

**CROSSING THE DARIEN: A COMPARATIVE ANALYSIS OF MIGRANT
PROTECTION IN THE DARIEN GAP UNDER THE EUROPEAN AND INTER-
AMERICAN SYSTEMS**

By

María de los Ángeles Avellaneda Herrera

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Supervisor: Lena Riemer

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I, the undersigned, Maria de los Angeles Avellaneda Herrera, candidate for the LLM degree in Human Rights declare herewith that the present thesis titled “Crossing the Darien: a comparative analysis of migrant protection in the Darien gap under the European and Inter-American systems” is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

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Abstract

The recent humanitarian crisis in the Darien Gap, a dangerous corridor for thousands of migrants crossing from Colombia into Panama, exposes the urgent need for better human rights protections in border zones. This thesis undertakes a comparative analysis of the European Court of Human Rights (ECtHR) and the Inter-American Human Rights System (IAHRS) to identify best practices as the most progressive and integral protection of rights and legal standards that can guide state responsibility in addressing human rights violations. Using the Darien Gap as a case study, this research examines how both regional systems have developed jurisprudence on key issues such as the right to life, access to asylum procedures, detention and externalization. The methodological framework is grounded in comparative legal analysis and allows for an evaluation of how each system articulates state duties in contexts of crisis, mobility, and securitization. This thesis argues that while the Inter-American system provides valuable guidance on collective and structural violations, the European system offers procedural safeguards. The research highlights the framework of both systems to address the protection gaps faced by migrants in the Darien Gap and identifies the potential of regional mechanisms to shape state practices in line with international obligations, even in contested and high-risk transit zones.

Keywords: comparative law, human rights systems, migration, Darien Gap, ECtHR, IAHRS, border governance, state responsibility.

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Introduction

What can be learned from comparing the Inter-American and European human rights systems when it comes to protecting asylum seekers, especially in a context of the Darien Gap? This thesis explores that question, focusing on how regional legal standards and institutional practices can shape state responsibility in one of the most dangerous migration routes in the world.

The Darien Gap, a deep jungle that connects Colombia and Panama, in the last few years has become an important corridor for migrants many of whom are fleeing violence, poverty, or political persecution in their home countries. In 2023, more than 500,000 people crossed this border and the situation showed the world the risks and violations of human rights that migrants were facing². The Panamanian state has responded with humanitarian actions but with restrictive migration controls that include detention, fines, and deportations as well³. Additionally, in July 2024 Panama signed a Memorandum of Understanding with the United States that has impacted the dynamics of migration and the protection of rights⁴.

This research looks at what principles and standards the European and Inter-American human rights systems have created and how their legal frameworks can offer insights and lessons for the Darien Gap as a case study. Both systems have developed strong jurisprudence on key human rights concepts, but they do so in different ways; while the European Court of Human Rights tends

² The Guardian 'Record half million people crossed the treacherous Darién Gap in 2023' (*The Guardian*, 3 January 2024) <<https://www.theguardian.com/us-news/2024/jan/03/record-half-million-people-crossed-darien-gap-2023>> Accessed January 10, 2025

³ DW Español, 'Panama Will Impose Fines of Up to Five Thousand Dollars on Migrants' (DW Español, 31 October 2024) <<https://www.dw.com/es/panam%C3%A1-aplicar%C3%A1-multa-de-hasta-cinco-mil-d%C3%B3lares-a-migrantes/a-70658061>> Accessed April 12, 2025.

⁴ Memorandum of understanding between the Government of Panama and the United States on migration cooperation (Ministerio de Relaciones Exteriores de Panamá) <<https://mire.gob.pa/memorandum-entre-el-gobierno-de-la-republica-de-panama-y-el-gobierno-de-los-estados-unidos-de-america-sobre-asistencia-y-cooperacion-en-asuntos-migratorios/>> Accessed 12 April 2025

to focus on procedural safeguards and strict lawfulness, the Inter-American Court emphasizes structural inequalities, collective harm, and the pro persona principle. The thesis focuses on four central areas where violations are ongoing in the Darien region (1) protection of life and safety, including positive obligations; (2) the legality and conditions of immigration detention; (3) the right to effective remedies and access to asylum; and (4) externalization policies and their human rights implications.

The main objective is to assess whether Panama's recent migration policies are consistent with the standards established by the ECtHR and IACHR which includes evaluating practices such as the use of temporary reception centers, expedited removals, and biometric identification systems considering human rights law. The analysis focuses specifically on developments from 2022 to early 2025, a period marked by significant legal and policy shifts.

Methodologically, the thesis uses a comparative legal approach, drawing from judgments, advisory opinions, and official reports. It also incorporates doctrinal legal research to examine commentary from scholars and practitioners in the field. Primary sources such as international treaties and regional case law are complemented by secondary sources including NGO reports and publications by international organizations.

