instance judicial bodies:* The Courts of Appeals (*Corte de Apelaciones*) are made up of a legally determined number of judges, called ministers (*ministros*), one of whom serves as the president of the Court of Appeals for one year.

  C.A. Arica: 7 judges, 3 of whom are women; C.A. Concepción: 18 judges, 6 of whom are women; C.A. Coyhaique: 3 judges; C.A. Chillán: 6 judges, 2 of whom are women; C.A. Iquique: 3 judges, 1 of whom is a woman; C.A. Antofagasta: 6 judges, 1 of whom is a woman; C.A. Copiapó: 3 judges, 1 of whom is a woman; C.A. La Serena: 6 judges, 1 of whom is a woman; C.A. Puerto Montt: 4 judges, 1 of whom is a woman; C.A. San Miguel: 18 judges, 11 of whom are women; C.A. Santiago: 33 judges, 19 of whom are women; C.A. Punta Arenas: 4 judges, 2 of whom are women; C.A. Rancagua: 7 judges, 3 of whom are women; C.A. Talca: 6 judges, 3 of whom are women; C.A. Temuco: 7 judges, 3 of whom are women; C.A. Valdivia: 6 judges, 2 of whom are women; C.A. Valparaíso: 15 judges, 8 of whom are women.[177]

  They are all professional judges; the branch of law in which each of them specializes is unknown.

- *Second instance judicial bodies:* Supreme Court (*Corte Suprema*)

  This collegiate body, based in the capital, consists of 21 judges known as ministers (*Ministros*), 9 of whom are women. The President of the Republic appoints these ministers from a list of five candidates proposed by the Supreme Court, with the Senate's approval. Of the 21 members, at least 16 must have a background in judiciary, while five must be distinguished lawyers from outside the judicial system with at least 15 years of professional or academic experience.[178]

[177] Judiciary, *Monitor de salas*, Available at: https://salas.pjud.cl/monitor/monitor.php#
[178] Judiciary, *Organización y Funciones*, Available at: https://www.pjud.cl/post/organizacion-y-funciones

All the judges are legal professionals, but publicly available information does not indicate that any of them specialize in migration or asylum matters.[179]

Selection and appointment

- *First instance judicial or quasi-judicial body/bodies:* Court of Appeals (*Corte de Apelaciones*)

  The ministers and judicial prosecutors of the Courts of Appeals are appointed by the President of the Republic from a list of three candidates proposed by the Supreme Court. (Article 78 Chilean Constitution).

- *Second instance judicial or quasi-judicial body/bodies:* Supreme Court (*Corte Suprema*)

  As noted earlier, the President of the Republic appoints the justices and judicial prosecutors of the Supreme Court. The President must choose from a list of five candidates proposed by the Court itself and must have the Senate's approval. According to Article 78 of the Chilean Constitution, five of the Supreme Court's members must be lawyers from outside the judiciary. These appointees must have at least 15 years of legal experience, be distinguished in their professional or academic fields, and fulfil other criteria set by constitutional law.

  The Supreme Court and the Courts of Appeals, when applicable, will form slates of five or three candidates in a specially convened plenary session. During a single vote, each member can vote for three or two individuals, respectively. The candidates with the top five or three votes will be chosen. In the case of a tie, the winner will be decided by a draw.

Implications of the characteristics of adjudicators and their appointment system

The judicial appointment system can influence the adjudication of asylum access barriers in Chile. The system for appointing Justices to the Supreme Court and Courts of Appeal, which involves the courts proposing candidates (*ternas* or *quinas*, lists of three or five) to the President of the Republic for final appointment (Article 78 of the CPR and Article 254 of the Organic Code of Courts), is criticized for its lack of transparency and for fostering political patronage or corporatism. This structural deficiency raises concerns about whether judges feel sufficiently independent to systematically overrule executive decisions—such as unlawful asylum denials or expulsions—given that these same political actors influence their tenure and promotions. While no direct sources are quantifying the influence of the appointment process on the specific outcomes of asylum applications, this systemic weakness creates a risk of political deference that affects the judiciary's ability to operate as a robust and impartial countervailing force to the State, thereby indirectly affecting the quality and consistency of the protection offered by Law No. 20.430.

Clerks or experts supporting the adjudication function

Judicial bodies in Chile are supported by various auxiliary justice officials who, while not specialized in asylum per se, support the jurisdictional function through their administrative and technical expertise. These professionals include Judicial Secretaries and Rapporteurs, whose functions are primarily organizational but directly facilitate adjudication: Secretaries are responsible for the daily submission of applications and authorizing judicial powers (Article 380 of the Organic Code of Tribunals- COT), while Rapporteurs are responsible for submitting cases to the collegiate courts (Courts of Appeals and the Supreme Court) for resolution (Article 372 of the COT), ensuring that judges have a clear and concise overview of the litigation, including asylum cases. Another form of expert support exists through the Technical Council, composed of specialized professionals such as social workers and psychologists. While primarily focused on the Family Courts, they are defined as auxiliary bodies in the administration of justice that advise judges in their specialized areas (Article 457 of the COT). The appointment of most of these professionals, although varying by rank, follows competitive procedures established in the COT. The

[179] Judiciary, *Corte Suprema*, Available at: https://www.pjud.cl/tribunales/corte-suprema

Secretariat staff follows the rules for the Secondary Scale or Employee Scale, while the selection of technical advisors is based on the professional titles required by law.

Interpretation service

Interpretation services in Chilean judicial bodies are not traditionally enshrined as an independent professional career in the Organic Code of Courts (COT), but their necessity for access to justice, particularly in asylum adjudication, has prompted a significant recent institutional response. To ensure effective communication for litigants who do not speak Spanish (including the Haitian Creole migrant community, a highly vulnerable group) or who use Chilean Sign Language, the Administrative Corporation of the Judiciary (CAPJ) has implemented a specialized program of on-demand online translation services in the Courts of Appeals and first instance courts throughout the country. This service, which covers multiple foreign and indigenous languages, utilizes professional interpreters available through a dedicated platform and is widely employed in court hearings and public reception modules to address fundamental due process requirements and constitutional guarantees, such as the right to a rational and fair procedure, which are essential for asylum seekers challenging administrative barriers through constitutional remedies.

The service facilitated 1,677 interpretations in 2024, averaging nearly 140 per month. The program has historically served over 9,400 people nationwide since 2018. In 2024, the majority of calls required translation in Creole (68%) and Chilean Sign Language (LSCh, 24%), with the remaining 9% covering a vital range of other foreign and indigenous languages like Quechua, Chinese, and Rapa Nui, serving highly vulnerable populations who lack access to private assistance. Most interpretations (93%) occur in courtrooms, with the Metropolitan Region concentrating half of all services, though nearly 50% are delivered across other regions, including Valparaíso and O'Higgins.[180]

Quality and availability of human resources

The quality and availability of human resources in Chilean judicial bodies, particularly in the Courts of Appeal, which are responsible for addressing barriers to asylum, may be affected by a lack of specialization and staff allocation in relation to the growing caseload. While the Administrative Corporation of the Judiciary (CAPJ) implements professional development programs, the *de facto* specialization acquired by adjudicators and staff handling high-volume cases, such as the Appeal for Protection, often does not translate into officially dedicated personnel or relief from the overall judicial workload. This situation is particularly critical, as the workload directly contributes to case backlogs and can deteriorate the quality of judicial decisions by subjecting staff to constant time pressure. Consequently, despite the existence of basic legal qualifications and access to voluntary training, staff shortages and the absence of formally specialized human resource structures dedicated to the complex and time-sensitive nature of asylum and migration cases mean that the system's reliance on the commitment of generalist staff frequently compromises the effective quality and timely delivery of justice.

Implications of human resources in judicial bodies

The quality and availability of human resources in the Chilean judiciary can have direct negative implications for the adjudication of asylum access due to the dual challenges of insufficient specialization and high caseload. Since the judges responsible for reviewing executive decisions in asylum matters come from a generalist judicial background whose professional trajectory is not necessarily specialized, the quality of decision-making depends largely on voluntary training provided by the Judicial Academy. This adds to potential staffing shortages in the judicial system. Furthermore, while the judiciary has addressed the need for interpretation services for asylum seekers (particularly Creole speakers) through specialized platforms, the deficit in core judicial and administrative support staff could undermine the speed and effectiveness of constitutionally guaranteed judicial protection, forcing specialized judges to operate under resource constraints that prevent consistent, high-quality, and timely decisions.

[180] See Judiciary (2025) *Programa servicio de traducción en línea para tribunales de justicia*, Departamento de Desarrollo Institucional Subdepartamento de Atención de Usuarios.

F. Tools supporting adjudication

The technological infrastructure is managed by the Administrative Corporation of the Judiciary (CAPJ), which oversees the Virtual Judicial Office (*Oficina Judicial Virtual*) for electronic filing and case management, including a Unified Case Consultation for public access to information on unreserved cases. In addition, the Judiciary employs formal cooperation protocols and agreements with executive bodies - such as the National Migration Service (SERMIG)- to standardize procedures and facilitate the exchange of necessary administrative information. The Easy Procedure platform (*Trámite Fácil*) stands out as a service for all users that allows them to carry out their procedures directly before the courts using pre-defined electronic forms.

The key tool is the Virtual Court Office, administered by the Administrative Corporation of the Judiciary (CAPJ), which allows for the electronic filing of all judicial actions. This digital filing system and its database, the Unified Case Consultation, ensure that the judiciary complies with the constitutional mandates of accessibility and transparency (Article 19 No. 3 of the CPR and Article 9 of the COT). Furthermore, the judiciary has implemented specialized on-demand online translation services within the courts, managed through the CAPJ's technological infrastructure, which directly supports due process and effective access for non-Spanish-speaking asylum seekers by providing immediate interpretation services during court hearings and administrative investigations.

The implementation of organizational and technological tools by the Chilean judiciary can have implications for the resolution of asylum access, primarily by improving procedural efficiency and transparency, but also by introducing new challenges in terms of digital equality. The Virtual Judicial Office, centralized and managed by the Administrative Corporation of the Judiciary (CAPJ), facilitates the electronic filing of judicial appeals. Furthermore, the use of remote oral hearings and the digital exchange of documents streamlines the process, which is crucial given the urgency of cases involving asylum access barriers. While these tools promote the right of access to justice (Article 19 No. 3 of the CPR and Article 9 of the Organic Code of Courts, or COT) and mitigate the geographical barriers inherent in the decentralized system (Article 54 of the COT), their effectiveness is mediated by the digital literacy and connectivity of vulnerable asylum seekers, creating a new barrier to access if the necessary technical support or infrastructure is not uniformly available across all local units.

G. Management

- *First instance judicial bodies:* The administrative and managerial oversight of the Courts of Appeal in Chile is carried out by several figures defined by law. The principal manager is the President of the Court of Appeals; an adjudicator selected annually from among the sitting justices of the court based on seniority. The duties of this role, as set forth in the Organic Code of Courts -COT (particularly within Title V, Chapter III, which deals with the Presidents of Courts), are primarily managerial and directional rather than jurisdictional, including presiding over the court in its sessions, forming the weekly dockets, and exercising administrative authority over the court's auxiliary staff. Furthermore, the Justices of the Chamber (Section Presidents/Ministers) exert influence by directing the workflow and decision-making within their respective chambers. Moreover, the Court Clerk, although technically an auxiliary official (Title XI of the COT), has an important administrative responsibility as a minister of faith and administrator of the court's internal archives and documents (Article 380 of the COT), ensuring compliance with judicial procedures.
- *Second instance judicial bodies:* The governance and administrative direction of the Supreme Court of Chile are primarily executed by the judges themselves, operating distinctly from the court's core jurisdictional function. The highest administrative authority rests with the President of the Supreme Court, who is elected by their peers for a non-renewable two-year term. The President's

central duties include presiding over all court sessions —plenary and specialized—and leading its general administration, encompassing management of daily operations, case organization, and work assignments for judicial officers. A key annual responsibility is delivering a public address on the first business day of March, reporting on the previous year's judicial work and highlighting interpretive challenges faced by the higher courts.[181]

Beyond the President, administrative authority is distributed among Justices of the Chamber, who preside over and direct the workflow of specialized chambers, such as the Third Chamber, which frequently handles public law cases like asylum appeals.

A central body for executive oversight is the Superior Council of the Administrative Corporation of the Judiciary (CAPJ), which consists of the President of the Supreme Court and four other justices (Article 507 of the Organic Code of Courts -COT). This council allows the Supreme Court to directly exercise its constitutional supervisory power (directive, correctional, and economic; Article 82 of the Constitution) over all judicial proceedings nationwide.

Finally, the Secretary of the Supreme Court, an auxiliary official, performs a key administrative function as both a notary public and the administrator of judicial proceedings (Article 380 of the COT), providing essential organizational support to the highest court.

Chilean judges enjoy guaranteed tenure, though their service is subject to certain legal provisions. Employment automatically ends at age 75, except for the Supreme Court President, who completes their current term. Judges may also be removed due to resignation, legal incapacity, or a court-ordered dismissal. The Supreme Court holds the authority to remove any judge for particular causes, requiring an investigation and a majority vote, and may also approve the transfer of judicial staff to an equal-standing position with a majority vote and justified reason, as outlined in Article 80 of the Chilean Constitution.

Despite constitutional guarantees of judicial independence, Chile's unique legal culture and highly hierarchical judicial structure can lead to a degree of "passivity" in courts when addressing laws or policies that infringe upon rights. The career path heavily relies on annual evaluations from superior courts. This system incentivizes lower-ranking judges to emulate their superiors' cautious approach, fostering a traditional and formalist interpretation of the law. By the time judges reach the highest ranks, they have often become accustomed to avoiding politically controversial cases, supported by a strong corporate identity that isolates them from external social influences and reinforces a traditional belief that the judiciary should not engage in "political" matters. [182]

Managers and middle managers within the system, although lacking de jure authority over jurisdictional decision-making (Article 76 of the Constitution), exert a significant indirect influence over judges' professional lives and case flow. This influence is rooted in the Supreme Court's concentrated superintendence power (Article 82 of the Constitution), which translates into direct managerial control over administrative resources via the CAPJ. Crucially, managers impact career advancement. The promotion requires favourable qualifications from superiors (Articles 273 and 277 *bis* of the COT), data and compliance assessments from CAPJ administrators feed into the administrative evaluations used for disciplinary and promotional decisions by higher-ranked judicial managers. This creates a potent leverage point that can enforce internal standards and potentially encourage deference in legal interpretations among adjudicators.

Professional performance measures

Professional performance measures for judges and judicial staff are structurally established in Chilean judicial bodies, governed primarily by the annual rating system and the creation of judicial ranking systems (*Escalafones*), as established in Title X, Section 3, of the Organic Code of Courts (COT), particularly Articles

[181] Judiciary, *Organización y Funciones*, Available at: https://www.pjud.cl/post/organizacion-y-funciones
[182] Couso J.A. *The Judicialization of Chilean*, cit., p. 122.

273 and 277 *bis*, which require the assessment of competence and conduct for professional advancement. However, the qualitative assessment of these measures could pose a structural threat to judicial independence in adjudicating access to refugee status: since performance evaluations are conducted by more senior judges and are explicitly linked to promotion, transfer, and tenure within the highly hierarchical system, judges may be incentivized to adopt interpretations that align with the perceived institutional consensus or criteria favored by their superiors.

H. Caseload and delays

- *First instance judicial bodies:* The workload of the seventeen Courts of Appeal has been considerably increased by the remedy for protection and Habeas Corpus (Articles 20 and 21 of the Political Constitution), constitutional actions used for urgent defence against illegal or arbitrary acts of the executive branch.
- *Second instance judicial bodies:* The caseload of the Chilean Supreme Court is characterized by a high volume of appellate proceedings, reflecting its position as the highest body of the judiciary, with the dual function of unifying jurisprudence and acting as the final guarantor of constitutional rights. The bulk of its work focuses on cassation appeals, which fulfil their legal review function, along with the considerable influx of protection and amparo appeals filed from the Courts of Appeal. These constitutional actions, although originating in the lower appellate courts, constitute an important and prominent part of the Supreme Court's agenda, as its Third Chamber frequently decides on public law matters, including immigration appeals and asylum claims.

The workload in the Chilean Courts of Appeal, dominated by high-volume constitutional actions such as the remedy of protection (Article 20 of the CPR), can have negative consequences for the resolution of asylum applications. This overload can compromise the quality of justice for asylum seekers, as the courts, due to the volume of cases, may be inclined to decide cases mechanically without considering the fundamental elements of each case. This results in the appeal of these decisions to the Supreme Court, which may also apply a mechanical method to resolve constitutional guarantee actions.

During the study period, identical Court of Appeal decisions have been identified, with only the parties involved and the dates changing. Likewise, Supreme Court decisions have been identified that simply state that the appealed judgment is "upheld" in the same terms as the Court of Appeals decision, without providing any reasoning.

Delays and backlogs characterizing judicial bodies responsible for asylum access adjudication

According to a report from the Center for Justice Studies of the Americas (CEJA), Chile's judicial system shows a concerning trend in its resolution and congestion rates. The country's judicial resolution rate (*tasa de resolución*- TR) had a very high value of 1.37 in 2019, but has since experienced a sustained decline, reaching 0.72 in 2024, placing it in a critical situation where it resolves significantly fewer cases than it receives. This is a worrying regression. Similarly, its judicial congestion rate (*tasa de congestión*- TC) has shown a moderate upward trend. It began at 1.88 in 2018, which was slightly above the acceptable threshold, and has risen to 2.55 in 2024, putting it firmly in the critical congestion range. The report projects that if these trends continue, Chile's situation will become even more challenging by 2030, with a projected TR of 0.62 and a TC of 3.25, a combination that could seriously strain the judicial system's ability to manage its workload.[183]

Currently, no relevant sources have been found to assess the potential implications of delays in resolving barriers to accessing asylum in Chile. While the resolution of constitutional guarantee actions is generally

[183] 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.

swift, and no cases of procedural delays affecting constitutional rights have been identified for these specific actions, the broader issue of asylum access delays remains unexamined.

I. Influence of judicial or quasi-judicial bodies on access to asylum

The case law of the Chilean superior courts has not directly changed the text of asylum legislation, but it has exerted a significant corrective and interpretive pressure on administrative practice, leading to a profound, albeit paradoxical, indirect impact on the legal framework. This judicialization, driven by the tension between protective international norms and restrictive executive barriers, primarily involved the courts nullifying arbitrary administrative actions that obstructed the initiation of asylum proceedings, such as the former informal requirement of "pre-admissibility interviews" or the immediate expulsion of applicants who had entered irregularly. By consistently upholding the right to seek refuge and mandating the creation of clear procedural protocols -as seen in key Supreme Court decisions- the judiciary acted as a constitutional check on administrative overreach.

However, this very pressure to formalize proceedings may have ironically fuelled subsequent legislative reform, which introduced a statutory initial stage of admissibility to the Refugee Law, raising concerns that the administration has effectively learned to codify its previous restrictive practices under the guise of due process, thereby creating new legal hurdles to accessing international protection.

Impact of case law in the field of asylum access adjudication on asylum policies

The direct impact of Chilean case law on official asylum policies, particularly those related to border control, is best understood as a procedural restraint on the Executive's discretionary power rather than a proactive change in policy substance. Recurrent judicial intervention, especially through constitutional actions, effectively nullified arbitrary administrative practices that created de facto barriers to asylum access, thereby forcing the Ministry of the Interior and the National Migration Service (SERMIG) to align their actions with the constitutional and international obligation of *non-refoulement*. While the courts have consistently mandated the creation of clear procedural protocols to guarantee due process and correct administrative delays, this pressure has operated in parallel with, and sometimes in opposition to, the State's overarching securitization of border policy (e.g., the deployment of the Armed Forces under the Critical Infrastructure Law), often leaving a tension where judicial protection battles administrative containment measures that aim to filter or deter irregular entry, demonstrating that case law primarily corrects the execution of policies without fundamentally altering the restrictive strategic direction of Chile's asylum management.

Impact of case law in the field of asylum access adjudication on executive practices

The primary impact of Chilean case law on executive practices in the field of asylum access adjudication has been procedural correction and the mandate for formal protocol establishment, effectively dismantling arbitrary administrative barriers. Driven by the mass filing of constitutional actions (remedy of protection and habeas corpus), the Supreme Court and the Courts of Appeals repeatedly ruled against the National Migration Service (SERMIG) and other executive bodies for practices that violated the right to seek refuge, such as the refusal to register an asylum application from migrants who entered irregularly ("*paso no habilitado*"), or the implementation of informal, non-statutory pre-admissibility interviews. Most notably, in a milestone decision (e.g., *No. 115.005-2023* analysed in Part II), the Supreme Court explicitly instructed the executive to "revise and adjust its protocols", declaring that denying the required form or imposing procedural obstacles was an "arbitrary and illegal" act of authority. While this judicial pressure forced SERMIG to eventually publish formal manuals and procedures for application registration and border handling, thereby ensuring basic due process guarantees and adherence to the principle of non-refoulement, it simultaneously contributed to a shift in the executive's strategy from arbitrary administrative barriers to formally codified legal barriers, as evidenced by the subsequent legislative creation of a statutory admissibility stage in the asylum process.

J. Judicialization of politics

Significant and sustained conflict exists between the Chilean Executive and Judiciary regarding asylum access, driven by the tension between the Executive's mandate for migration control and the Judiciary's role as the guarantor of human rights. For instance, jurisprudential analysis highlights five main bureaucratic barriers that severely restrict access to the procedure: the illegal requirement for a "voluntary declaration of clandestine entry" (self-reporting), the unauthorized pre-admissibility interview, the systemic appointment system, active removal orders, and verbal rejections. These obstacles often coexist in a "vicious circle" that makes initiating a claim virtually impossible. For example, the self-declaration requirement, despite being deemed illegal by courts for years, was consistently misinterpreted by authorities as a prerequisite for applying, paradoxically exposing applicants to expulsion orders. Similarly, the informal pre-admissibility interviews, lasting only five to ten minutes, served as a "first filter" for verbal denial, often based on nationality or alleged non-compliance, undermining the right to appeal. While the Judiciary often intervenes to invalidate these contra-legal practices, this necessitates applicants resorting to litigation due to a prevailing legalistic judicial culture that considers law and politics separate.

Another point of contention has been the summary removal of people from Chilean territory, including instances of collective expulsions. While the courts recognize the executive branch's authority in immigration matters, they have insisted on the need to respect due process and ensure the individual assessment of each individual.

While these points of contention exist, no public criticism of the government's judicial bodies has been identified to date.

Restrictions or expansion of the jurisdiction or competence

Legislators have not recently restricted or expanded the jurisdiction or authority of Chilean judicial bodies responsible for determining access to asylum. Instead, legislative efforts have focused on amending asylum law to further limit access to the right itself. For example, the 2024 legal reform created a formal initial stage to exclude "manifestly unfounded" claims and imposed an extremely short seven-day application deadline. However, these new barriers do not affect the courts' fundamental jurisdiction to review these and other administrative obstacles.

It should be kept in mind that the Chilean judiciary has historically been illiberal and subordinate to political power, even after the return of democracy in 1990. This deference by the judiciary to maintaining a separation between its work and political matters is rooted in a judicial culture that distinguishes between law and politics. For years, this belief led judges to avoid adopting "political positions" to limit government authority, while allowing exceptions that favoured traditional and conservative values, which were not considered "political". This was reinforced by the internal institutional culture, characterized by strict hierarchical control exercised by the Supreme Court over the careers of subordinate judges.[184]

More recently, however, Chilean judicial bodies, particularly the Supreme Court, have proactively found ways to influence the outcomes of asylum policies, going beyond mere legal enforcement to become a vital counterweight to restrictive administrative policies. This influence is most clearly seen in the Supreme Court's development of a guarantor line of reasoning that has consistently invalidated extralegal requirements imposed by the executive, such as the initial, unauthorized pre-admissibility interview and the systematic delays caused by the appointment system. By consistently reversing unfavourable rulings and affirming the primacy of the right to seek asylum over migration formalities, the Supreme Court forced the administrative authorities to establish clear procedural protocols. However, this policy influence is complex and fluctuating, as seen in the Supreme Court's later decision in 2023 (Ruling No. 115.005-2022), which sought to balance humanitarian protection with the state's interest in migration control by validating

[184] See Hilbink L. An Exception to Chilean Exceptionalism?. The Historical Role of Chile's Judiciary. What Justice? Whose Justice? Eckstein S.E., and Wickham-Crowley T.P. (eds), Fighting for Fairness in Latin America, University of California, pp. 64-97.

self-declaration as a subsequent verification requirement within the asylum process, thus integrating an element of the executive's control agenda into the judicial framework.

The passivity of Chilean courts is deeply rooted in the country's unique legal culture and the highly hierarchical structure of its judicial system. This system, an extreme version of the continental European model, fosters a career path where judges, fresh out of law school, are socialized over decades through a rigid, bureaucratic hierarchy. Promotion is heavily reliant on annual evaluations from superior courts, creating an environment where lower-ranking judges emulate their superiors and adopt a traditional, cautious approach to their roles. By the time they reach the top ranks, most judges have become accustomed to avoiding politically controversial cases. This disciplined behaviour is further reinforced by a legal education that emphasizes a formalist interpretation of the law and a strong corporate identity that isolates judges from external social forces. As a result, many judges share a traditional belief that the judiciary should not be involved in "political" matters and should remain distant from public political debates.[185]

The judicialization of politics in Chile, particularly in asylum cases, has been recognized by the number of legal proceedings initiated in recent years against authorities responsible for immigration and asylum matters in Chile. Academics, the Comptroller General of the Republic, and the Supreme Court have referred to the judicialization of asylum in Chile as a mechanism to counteract barriers to asylum.

For instance, in 2020, the Comptroller General of the Republic (CGR) prepared the final report of special investigation No. 828, of 2019, on alleged irregularities in the Undersecretary of the Interior. In this report, the CGR affirmed that the executive's illegal practices in asylum processing have directly led to the judicialization of asylum access in Chile, transforming courts into the de facto guarantors of the right to seek refuge. The investigation by the CGR found that the Department of Immigration and Migration (DEM) imposed demanding and non-statutory requirements for the formalization of refugee status, including delays of over three months for an appointment and an improper evaluation of protection needs by initial intake officers. This administrative obstruction forced at least 229 foreigners to file remedy of protection or writ of Amparo actions between July 2018 and June 2019. Consequently, 55.89% of the applicants reviewed by the CGR accessed the formalization process only after judicial intervention, demonstrating that the judiciary was essential for overcoming the executive's systematic failures, which contravened both Law No. 20.430 and CGR directives.[186]

The Supreme Court of Chile itself has acknowledged this situation, stating that "massive judicialization has taken place"[187] due to the irregular practices of the administrative authority.

Furthermore, an academic study showed that the judiciary in Chile has played a crucial role in the judicialization of asylum access barriers, becoming the effective guarantor of the human right to seek and receive asylum against illegal administrative practices. This judicial intervention has been necessary because executive authorities have persistently imposed an unauthorized admissibility phase on the asylum procedure and demanded extralegal requirements, such as voluntary declaration of irregular entry (self-reporting of irregular entry). Between 2018 and 2020, at least 85 constitutional protection actions were filed before the Courts of Appeal contesting these barriers. Out of the cases whose final results are known, 54 were favourable to the asylum seekers, with the Courts declaring the administrative action illegal for omitting the timely processing of requests and thus violating the right to equality before the law.[188]

[185] Couso J.A. *The Judicialization of Chilean*, cit., p. 122.
[186] General Comptroller of the Republic, 2020, *Informe final de investigación,* cit.
[187] As an illustration, see Supreme Court's rulings: Writ of Protection No. 115.005-2022, adjudicated on 20/03/2023, § 16th; Writ of Protection No. 64932-2023, adjudicated on 03/05/2023, § 16th; writ of Protection No. 56729-2024, adjudicated on 27/11/2024, § 16th; writ of Protection No. 57572-2024, adjudicated on 04/12/2024, § 16th
[188] See Gutiérrez F. & Vargas F., *Trabas en el ejercicio*, cit.

L. Other relevant aspects of judicial bodies

To date, no other aspects relating to the institutional and organizational configuration, characteristics and role of judicial bodies that are relevant to the study of the adjudication of access to asylum in Chile have been identified.

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

As mentioned in Part II, in Chile, asylum claim adjudication is primarily managed by a framework of executive bodies whose functions are defined by key legislation, notably Law No. 20.430 (2010), Law No. 21.325 (2021), and the recent Law No. 21.655 (2024). At the core of the system is the National Refugee Commission (*Comisión de Reconocimiento de la Condición de Refugiado*), established by Law No. 20.430, which serves as the principal adjudicative body responsible for determining refugee status according to international and domestic standards, as well as coordinating protection policies and durable solutions.

The National Refugee Commission is structured as an inter-institutional body to ensure collective decision-making in refugee status determination. As defined by its Internal Regulations, the Commission is composed of members with voting rights, including the Head of the Department of Immigration and Migration (now the National Migration Service, SERMIG) from the Ministry of the Interior and Public Security, who serves as its Chair, plus two additional representatives from the Ministry of the Interior and two representatives from the Ministry of Foreign Affairs (Article 2). These representatives are formally appointed by the respective Ministers, and alternates must also be designated to maintain quorum (Article 3). Furthermore, UNHCR participates in the Commission's meetings through a designated representative, who holds the right to speak but does not have voting rights, ensuring advisory input from the international body (Article 4).

The involvement of Chilean executive bodies in judicial review proceedings concerning asylum access, typically the Remedy of protection or writ of Amparo, is extensive and often adversarial, driven by their core mandate to manage borders and immigration control, which places them in direct opposition to the asylum seeker. The primary agency involved in the litigation is the National Migration Service (SERMIG), which acts under the political oversight of the Ministry of the Interior.

In the judicial context, the executive's involvement is characterized by defending administrative decisions or inaction that have created a barrier to asylum access. When an asylum seeker files a judicial appeal to challenge an expulsion order or the refusal to process an application, SERMIG (representing the state) becomes the appellee or respondent. Its primary effort is to defend the legality and procedural correctness of its own actions, arguing that the challenge is inadmissible or that the asylum seeker failed to meet a legal requirement (e.g., proper entry or timely application). Moreover, executive bodies prioritize national migration control and adherence to administrative regulations, which often conflict with the judicial body's focus on upholding constitutional guarantees, like the principle of non-refoulement, guaranteed by international human rights treaties. This inherent tension means SERMIG's involvement is focused on maintaining administrative authority rather than facilitating protection.

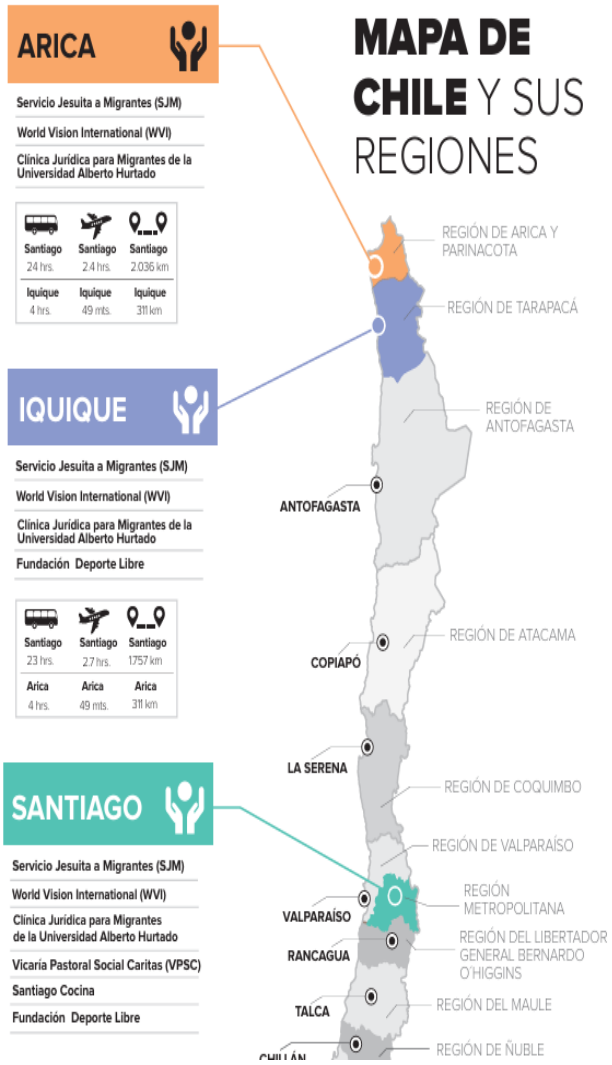
To date, no discernible differences have been documented regarding the executive's involvement in judicial proceedings based on either the specific barrier challenged or the case's geographic location. In all analysed instances, active executive involvement is observed, consistently prioritizing the strict enforcement of migration regulations over protection guarantees.

Role of executive bodies and their implications in asylum access adjudication

When an asylum seeker challenges an administrative denial of access -such as an expulsion order or refusal to process a claim- via judicial action, executive bodies, chiefly represented by the SERMIG, become active, adversarial parties in the trial. The executive's role centres on defending the legality and procedural rectitude of its administrative actions, providing the court with the primary evidence, including the administrative file and internal reports, while actively seeking to uphold migration control measures. This adversarial litigation creates significant implications for asylum adjudication: it often impedes a full judicial review by compelling courts to focus on procedural adherence to migration regulations rather than the core human rights issues at stake. Furthermore, the executive's involvement serves to defend and institutionalize restrictive policies being challenged and introduces a fundamental asymmetry of resources and systemic knowledge, favouring the state, ultimately limiting the overall effectiveness of the protection adjudication process.

B. International or regional organizations

While asylum claim adjudication in Chile remains the sovereign competence of the state, executed by bodies like the SERMIG, international and regional organizations exert a crucial, indirect influence on the asylum system's access and practice.



Source: El trabajo de atención de Acnur en Chile, 2024.

UNHCR's role in Chile is multi-faceted, extending beyond its Santiago base to focus heavily on the northern border regions of Arica y Parinacota and Tarapacá through a strong partnership network. The organization provides operational support - including humanitarian aid, legal counselling, shelter assistance, and cash grants- as well as psychosocial support to vulnerable asylum seekers. UNHCR leads livelihood strategies, fostering social integration and improving employment opportunities through community and private sector collaborations. Furthermore, it conducts vital protection monitoring to assess risks and offers technical assistance to national authorities to enhance the asylum legal framework. Its advisory, non-voting presence on the National Refugee Commission (CNR) ensures international protection expertise is integrated into the state's quasi-judicial determination process.

UNHCR's involvement is driven by its humanitarian mandate to ensure refugee protection and its institutional relationship with the executive. Its seat on the CNR is a formal channel for influence, allowing it to provide technical support directly to the decision-making body. The operational focus on northern regions (Arica, Tarapacá) is explained by the need to address high levels of geographic barriers and the most vulnerable populations entering irregularly.

UNHCR exerts significant indirect influence on Chile's asylum access adjudication, a process which remains the sovereign function of the state's executive branch. Operating through a mandate-driven partnership, the UNHCR provides essential technical assistance -including advice on legal reforms and protocol drafting- and holds a non-voting advisory seat on the National Refugee Commission (CNR) to integrate international standards into the state's determination process. The agency supports asylum seekers through a comprehensive approach centred on operational support delivered via partners in Santiago and the northern border regions of Arica and Iquique, providing humanitarian aid, psychosocial support, and guidance on the refugee status determination process (RSD). Furthermore, the organization conducts protection monitoring to identify risks, develops a livelihood strategy by engaging the private sector to foster employment, and works with communities to promote peaceful coexistence, particularly addressing the severe geographical barriers faced by vulnerable populations in the North.[189]

UNHCR's efforts demonstrate a clear territorial divergence, concentrating resources heavily in the north to compensate for the State's failure to provide adequate access to protection at the regional level, and in the metropolitan area (the country's capital), where the majority of Chile's migrant and refugee population is located.

UNHCR plays an indirect but central role in Chile's asylum system, primarily through the provision of technical advice, operational support, and legal guidance, as the agency has no decision-making power. Its participation in the National Refugee Commission (CNR) allows it to influence the development of standards and protocols, as well as the decisions of the cases evaluated by the Commission. Although it only has a voice but no vote, its active presence can make a difference in the interpretation and application of standards. Furthermore, through technical assistance, the agency helps national authorities improve the national legal framework and ensure that the process, particularly with regard to complex issues such as the protection of women and children, complies with international standards.

C. NGOs and bar associations

The Jesuit Migrant Service (JMS) is part of the Society of Jesus as well as part of an international network present in more than 50 countries. In Chile, the Jesuit Migrant Service accompanies and guides thousands of migrants and refugees, facilitating their inclusion in the country in accordance with the current legal framework and promoting their contribution to the development of society. It also promotes respectful and harmonious coexistence between Chileans and migrants. Among its activities is providing legal advice to people in situations of human mobility.

So far, no specific data has been found on its composition or resources in the country.

The JMS plays a crucial, sustained role in asylum access adjudication by deploying its legal expertise and providing direct assistance. Its primary strategy involves challenging executive barriers to asylum through active legal action on behalf of asylum seekers whose right to seek protection has been obstructed by the state. This high level of involvement stems from the JMS's specialized mandate as a religious NGO dedicated to human mobility and its agility in managing complex, pioneering legal cases that other organizations might decline. By offering legal advice and representation, the JMS fills a critical void, enabling asylum seekers to contest state actions that may violate the principle of *non-refoulement* and compelling judicial review of executive decisions, thereby directly influencing adjudication.

Beyond litigation, the JMS leverages its experience to forge strategic partnerships with government authorities. Complementing this effort is its strong operational presence and collaborative network, particularly in the Metropolitan Region and the northern border areas (Arica and Iquique), strategically focusing on assisting the most vulnerable populations facing significant geographical hurdles to justice and initial humanitarian aid, often in coordination with UNHCR. This broader commitment to human mobility

[189] UNHCR, *ACNUR en Chile*, https://help.unhcr.org/chile/acnur-en-chile/

is mirrored in a project executed by a partner foundation and the Legal Clinic of the Universidad Alberto Hurtado. This initiative provided comprehensive social and legal services—including orientation, social support, legal sponsorship, and policy advocacy—primarily for refugees, asylum seekers, stateless persons, and Venezuelan migrants in transit. In 2022, a key success was regularizing the legal status of individuals through access to the refugee recognition procedure or the general migratory system via judicial representation, strategic litigation, and workshops. Furthermore, the project successfully secured Chilean and Colombian nationality recognition for children and adolescents who were otherwise stateless, demonstrating a profound commitment to protecting the rights of those in vulnerable human mobility situations.[190]

Role of NGOs and bar associations and their implications in asylum access adjudication

The JMS plays a crucial, multi-pronged role in Chile's asylum landscape by actively engaging in legal action, direct assistance, and institutional cooperation to influence the interpretation of migration and refugee regulations. The organization frequently challenges barriers to asylum access by providing legal assistance to individuals whose right to seek protection is obstructed, thereby promoting a rights-based interpretation of the law. Operating across the Metropolitan Region and northern border areas, the JMS works closely with the UNHCR to offer aid to those crossing the land frontier. Furthermore, the JMS strategically collaborates with Chilean authorities to enhance service capacity. A key example is the December 2024 agreement formalized with the Judicial Assistance Corporation (CAJ) of the Biobío Region, establishing initiatives for exchange of experiences, joint training, technical advice, and research. This cooperation is particularly significant as it includes the JMS sharing its expertise and specialized jurisprudence bulletins with CAJ officials, directly addressing the ambiguity within current immigration legislation to strengthen migrants' access to justice.[191]

Legal clinics within major Chilean university faculties have played an instrumental role in addressing barriers to asylum access by actively judicializing these challenges. For instance, Legal Clinic for Migrant Care at Alberto Hurtado University and the Legal Clinic Diego Portales University, recognized as one of UNHCR's partners at the national level.

The judicial decisions analysed demonstrate the importance of these organizations, as the directors and staff of legal clinics have acted as legal representatives for asylum seekers, filing lawsuits and appealing negative administrative decisions. In essence, these university clinics have significantly contributed to the defence of the right to seek asylum in Chile by facilitating access to the judicial system.

D. Supranational courts

While Chilean courts often prioritize national legislation when addressing barriers to asylum, they demonstrate an implicit, and sometimes explicit, adherence to Inter-American instruments and precedents. However, in some rulings, they may even misquote IACtHR jurisprudence, for example, by changing the name of the Pacheco Tineo Family v. Plurinational State of Bolivia case to "*Familia Toro vs. Estado Plurinacional de Bolivia*" (*Ruling No. 129.433-2020*, issued on 18 January 2021), "*Familia Álvarez vs. Estado Plurinacional de Bolivia*" (*Ruling No. 131.078-2020*, adjudicated on 15 March 2021), "*Familia Gutiérrez vs. Estado Plurinacional de Bolivia*" (*Ruling No. 138.326-2020*, adjudicated on 26 July 2021), or "*Familia Lagos vs. Estado Plurinacional de Bolivia*" (*Ruling No. 69.492-2021*, adjudicated on 20 September 2021)

For instance, the Supreme Court rulings (*No. 129.433-2020, No. 131.078-2020, No. 138.326-2020, No. 69.492-2021*) overturned expulsion orders from the country and upheld the prevalence of the principle of non-refoulement established in both the Geneva Convention and Chilean Law No. 20.430, as well as the prohibition of immigration detention, and the right to seek asylum. Crucially, the Supreme Court explicitly

[190] UNHCR (2022) Movilidad Humana en Chile 2022: Promoviendo la integración y contribuyendo al desarrollo del país, p. 62.
[191] Judicial Assistance Corporation Biobío (2024) *CAJ Biobío y Servicio Jesuita a Migrantes firman convenio de colaboración para fortalecer acceso a la justicia de personas en movilidad humana*, https://www.cajbiobio.cl/entrada.php?entrada_id=177

referenced the IACtHR jurisprudence, particularly the "*Pacheco Tineo Family v. Plurinational State of Bolivia*" case, to bolster its interpretation. This reference affirmed that the right to seek and receive asylum, along with the non-refoulement principle—enshrined in Articles 22.7 and 22.8 of the American Convention on Human Rights—must prevail. The ruling concluded that, based on normative hierarchy and the obligation of conventionality control, these Inter-American precepts must take precedence over domestic provisions (like Articles 6 of Law No. 20,430 and its regulations), effectively preventing the expulsion of asylum seekers, even when their expulsion orders predated their asylum requests.

E. Other actors

To date, no other actors involved in asylum access adjudication in Chile have been identified.

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

It could be said that Chile has three main migration routes -two by land and one by air- through which it receives the largest number of migrants and asylum seekers. These routes also serve as departure points for migrants who use Chile as a transit country to the north of the American continent. In the case of the Haitian community, it has been categorized as a "reverse migration route", where people who had previously resided or stayed in Chile head toward the Mexican border with the United States.[192]

Initially, Haitian immigrants could enter Chile as tourists and later apply for another visa to regularize their status, a process that was facilitated by Chile's less restrictive policies compared to countries like the US or Canada. Haitians were often attracted by Chile's political and economic stability and the perception of less racism than in other countries in the region.[193] By 2010, the majority of Haitian migrants entered Chile directly through Santiago International Airport, resulting in a low percentage of irregular or clandestine entries. Haitians travelled to Santiago via direct flights from either Port-au-Prince or Santo Domingo, Dominican Republic. They often chose the Dominican route due to cheaper fares and because some individuals possessed prior Dominican residency.[194]

Despite common assumptions about forced migration, the percentage of asylum visas granted to Haitians was negligible. Instead, a large majority obtained legal entry through other means: 42.9% received a visa linked to a work contract, and 54.5% received a temporary visa, for the period 2010-2013.[195] When the immigration measures applied in Chile became more restrictive, Haitian nationals began arriving in Chile via the northern border through the Peruvian city of Tacna. Their journey typically involved transiting through Ecuador into Peru, from where they would then head to Peru's southern border with Chile. A significant challenge for these migrants was the discovery at the Peruvian-Chilean border that their Peruvian entry stamps were often counterfeit. This was primarily due to their having entered Peru through unauthorized crossings from Ecuador. Consequently, Peruvian police would intercept them, at least temporarily preventing their entry into Chile[196]

---

[192] Madriaga-Parra L. & Gissi-Barbieri N. (2025) "*Migración haitiana de tránsito: la ruta migratoria por Santiago de Chile y la aspiración de llegar hacia el norte global*", Antípoda. Revista de Antropología y Arqueología, Vol. 58, p. 161.
[193] IMO (2022), "*Migraciones Sur-Norte desde Sudamérica. Rutas, vulnerabilidades y contextos del tránsito de migrantes extrarregionales. Informes estratégicos de coyuntura #1*", pp. 29-30.
[194] Madriaga-Parra L. & Gissi-Barbieri N. (2025) "*Migración haitiana de tránsito"*, cit., p. 164.
[195] Rojas Pedemonte N., Amode N. & Vásquez Rencoret J., "*Racismo y matrices de "inclusión" de la migración haitiana en Chile: elementos conceptuales y contextuales para la discusión*", Polis, Revista Latinoamericana, Vol. 14, No. 42, 2015, p. 224.
[196] See Nieto C., "*Migración haitiana a Brasil: redes migratorias y espacio social transnacional*", Ciudad Autónoma de Buenos Aires: CLACSO, 2014, p. 74.

Main routes for Haitian migrants to Chile[197]

Main routes for Venezuelan migrants to Chile[198]

Main routes for Cuban migrants to Chile[199]

The routes for Venezuelan migrants to Chile predominantly follows three main paths. The most frequent, **Route A (Overland)**, involves an extensive journey beginning in Zulia and Táchira, Venezuela, to cross the border into Colombia. Travelers then move through Colombia, typically via the Capital District and Santander toward Nariño, to reach the Rumichaca crossing into Ecuador. In Ecuador, the route continues through Carchi, Pichincha, Guayas, and El Oro to the Huaquillas-Tumbes border crossing into Peru. In Peru, migrants travel through the Lima District to the Tacna Province, where they access the Chacalluta border crossing into Arica, Chile, before taking a final bus journey to Santiago. The second most frequent route, **Route B (Air via Colombia)**, starts with an overland transit within Venezuela to Táchira to cross into Colombia. From there, migrants take a flight, often from Santander or the Capital District, directly to Chile, sometimes including a layover in Panama. **Route C (Air Direct from Venezuela)** is the least common, involving a direct flight from Caracas, Venezuela's Capital District, to Chile, which also typically includes a stop in Panama.[200]

Cuban migrants utilize several key pathways across the continent. A major, complex route involves moving from Cuba to Guyana, then through Brazil and other South American countries like Perú (via Iñapari, Cusco, Arequipa, Tacna) or Bolivia (via Roraima, Manao, Porto Velho, Guayaram, La Paz, Oruro), often ultimately heading towards Chile (specifically the city of Iquique). [201]

While Dominican nationals began crossing the border with Bolivia following the imposition of visas in 2012, a new migratory route to Chile for non-neighbouring countries was not firmly established until consular visas were imposed on Haitian nationals in 2018 and Venezuelan nationals in 2019. This route became more frequent after border closures due to the COVID-19 pandemic in 2020. Migrants who were

[197] MJS, *El éxodo silencioso de los haitianos en América Latina*, https://sjmchile.org/uncategorized/el-exodo-silencioso-de-los-haitianos-en-america-latina/
[198] International Migration Office (IMO), 2018.
[199] Sanabria Navarro J.R., Silveira Pérez Y. and Niebles Nuñez W.A. (2023). "*Impacto Socioeconómico de la migración en Cuba, 2022*". International Journal of Cuban Studies, Vol. 15, No. 1, p. 100.
[200] See IMO (2018), *Monitoreo de Flujo de Población Venezolana: Chile*, July 2018; Prado A., Schroeder S. & Cortés C. Impacts of the immigration corridor on Peruvian and Chilean cities urban. Transformations during the pandemic, AROS Revista Urbano, No. 45, p. 11.

[201] Sanabria Navarro J.R., Silveira Pérez Y. and Niebles Nuñez W.A. (2023). "*Impacto Socioeconómico*", cit., p. 100.

denied formal entry at the Chacalluta border crossing between Chile and Peru subsequently shifted to the Desaguadero crossing between Peru and Bolivia. From there, they continued their journey to the border post located between Colchane, Chile, and Pisiga Bolívar, Bolivia,[202] where they could enter the country through both regular and irregular means.

It is important to note that before visa requirements were imposed on certain Latin American countries, most nationals from those countries entered the country directly through the airport in Santiago, Chile, thanks to the visa exemption. Likewise, nationals of countries outside the American continent entered the country through the airport.

The forced migration routes to Chile follow the same paths as the primary migration routes discussed in the previous section.

Main entry points in the country since 2010

Chile's ten busiest border crossings since 2020 include the international airport in the capital (Airport Merino Benitez), as well as several land borders. These land crossings are Chacalluta (Peru); Los Libertadores, Cardenal Samore, and Monte Aymond (Argentina); and Colchane (Bolivia). Despite their high traffic volume, the crossings with Argentina are not considered major points of entry for migrants.

Punto fronterizo	2020		2021		2022		2023		2024	
	Entrada	Salida	Entrada	Salida	Entrada	Salida	Entrada	Salida	Entrada	Salida
A. Merino Benítez, Metropolitana	1.252.056	1.329.917	980.115	1.061.998	3.299.134	3.291.145	4.587.399	4.669.982	5.489.874	5.591.512
Chacalluta, Arica y Parinacota	807.037	787.525	47.631	47.737	1.029.487	1.025.009	2.039.542	2.021.825	2.371.707	2.365.557
Los Libertadores, Valparaíso	394.299	272.124	211.012	203.520	728.104	672.667	1.186.006	702.816	1.428.739	813.689
Cardenal Samore, Los Ríos	152.689	147.990	15.759	20.221	167.781	166.048	513.120	493.905	536.427	509.890
La Dorotea, Magallanes	47.577	47.946	-	-	143.498	143.860	347.362	340.572	318.826	307.889
Monte Aymond, Magallanes	145.107	54.571	108.285	119.003	243.490	232.590	324.393	309.493	309.903	298.505
Colchane, Tarapacá	139.025	140.699	27.183	19.868	129.265	118.692	307.793	246.165	471.451	389.503
Chungará, Arica y Parinacota	133.632	71.272	94.803	84.132	175.865	133.884	307.363	224.625	300.082	240.017
Puesco, La Araucanía	63.690	61.710	-	-	56.993	58.621	233.014	234.301	228.616	229.169
San Sebastián, Magallanes	55.955	52.905	101.385	86.683	188.921	180.087	224.215	216.377	213.463	206.548
Total nacional	**3.615.859**	**3.399.476**	**1.679.219**	**1.733.499**	**6.622.013**	**6.450.642**	**11.267.768**	**10.651.144**	**12.956.453**	**12.190.851**

Source: Jesuit Migrant Service (2024). *Anuario Estadístico de Movilidad Humana en Chile 2024*. Santiago, Chile, p. 31

<u>Land entry points:</u>

The primary land crossings for migrants entering and leaving Chile are located along the northern border with Bolivia and Peru.

[202] Ramos, R. & Tapia Ladino, M. (2024) "*Entre humanitarismo y seguridad",* cit., p. 12.

Main border crossings on the northern border

Chacalluta: The Chacalluta Border Complex, located 11 km north of Arica, Chile, and 19 km from Tacna, Peru, is the only border crossing between the two countries, making it a crucial border crossing. This is the busiest crossing in the region, and the second busiest international crossing in South America.[203] The complex has modern immigration, health, and customs control systems and is open 24/7, year-round, except in emergencies. It serves as a transit center for a diverse flow of people, including tourists, students, workers, and families, who use it daily for a variety of purposes, from commerce and education to visiting relatives. Border control at this crossing is the responsibility of a contingent of Chilean Carabineros and the Investigative Police (PDI).

Since 2017, the "Integrated Border Control" system has been in place, where border authorities from both countries work together to streamline and simplify border controls.[204] The joint work between the Chilean and Peruvian police forces drastically reduced the possibilities of entry through Chacalluta and the surrounding clandestine crossings, which led these people to seek alternatives.[205]

Another danger for those attempting to cross open border areas between Peru and Chile is the threat of unexploded anti-tank and antipersonnel mines in the northern border, in Arica and Parinacota Region. These mines were planted during the dictatorship. Although Chilean authorities continue to monitor and demine these areas, certain zones still present a mine risk.[206]

Colchane (Tarapaca, border with Bolivia): Until recently, the Colchane border crossing was primarily used by indigenous people who traveled through their ancestral lands via established migratory routes between Bolivia and Chile. During the 2010s, the situation grew more complex with the emergence of two new migratory flows. The first consisted of non-Bolivian, non-indigenous individuals seeking seasonal agricultural work in central and southern Chile. The second, and more concerning, was a growing influx of highly vulnerable migrants from northern South America and the Caribbean. The implementation of restrictive policies in Peru and stricter controls at the border with Chile in 2019 led to a surge in both legal and illegal entries at the Colchane and Pisiga Bolívar crossings, surpassing the Chacalluta crossing. To

[203] Valenzuela E. (2020). "*Frontera y luchas migrantes: Riesgos y desafíos en el Norte de Chile, Migraciones, derechos humanos y acciones locales*". Hispanic Issues On Line 26, p. 97.
[204] Ministry of Homeland, *Arica: Se inició el Control Integrado en Chacalluta y Santa Rosa*, 17/08/2017, https://www.interior.gob.cl/noticias-regionales/2017/08/17/inicio-el-control-integrado-en-chacalluta-y-santa-rosa/
[205] Mardones P. (2025) "*Interacción entre migrantes e indígenas bajo el régimen de control fronterizo en Colchane (Tarapacá, Chile)*". Alteridades, Vol. 35, No. 69. Ciudad de México, p. 89.
[206] See Ministry of Defense, *Actualización al informe de chile acerca de las medidas de transparencia, de conformidad al artículo 7º, Nº 2, de la "Convención sobre la prohibición del empleo, almacenamiento, producción y transferencia de minas antipersonal y sobre su destrucción"*, 30 April 2020.

impede criminal activities, a 1.5-meter-deep, wide ditch was constructed during the Bachelet administration next to the border complex, though it is easily bypassed a few kilometres away.[207] Furthermore, arbitrary and discriminatory practices by border authorities have been identified, leading to rejection at the border. For years, rejection at the border has favoured irregular entry through the use of smugglers[208] (so-called "*coyotes*" or "*pasadores*"), who offer their "services" to cross the desert and the Chilean border.

Within the framework of humanitarian discourse and migration control,[209] a temporary emergency space called Lobito Temporary Emergency Facility (*Espacio Temporal de Emergencia Lobito*) was established in 2021 south of Iquique to provide humanitarian assistance to vulnerable migrants. The centre, located on land provided by Arturo Prat University, offered essential services such as food, medical care, and shelter to people arriving in the city.[210] Over its three-year operation, it served 15,263 people, including over 5,300 children and adolescents. However, in February 2025, authorities announced the facility's closure, citing a "significant decrease in demand". The official position is that irregular entries through Colchane have decreased by 34% this year compared to the same period in 2024 and by 60% since 2021.[211] This decline is presented as the reason for the decision to close the centre. The closure reflects a shift in government policy toward prioritizing border security and a focus on immediate returns to Bolivia for those who cross without authorization. This change has significantly limited access to humanitarian aid for migrants.

Moreover, to contribute to border control in Colchane, three Border Observation Posts (BOPs) were established in 2023. The BOPs are equipped with advanced systems, including thermal cameras for border control, a satellite internet and communications system, and perimeter vision cameras with a range of 10 km during the day and 5 km at night. According to authorities, this investment in technology and infrastructure is part of a broader strategy that has already contributed to a significant 29% reduction in illegal border crossings between February and October 2023. This experience is expected to be replicated at other Chilean border posts.[212]

Air entry points:

Chile operates immigration control units at the Arturo Merino Benítez International Airport (AMB), also known as Santiago International Airport or Pudahuel Airport. 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.

Information regarding the facility for inadmissible persons is not publicly disclosed. This area is utilized for the de facto detention of individuals who have either been denied entry or whose international protection claims remain unprocessed, pending their removal from the country on the next available flight.

Implications that migratory routes

The route of migration does not determine the judicial evaluation of asylum barrier legality, but it demonstrably impacts the quantity and character of litigation presented to the courts.

For individuals entering via land, the judiciary is essential in reviewing summary expulsions and pushbacks. Courts of Appeals with jurisdiction over border regions receive frequent petitions for intervention, at times

[207] See Mardones P. (2025) "*Interacción entre migrantes"*, p. 87-89.
[208] See Liberona Concha N. (2015) "*La frontera cedazo y el desierto como aliado. Prácticas institucionales racistas en el ingreso a Chile*". Polis, Revista Latinoamericana, Vol. 14, No. 42, 2015, p. 143-165
[209] See Carolina Stefoni C., Jaramillo M., Bravo A. & Macaya-Aguirre G. (2023) *Colchane. The construction*, cit.
[210] Swissinfo, *Fin a la acogida en el norte de Chile y «reconducción» a Bolivia de migrantes irregulares*, 29/04/2025, https://www.swissinfo.ch/spa/fin-a-la-acogida-en-el-norte-de-chile-y-%22reconducci%c3%b3n%22-a-bolivia-de-migrantes-irregulares/89236235
[211] Regional Presidential Delegation of Tarapaca, *El próximo viernes 28 de febrero cierra dispositivo humanitario Lobito*, 21/02/2025.
[212] Ministry of Homeland, *Vicepresidenta Carolina Tohá y ministra de Defensa, Maya Fernández, inauguran nuevos Puestos de Observación Fronteriza (POF) en Colchane*, 17/11/2023, https://www.interior.gob.cl/noticias/2023/11/17/vicepresidenta-carolina-toha-y-ministra-de-defensa-maya-fernandez-inauguran-nuevos-puestos-de-observacion-fronteriza-pof-en-colchane/

establishing jurisprudence that restricts the executive's capacity to violate the principle of *non-refoulement*. Conversely, at the Santiago de Chile International Airport (the primary air route), barriers to asylum typically manifest as denial of entry or immediate removal (as previously noted in Part I). Litigation arising from these cases centres on the legality of non-admittance. The courts must consequently evaluate these actions within the scope of national security and border control, focusing the legal discourse on the interpretation of statutory norms and the discretionary authority of immigration officials.

Implications that entry points in the country have on what occurs in judicial institutions

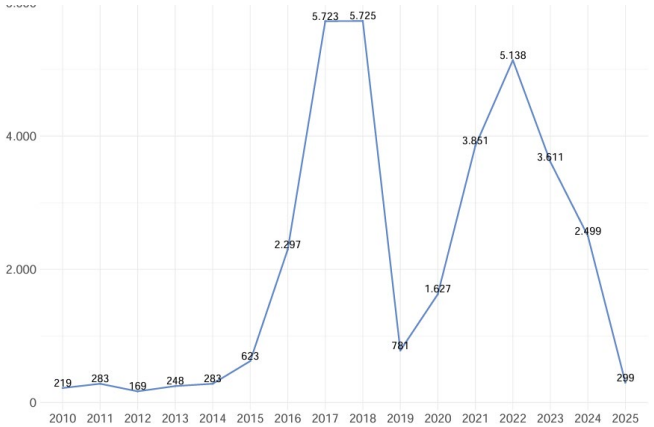
Courts of Appeals in Chile's border regions frequently adjudicate cases concerning barriers to asylum access, thereby cultivating specialized judicial expertise and a body of jurisprudence attuned to the dynamics of forced migration. These tribunals are critical in challenging administrative policies and practices that undermine the principle of non-refoulement. The legal challenges and subsequent rulings directly respond to specific border practices, such as the arbitrary refusal of entry or the imposition of document requirements, leading to the establishment of consistent case law.

In contrast, asylum seekers entering through the Santiago International Airport encounter a separate paradigm. Legal practice at this entry point is less focused on migration management and more heavily weighted toward national security concerns. The typical challenges here involve non-admittance and immediate expulsion. Accordingly, the judiciary is tasked with evaluating these barriers through the lens of national security and border control, with the legal discourse primarily debating the interpretation of statutory norms and the limits of discretionary authority vested in immigration officials.

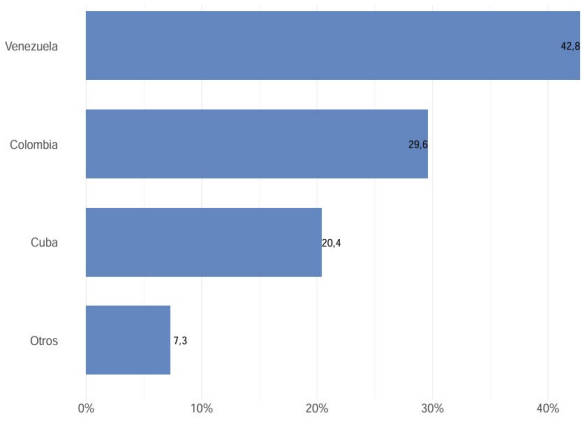
B. Composition and spatial distribution of forced migration population

Between 2010 and the first half of 2025, a total of 33,376 asylum applications were formalized. During the first half of 2025, 299 asylum applications were registered, representing 12% of the applications from the previous year.

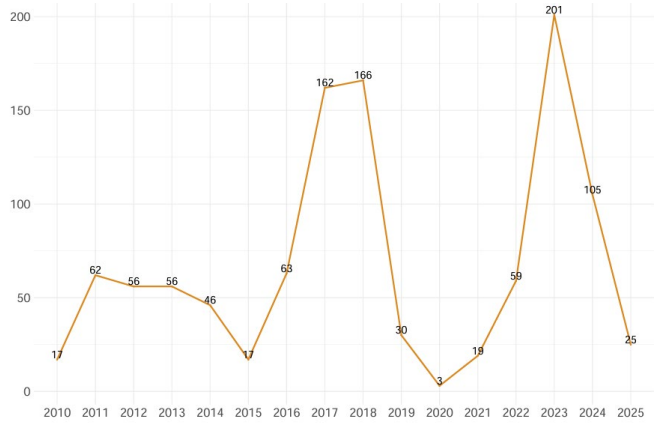
Refugee applications formalized per year



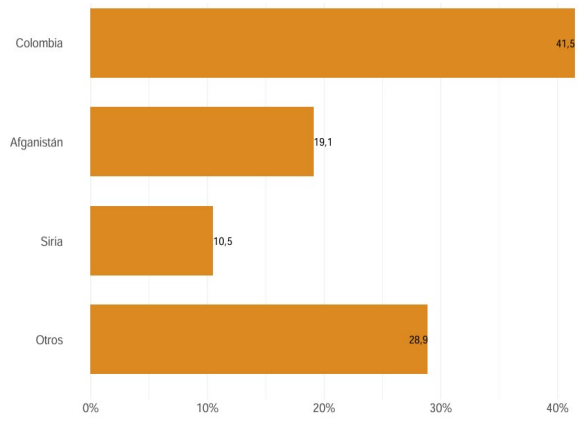
Distribution by nationality



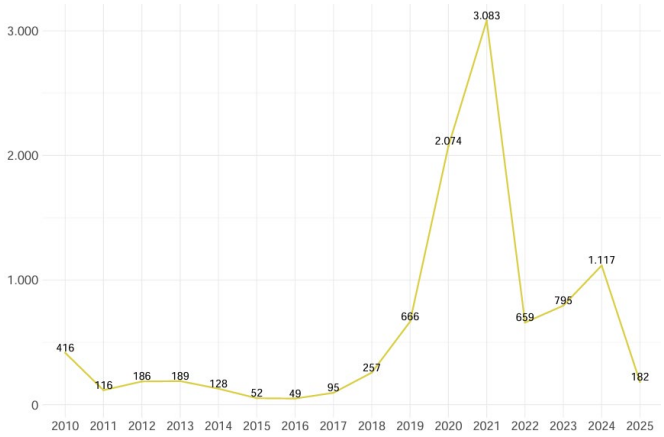
Recognition of refugee status per year



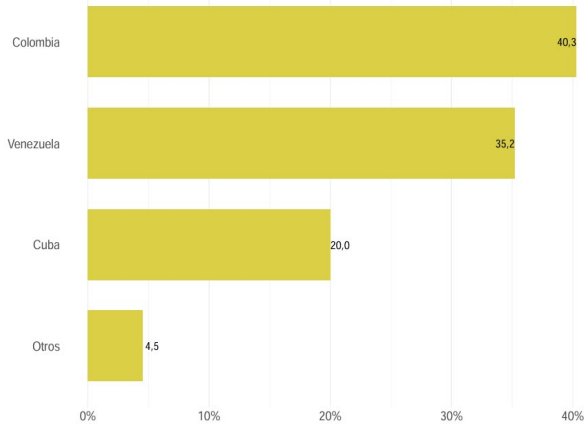
Distribution by nationality



Refugee applications rejected per year



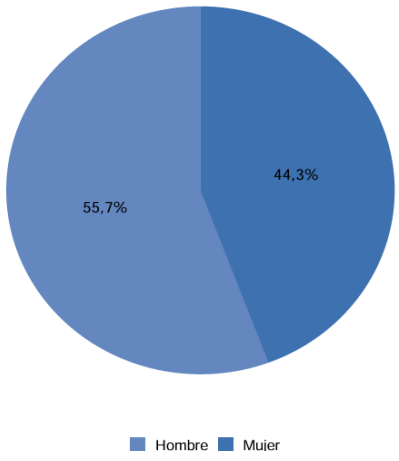
Distribution by nationality



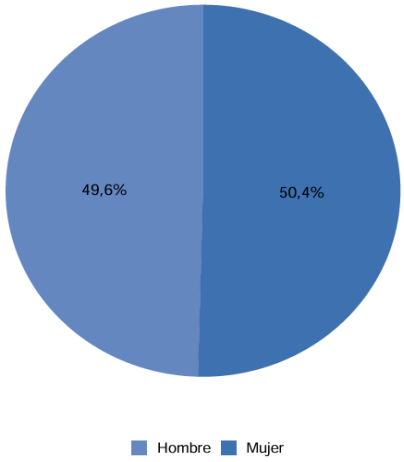
Source: SERMIG, *Minuta Refugio en Chile (agosto, 2025)*

An analysis of asylum applications between 2010 and 2025 reveals a clear gender trend: men filed the preponderance of claims. Despite this, a greater proportion of male applications faced rejection, making women marginally more likely to be granted refugee status in Chile.

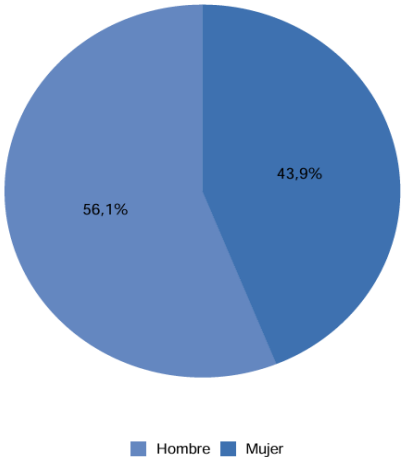
Sex distribution of formalized asylum applications 2010-2025



Distribution by sex of refugee status recognition 2010-2025



Sex distribution of rejected asylum applications 2010-2025



Source: SERMIG, *Minuta Refugio en Chile (agosto, 2025)*

In Chile, the judiciary has played a crucial role in the initial stages of refugee protection, primarily by ensuring that migrants are not penalized for irregular entry. The Courts of Appeal in the main entry regions and the Supreme Court have been instrumental in safeguarding the right to remain in the country and seek asylum. Asylum seekers have regularly used constitutional guarantee actions, such as the writ of amparo and the remedy of protection (*Recurso de Protección*), to address a range of issues. While the Courts of Appeal have often adopted a restrictive interpretation of immigration regulations, the Supreme Court has consistently been more protective, favouring asylum applications while still recognizing the administrative authority's jurisdiction to analyse them.

However, the potential impact of a massive, short-term influx of displaced persons on the adjudication process and case outcomes in Chile requires further analysis.

The high number of asylum seekers and refugees in Chile, particularly those in vulnerable situations, has placed significant pressure on the judicial system. This heavy caseload is a major challenge, as applicants often have limited resources and little knowledge of the law. Courts may consider specific factors to protect individuals, such as age and health conditions. In cases involving elderly individuals denied entry at the airport, for example, courts have tended to rule in their favour, weighing factors like their country of origin, age, health issues, and family reunification needs.

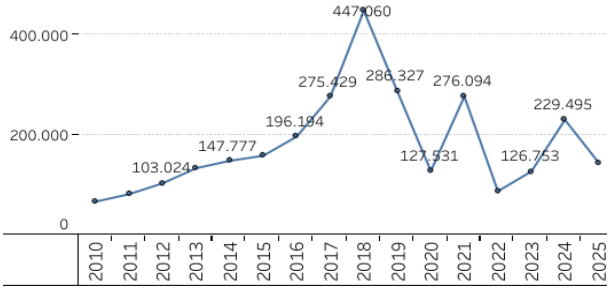
Furthermore, the applicant's country of origin can influence judicial decisions. When large groups of people from a specific country, such as Venezuela, seek asylum, judges become familiar with that country's political and humanitarian situation. This familiarity can lead to a more consistent and nuanced application of legal norms. Notable examples of this include the Court of Appeals' decisions on the 2021 collective expulsions and numerous rulings against administrative barriers, especially those requiring asylum seekers to self-declare their irregular entry before formalizing their claim.

Displaced persons who are not asylum seekers or recognized refugees

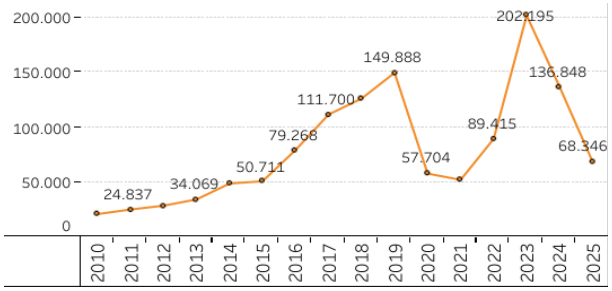
Several individuals in Chile are not registered as asylum seekers or refugees. These individuals may hold permanent or temporary resident status, often acquired through regularization processes or special visas, such as the Democratic Responsibility Visa for Venezuelan citizens or Humanitarian visas. The majority of these individuals are adult men of Venezuelan nationality.

See National Immigration Service, open data for temporary and permanent residences in Chile:

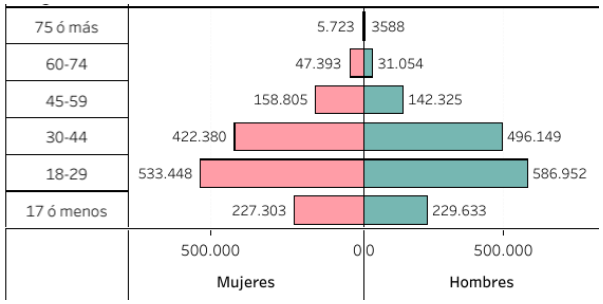
Number of Temporary Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by year.



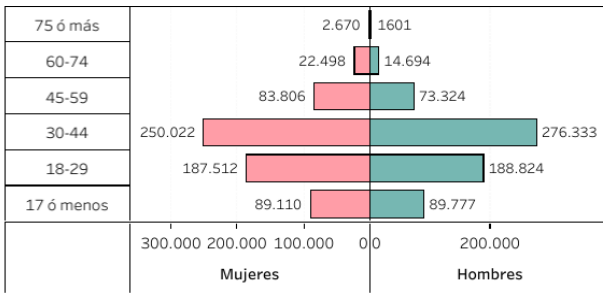
Number of Permanent Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by year.



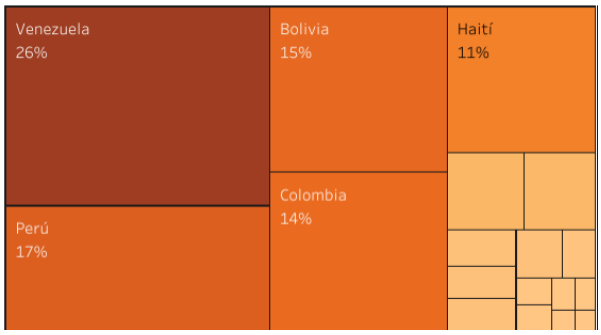
Number of Temporary Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by sex and age group.



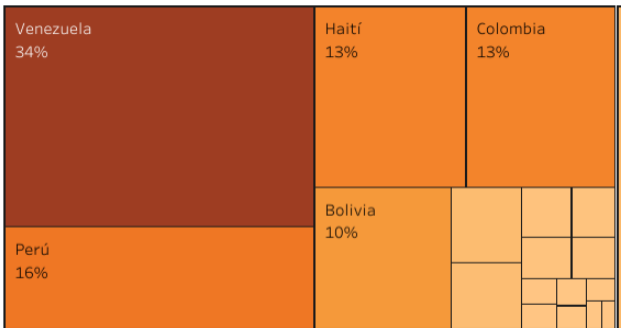
Number of Permanent Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by sex and age group.



Percentage distribution of Temporary Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by country.



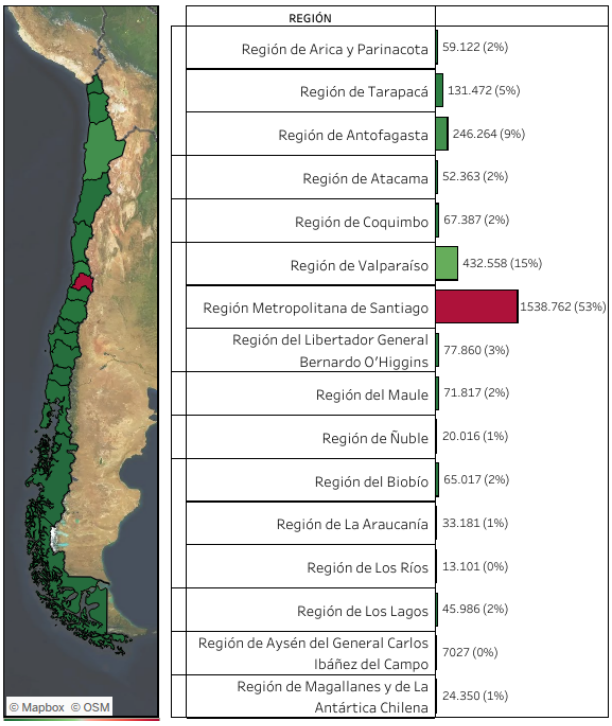
Percentage distribution of Permanent Residences granted to foreign nationals from all countries between 2010 and 2025, residing in the communes of all the provinces of the country's regions, by country.



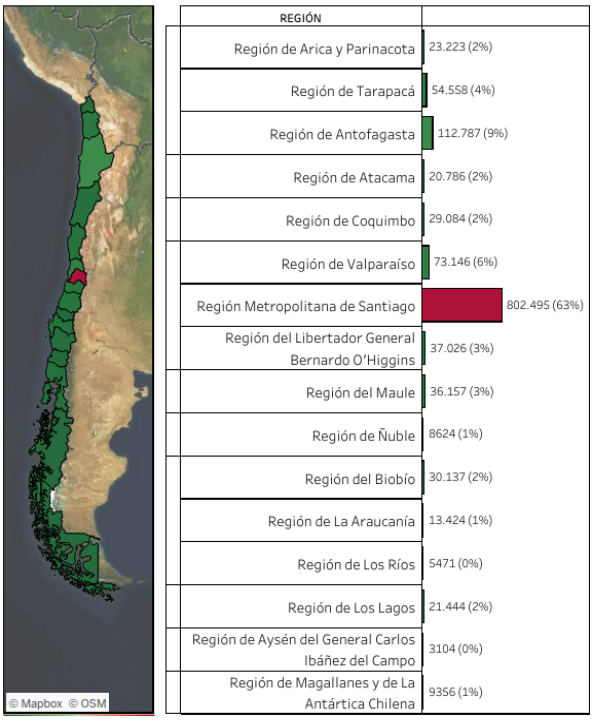
Distribution within the territory

Available statistical data indicate that the largest foreign population in Chile, whether migrants or refugees, is concentrated in the metropolitan region, that is, in the country's capital. See National Immigration Service, open data for temporary and permanent residences in Chile:

Number of Temporary Residences granted to foreign nationals from all countries between 2010 and 2025, by residence in the country's regions.



Number of Permanent Residences granted to foreign nationals from all countries between 2010 and 2025, by residence in the country's regions.



Furthermore, the spatial distribution of the irregular migrant population in Chile heavily concentrates in the Metropolitana region, which accounts for 43.1% of the national total with 145,163 people in the 2023 estimation, following a pattern similar to regular migration. The regions of Valparaíso (6.9%) and Antofagasta (4.1%) also hold significant numbers, with these three regions, plus Biobío and O'Higgins, collectively hosting over 61% of the estimated irregular migrant population. However, while the Metropolitan, Valparaíso, and Antofagasta regions saw the largest absolute increases in irregular migrants between 2018 and 2023, regions in the centre-south like Maule and Ñuble experienced the highest proportional growth, though from very low initial figures.[213]

Implications of the spatial distribution

A significant hurdle for asylum seekers in Chile is the geographic distance between northern entry points and the provincial capitals where they must file legal actions—such as a remedy of protection—to challenge administrative decisions or delays that prevent them from formally submitting their asylum applications. Although NGOs and civil society groups operate in these remote border areas, their presence may not be sufficient to meet the full scope of legal and practical needs.

Further investigation into this geographic barrier and its complete implications is crucial and should be explored in depth during interviews.

[213] Jesuit Migrant Service (2024). *Anuario Estadístico de Movilidad Humana en Chile 2024*. Santiago, Chile, pp. 31-32.

C. Political and public debate in the country

The growing influx of migrants to Chile, particularly from other South American countries, has fueled a specific type of political discourse: "the discourse of fear", which affects electoral periods in Chile.[214]

Political candidates in Chile used rhetoric to blame migrants for social problems, some also explicitly addressed migration control and border policies. For instance, in 2013, Pablo Longueira stated that foreigners would only be able to enter under a new immigration law, so that the economic development of the country could be enjoyed by Chileans first. In 2016, Sebastián Piñera, during his presidential campaigns, also expressed a desire for a more restrictive approach, suggesting that he would "close the doors to everything that is bad for Chile" and that the country had the right to decide who could enter. This discourse reflected a clear emphasis on control and selectivity, with border control being a key component of their proposed immigration policies. Furthermore, José Miguel Ossandón similarly advocated for stricter control by arguing for a "filter" to prevent those with criminal records from entering, claiming it would help migrants avoid stigmatization.[215]

The 2021 election saw immigration emerge as a dominant issue. Hard-right candidate José Antonio Kast proposed excavating a border ditch with Bolivia to curb inflows—a measure that was eventually implemented during the Gabriel Boric administration, alongside a "digital wall" of mobile, radar-equipped police vehicles. Kast has more recently pushed for the construction of a physical wall.[216]

These statements reveal a common theme among these candidates: a focus on regulating and restricting entry as a primary method for managing migration, often justifying it with a narrative of protecting national interests and security.

Furthermore, this discourse, which is often propagated by media outlets, frames the "illegal immigrant" as a threat, thereby acting as a catalyst for an identitarian populism ("*populismo identitario*") that unites marginalized citizens and economic elites against a common perceived enemy. While the former fear competition for scarce jobs, housing, and social resources, the latter see an opportunity to maintain a precarious workforce. The political exploitation of these social tensions is evidenced by Chilean legislative proposals, such as the 2013 reform to the immigration law, which, despite its late introduction, served as an electoral strategy to capitalize on negative public sentiment toward migration. Consequently, political actors use the topic of immigration as a means to gain electoral support by proposing the implementation of barriers and legal complexities for migrants, thereby reinforcing a climate of exclusion and hostility.[217]

The Chilean government has occasionally used a narrative that justifies its strict immigration policies by presenting migration as a source of social disorder. It suggests that there is "migratory chaos" and that measures are necessary to restore order, security, and regularity. This discourse frequently links migrants to negative social problems such as poverty, crime, and drug trafficking, constructing an argument for control and expulsion. By focusing on concepts such as "irregularity" and "fake tourists", the government blames the migrants themselves, presenting them as deceitful and in need of control.[218] This approach facilitates the justification of restrictive policies and selective enforcement, as it presents these measures as logical and necessary responses to a perceived threat.

---

[214] See Cociña Cholaki M. "*Discursos sobre inmigración internacional en Chile que develan racismo*", Oxímora Revista Internacional de Ética y Política, No. 16. 2020, p. 190.
[215] See Cociña Cholaki M. "*Discursos sobre inmigración"*, cit.
[216] Sanders R. (2025) Chile's Immigration Challenges Heat Up Ahead of 2025 Elections, United States Institute of Peace, https://www.usip.org/publications/2025/01/chiles-immigration-challenges-heat-ahead-2025-elections
[217] Achón Rodríguez O. (2019) "*La introducción del estatuto jurídico de irregularidad inmutable en la legislación chilena sobre extranjería o la profundización del proceso de criminalización de la inmigración*". PÉRIPLOS, GT CLACSO - Las Políticas Migratorias y el Control de Poblaciones en el Siglo XXI: Debates, Prácticas y Normativas en América del Sur, Vol. 3/1, pp. 58 - 83
[218] See Stefoni C. & Brito S. (2019) "*Migraciones y migrantes en los medios de prensa en Chile: La delicada relación entre las políticas de control y los procesos de racialización*". Revista de Historia Social y de las Mentalidades, Departamento de Historia Universidad de Santiago de Chile, Vol. 23, No. 2, 2019: 1-28

Moreover, regional and local authorities in Chile have used xenophobic rhetoric to blame immigrants for social problems, particularly in the northern city of Antofagasta, which has a significant migrant population. In 2014, then-governor Waldo Mora sparked controversy by linking Colombian women to a rise in venereal diseases and prostitution, while also accusing them of causing marital strife. His comments reflect a common societal stereotype that sexualizes Colombian women and associates them with a perceived moral decay. A former mayor of Antofagasta, Karen Rojo, similarly used fear-mongering language, claiming that the arriving migrant population was creating "serious problems" and "poverty ghettos". This type of rhetoric, also used by other politicians, frames immigrants as a threat to national stability and social order, revealing a deeply ingrained prejudice. This xenophobia, particularly evident in Antofagasta, is often directed at Afro-Colombian migrants, who are highly visible in a society that historically sees itself as white and homogeneous.[219] Such statements from public figures not only fuel negative stereotypes but also demonstrate how political gain can be sought by administrating xenophobia and scapegoating foreign populations.

Michelle Bachelet (2006- 2010 and 2014- 2018)

During her first term (2006-2010), President Michelle Bachelet established Chile as a "welcoming country" by guaranteeing health and emergency care for migrants regardless of their status. Despite a dramatic increase in migration inflows during her second, non-consecutive term (2014-2018), immigration policy was not a priority on her agenda, which maintained a strong commitment to human rights and avoided restrictive measures. Although her administration passed legislation to clarify refugee status procedures, this was primarily to ensure compliance with international conventions.[220]

The Bachelet administration's reform bill in 2017 focused on controlling irregular migration through new entry and exit regulations and the establishment of administrative sanctions. Despite the bill's content not fully aligning with the more extreme aspects of anti-immigration rhetoric, Bachelet's public statements at the time validated public fears, whether they were well-founded or not, as a legitimate basis for implementing restrictive measures. This political strategy demonstrates how a perceived social threat, even if largely unfounded, can be leveraged to justify new legislation and garner electoral support by appearing tough on immigration. In this way, fear becomes a powerful tool in shaping policy, reinforcing the idea that new, more restrictive laws are necessary to address public anxieties. [221]

Officials warned the Interior Minister in 2017 about the massive, growing arrival of Haitian migrants, mostly via chartered planes for purported tourism, but with the intent to immigrate. This recommendation to impose visa requirements was ignored, and by the end of her term in 2018, the substantial wave of immigration had become a major campaign issue. [222]

Sebastian Pinera (2010- 2014 and 2018-2022):

The discourse surrounding the immigration issue during Sebastian Piñera's term has been characterized as "rhetoric of fear".[223] In 2018, Chile's government began to significantly change its migratory policies in response to a perceived "uncontrolled immigration", especially from Haiti. This involved a series of new administrative measures that made it much harder for Haitians to legally reside in the country. The prior work visa, which was not tied to a single employer and was popular among Haitians, was eliminated. In its place, specific visas for tourism and family reunification were created, but they had to be applied for from outside Chile, a process that was often difficult and bureaucratic. Additionally, the cancellation of a key low-cost airline, Latin American Wings, which was accused of human trafficking, further limited access for Haitians. These measures, combined with a "Humanitarian Return Plan", led to a sharp decrease in

[219] See Cociña Cholaki M. "*Discursos sobre inmigración"*, cit., pp. 194-197; Liberona Concha N. (2015) "*La frontera cedazo!,* cit.
[220] Sanders R. (2025) Chile's Immigration Challenges, cit.
[221] Achón Rodríguez O. (2019) "*La introducción del estatuto"*, cit., p. 67.
[222] Sanders R. (2025) Chile's Immigration Challenges, cit.
[223] Barrera M.F. (2019) "*Securitizar la migración: análisis del caso chileno*". Política / Revista de Ciencia Política, Vol. 57, No. 2, pp. 55-78.

the number of Haitian immigrants arriving in Chile, effectively creating major obstacles for them to settle and build a life in the country.[224]

For instance, during a visit to the Chacalluta border complex in 2020, President Sebastián Piñera outlined his administration's migration policy, emphasizing the need for a modern law to ensure a "regular, ordered, and legal" migration process. Piñera criticized what he called the "disorder" of previous years, citing the entry of hundreds of thousands of migrants, specifically mentioning Haitians, who allegedly entered illegally or under false pretences. He stated that Chile welcomes those who come to work honestly and contribute, but wants to "close the doors" to those who break laws or intend to commit crimes. The President expressed his strong opposition to two specific proposals from the opposition—a "tourist-work visa" and an amnesty for irregular immigrants—vowing to veto them if they pass. He argued that these proposals would incentivize illegal immigration, cause harm to both Chileans and legal migrants, and would be particularly damaging during the current economic crisis caused by the global pandemic. Piñera concluded by calling for the urgent approval of a new migration law to "order the house" ("*ordenar la casa*") and protect the interests of Chileans and legal migrants.[225]

Gabriel Boric (2022- 2026)

Despite his earlier pro-immigration stance as a lawmaker—stating he welcomed and supported "immigrants without papers"—President Gabriel Boric has significantly altered his approach in response to hardening public opinion. Now stating that "Chile is not in any condition to accept more immigrants" from Venezuela, Boric has deployed the army to northern Chile to assist police in controlling irregular migration and narcotics smuggling, though he has resisted making irregular migration a criminal offense. In line with this, the government has begun repatriating immigrants who have committed crimes, expelling 910 individuals to Haiti, Colombia, and Bolivia by October 2024, though diplomatic ruptures have prevented the repatriation of Venezuelan migrants. Furthermore, Congress has advanced legislation adding new grounds for expulsion, and an agreement has been reached with Bolivia allowing for the expulsion of illegal entrants found near the border. Counterbalancing these restrictive measures, the Boric administration has also planned a "regularization" process for immigrants who have registered with the police, a move the opposition criticizes as a "big amnesty" that may incentivize future irregular migration.[226]

Relevance of the topic of access to asylum in public debate

The media narrative in Chile on migration often serves to justify restrictive government policies. According to a 2018 study, the press has become a space largely dominated by official discourse, allowing authorities to disseminate a particular vision of migration and the measures being implemented. This narrative frequently presents migration as a social problem, linking it to issues of poverty, crime, and overwhelming numbers that overwhelm institutional capacities. The media contributes to a distorted, often threatening narrative by employing specific stereotypes. This includes the portrayal of Haitian migrants as uniformly poor and vulnerable, requiring benevolence,[227] contrasted with the depiction of Venezuelan migrants as the source of a crisis or overcrowding. This strategy effectively reduces a complex social reality to a simplified, digestible idea.

For instance, the government installed the metaphorical idea of "putting one's house in order" ("*poner en orden la casa*"), which functioned as a powerful ideological concept to frame a series of control measures,

[224] Debandi N. and Patallo M. (2022) "*Entre lo nacional y lo local, las respuestas estatales a la movilidad haitiana en el cono sur*", 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. 338 et seq.

[225] Presidency of Chile, *ARICA Presidente Piñera visita el complejo fronterizo Chacalluta*, 29/08/2020, https://prensa.presidencia.cl/discurso.aspx?id=165532

[226] Sanders R. (2025) Chile's Immigration Challenges, cit.

[227] See the research on the narrative of Haitian migrants between 2017-2018 in a free newspaper of Ivanova A., Almendras J. and Mario Samaniego (2022) "*Los inmigrantes en la prensa chilena: lucha por protagonismo y racismo encubierto en un periódico gratuito*", Comunicación y Medios, No. 46,

including new visa requirements, expulsion programs, and police controls. This process of "racialization and othering" transforms certain migrant groups into an "other" who represents a threat to the social order, thus normalizing and legitimizing policies aimed at their control and expulsion. The media's role in this process has been crucial, amplifying official discourse, using crime and the burden on public services as justification for restrictions, and often presenting migrants in a subordinate and testimonial role that reinforces existing stereotypes rather than challenging them.[228]

Moreover, anti-immigrant sentiment in Chile often criminalizes the very act of seeking legal status, framing a migrant's intent to stay as a "dangerous" or "fraudulent" act, regardless of whether they follow official procedures. This narrative creates a symbolic figure of the "illegal immigrant", a perpetual lawbreaker who is perceived to be a threat to social benefits and public safety. This discourse has normalized the idea of migration status as immutable, with a tourist visa being a permanent condition. In contrast, pro-immigrant sentiment is typically presented in a more official capacity by the government, often through a discourse of balancing state control with respect for human rights. For instance, the regularization process for irregular immigrants served to manage public perception while paradoxically enabling the introduction of more restrictive laws. This approach highlighted a deliberate political strategy to project an image of moderation while simultaneously advancing policies that made it harder to change one's legal status, effectively forcing many to become irregular migrants".[229]

Furthermore, the number of groups explicitly expressing anti-immigrant sentiments, sometimes through violent actions, has increased in Chile. While these groups may not represent the majority, their impact on public perceptions and migrants' sense of security should not be underestimated. An analysis of more than 1.4 million tweets about migration in Chile between 2018 and 2020 revealed that periods in which the media focused on migrant communities coincided with an increase in discriminatory comments online, with a notable focus on the Haitian community, which accounted for 63% of discriminatory mentions. A particularly violent incident occurred in September 2021, in the northern city of Iquique, where an "anti-immigration march" culminated in the burning of belongings of homeless migrants living in camps.[230]

Relevance of the topic of access to asylum in public opinion

Tendencies towards discrimination, xenophobia, or racism against migrants and refugees have permeated Chilean society.[231] It exhibits a notable sensitivity to the issue of migration, largely perceiving it as a primary driver of increased insecurity and health risks within the nation.

The political narrative surrounding migrants as a problem, amplified by the media, is also reflected in society. In terms of discourse, two seemingly contradictory developments are observed in Chile: a growing acceptance of the country as an immigration nation coexists with increased hostility toward specific, often racialized, migrant groups. A 2018 survey by the National Centre for Migration Studies illustrates this paradox: while the majority of respondents had a generally positive view of immigration and supported equal rights for migrants in areas such as social security, healthcare, and education, 46% stated that they did not accept migrants from Latin American or Caribbean countries.[232] The business community strongly advocates for immigration, seeing it as crucial manpower due to Chile's aging population and declining birth rate. However, a sluggish economy exacerbates public concern over the strain on social services. Tensions are further inflamed by a rising crime rate, which the public firmly links to immigration, even though immigrant crime rates overall remain lower than those of the general population.[233]

The 2024 LATAM Pulse Chile' survey, for instance, indicated a prevailing sentiment that Chile's migration policy ought to be "more restrictive and with greater controls" (95,5%), directly linking security concerns

[228] See Stefoni C. & Brito S. (2019) "*Migraciones y migrantes",* cit.
[229] Achón Rodríguez O. (2019) "*La introducción del estatuto"*, cit., pp. 74-75.
[230] IMO (2022), "*Migraciones Sur-Norte*", p. 32.
[231] Acero L. (2025) "Contemporary Public Understanding on Refugees in Brazil and Chile: Trends and Reasons for Approval or Rejection", Issues in Social Science, Macrothink Institute, Vol. 13, No. 2, p. 27.
[232] IMO (2022), "*Migraciones Sur-Norte 1*", cit., p. 32.
[233] Sanders R. (2025) Chile's Immigration Challenges, cit.

to a perceived leniency in immigration policy. This societal perception was further underscored by a subsequent survey conducted between October 2024 and June 2025, which reiterated migration as the fourth most significant concern for Chileans, consistently associating it with insecurity, which ranked as the second most pressing issue.[234]

Moreover, the 2024 and 2025 Ipsos reports for Chile reveal a continued trend of public scepticism and a preference for restrictive immigration policies:

- In 2024, 68% of Chileans agreed that people should be able to take refuge in other countries, a figure that remained stable in the 2025 report. However, this general support is consistently undermined by significant distrust of refugees' motives. In 2024, a high number of Chileans (76%) believed that most foreigners seeking refuge were not genuine refugees but were instead looking for economic reasons. This suspicion appears to have decreased slightly to 74% in the 2025 survey, but it remains one of the highest rates globally.
- The preference for strict border control is a defining characteristic of public opinion in Chile across both reports. In 2024, 64% of Chileans supported closing borders to refugees entirely. This number decreased to 61% in the 2025 report, but it still places Chile among the countries with the strongest support for border restrictions. This sentiment is consistently higher than the global average and reflects a dominant security-focused perspective.
- Finally, Chilean public opinion remains pessimistic about the impact of refugees on their country. In 2024, a significant majority (56%) disagreed that refugees would successfully integrate into society, a sentiment that persisted in the 2025 report, with a similar number (56%) holding a negative view on this topic. Likewise, a majority of Chileans (55%) disagreed that refugees make a positive contribution, a belief that remained largely unchanged in the 2025 data. In conclusion, Chileans hold particularly negative views on refugees' impact on the economy and public services, as they feel these are already strained.

The high level of negative perceptions about the social and economic impact of refugees, coupled with a preference for limited access to rights, reinforces a public discourse in Chile that is more restrictive than in many other countries.

It is important to note that even within migrant communities in Chile, there can be anti-migrant sentiments and those in favour of stricter immigration control, as a 2020 study shows. This study revealed a phenomenon called "pulling the ladder after me", where immigrants who have recently settled show a positive attitude toward new, more restrictive policies, and a negative attitude toward new arrivals of their co-nationals. This stance, common among Venezuelans who immigrated before the Democratic Responsibility Visa was enacted, is a way to distinguish themselves from new, more vulnerable arrivals. The initial wave of Venezuelan immigrants to Chile was often middle-to-upper-class and highly educated, arriving by plane, while later immigrants were from more diverse socioeconomic backgrounds, traveling by land and foot. These earlier, more established Venezuelan immigrants view new arrivals with suspicion, portraying them as "criminals" or "bad people" to justify their support for stricter laws. This act of "othering" helps them dissociate from the "bad immigrants" to maintain their status as "ideal" immigrants in Chile. Moreover, some of these immigrants even adopt racist and xenophobic narratives from the host country, directing them at other migrant groups, particularly Haitians, Peruvians, and Afro-Colombians, whom they see as undesirable. This "xenophobia among immigrants" also extends to other groups, with some Venezuelans expressing concern about the arrival of Colombian criminals. Their support for stricter policies is, therefore, a way to secure their own acceptance and status within Chilean society.[235]

[234] See Latam Pulse Atlas & Bloomberg, Chile October 2024, https://atlasintel.org/poll/latam-pulse-chile-october-2024-2024-10-31; Latam Pulse Atlas & Bloomberg, Chile June 2025, https://atlasintel.org/poll/latam-pulse-chile-june-2025-2025-07-08
[235] See Doña-Reveco C. & Gouveia L. (2020) What do immigrants make of immigration policies? Insights from interviews with Venezuelans in Chile, International Migration IMO, Special Issue, p.

Implications that political debate and public opinion have on what occurs in judicial bodies

Jurisprudence on asylum in Chile indicates that the prevailing political discourse may subtly affect judicial decision-making concerning barriers to protection, particularly through the lens of legal interpretation.

The Courts of Appeals exhibit a tendency toward restrictive application of the law regarding administrative impediments. In matters where the administration mandates documents (like the self-declaration for irregular entry) or imposes fixed deadlines, the appellate courts often uphold the executive's position through rigorous application of immigration statutes. This approach may be attributable to the influence of political and public debate surrounding large-scale migration. Conversely, in instances of summary expulsions (e.g., in 2021), these courts adopted a heightened legalistic focus on ensuring due process, asserting that while the authority to order removal exists, it must be accompanied by an adequate mechanism for individual defence.

The Supreme Court, for the most part, appears less susceptible to the political debate on immigration/asylum, consistently upholding the right to international protection by nullifying immediate removals and administrative obstacles. A notable exception, potentially influenced by the political drive for increased control, is *Ruling No. 115.005-2022* (Third Chamber, 23 March 2023), which affirmed the requirement for asylum seekers to file a self-report documenting irregular entry.

D. Corruption

While corruption does not appear to be a decisive factor preventing access to asylum in Chile, its use by migrant trafficking networks operating along the Peru-Chile corridor to facilitate their operations cannot be ruled out.[236] The only documented incident to date involves a publicly reported case of corruption within the Rancagua Immigration Service offices. In 2025, the Investigative Police (PDI) executed a raid amid allegations that the regional director was improperly connected to a lawyer who marketed herself online as an immigration expert and charged foreign nationals for securing visas and residency permits. The director of the office subsequently resigned; however, the current status of the investigation remains unknown.[237]

To date, no sources have been identified that focus on corruption in asylum access adjudication in Chile. Moreover, to date, no sources have been identified that assess whether and how corruption among the various actors involved in granting asylum access influences decision-making in judicial bodies.

E. Other socio-political factors

The Immediate Return Agreement with Bolivia—a subject previously introduced in Part I—constitutes a significant element influencing border dynamics. Although the agreement's precise terms remain confidential, the established procedure allows for the expeditious return to Bolivian territory of any individual who has crossed the Chilean border irregularly and is detected within a 10-kilometer radius. This action is contingent not upon nationality, but upon demonstrating prior transit through Bolivia. Consequently, this policy immediately raises the question of whether Chile is using this mechanism as a form of the safe third country doctrine to divert potential asylum applications to Bolivia.

[236] Regarding to migrant trafficking networks at the border, see Sanhueza-Sepúlveda K. (2024), "*El tráfico de migrantes en Chile: un análisis crítico del tipo penal y su adecuación con el estándar internacional*", Revista de Derecho Universidad de Concepción 2024, No. 256, pp. 51-88.

[237] Bravo A. (2022) *Director regional de Migración renunció tras allanamiento a su oficina*, 05 May 2025, https://www.elrancaguino.cl/2025/05/05/director-regional-de-migracion-renuncio-tras-allanamiento-a-su-oficina/