This research aims to contribute to a deeper understanding of how regional human rights systems have developed the protection of migrants in borders such as the Darien Gap. It seeks to offer practical, rights-based recommendations for states like Panama that are facing complex migration challenges defining the strength of each system.

1. The Darien Gap

1.1. Overview

One of the most dangerous migration routes in the world is the Darien Gap. In 2023, half a million migrants crossed the jungle that constitutes the border between Panama and Colombia⁵ and 52 remain missing⁶. The migrants that cross the border are, according to Refugees International, mostly Venezuelans and Haitians, being the first ones, most of the migrants, with sixty percent of the people that cross the jungle⁷. There are also Colombians and Ecuadorians present on the route. Additionally, there is a high influx of migrants coming from African and Asian countries, especially India, Bangladesh, and Nepal from Asian, and Eritrea, Ethiopia, Nigeria, and the Democratic Republic of the Congo (DRC) from Africa⁸.

It is over 7.014 km² and it is the third biggest jungle in Central America. The Darien Gap is the only interruption of the Pan-American route that connects Canada with Argentina⁹. The characteristics of the jungle and its biodiversity make the jungle a difficult path to cross, and those who do it are subjected to multiple risks. For December 2024, 55 migrants died while crossing the

⁵ The Guardian (n 2)

⁶ International Organization for Migration, 'The Americas | Missing Migrants Project' (*Missing Migrants Project*, 2025) <<https://missingmigrants.iom.int/region/americas>> Accessed 12 April 2025

⁷ Rachel Schmidtke and Caitlyn Yates, 'After the Darien: Aid and Pathways for Migrants in Panama and Costa Rica' (*Refugees International*, 11 October 2024) <<https://www.refugeesinternational.org/reports-briefs/after-the-darien-aid-and-pathways-for-migrants-in-panama-and-costa-rica/>> Accessed April 12, 2025

⁸ Caitlyn Yates, 'As More Migrants from Africa and Asia Arrive in Latin America, Governments Seek Orderly and Controlled Pathways' (*Migration Policy Institute* October 22, 2019) <<https://www.migrationpolicy.org/article/extracontinental-migrants-latin-america>> Accessed April 12, 2025

⁹ WCS 'El Darién' (*Wildlife Conservation Society*) <<https://programs.wcs.org/gcf-the5greatforests/es-es/-Sobre-Los-5-Grandes-Bosques-de-Mesoamerica/El-Dari%C3%A9n>> Accessed April 10, 2025

Darien Gap¹⁰. Other risks faced by the migrants are the sexual violence acts that organized crime organizations have committed and that have been reported by Doctors Without Borders ¹¹; death and disappearances¹², and harsh environmental conditions such as flash floods, mosquito-borne dengue fever and malaria, to falls from cliffs¹³. The Clan del Golfo organization controls who transit of the route and charges a price for its crossing.

The massive migration from Venezuelan has been caused by an authoritarian government and an economic crisis that was exacerbated by the COVID-19 pandemic¹⁴. According to the United Nations, since 2015, more than 7,7 million Venezuelan persons have left their country¹⁵. Many of the Venezuelans crossing the gap lived in Colombia for months or years to save enough money to keep the route to the United States through the Darien Gap.

For Haitians, who are the second biggest group that crosses through the Gap, the situation is not much different. Before 2015, they were the main nationality crossing the border, and the numbers are still similar. The main cause of migration for Haitians is the massive earthquake of 2010 that

¹⁰ The Guardian and Agence France-Presse, 'Panama says 55 US-bound migrants have died crossing Darién Gap this year' (*The Guardian* December 19, 2024) <<https://www.theguardian.com/world/2024/dec/19/darien-gap-deaths-immigration>> Accessed April 15, 2025

¹¹ Médicos Sin Fronteras 'Sexual Violence in the Darién: "They Tried to Rape Me, They Groped Me, and Left Me with Bruises"' (*Médicos Sin Fronteras*, June 18, 2024) <<https://www.msf.es/noticia/violencia-sexual-darien-intentaron-violarme-me-manosearon-y-me-dejaron-varios-morados>> Originally in Spanish. Accessed April 11, 2025.

¹² Human Rights Watch, "'Hell Was My Only Option": Abuses against Migrants and Asylum Seekers Pushed to Cross the Darién Gap' (*Human Rights Watch*, November 2023) <<https://www.hrw.org/report/2023/11/09/hell-was-my-only-option/abuses-against-migrants-and-asylum-seekers-pushed-cross#4065>> Accessed 12 April 2025

¹³ Ibid

¹⁴ Julie Turkewitz, 'En números récord, los venezolanos arriesgan una travesía mortal para llegar a la frontera de EE. UU.' (*The New York Times en Español*, October 7, 2022) <<https://www.nytimes.com/es/2022/10/07/espanol/darien-venezolanos.html>> Originally in Spanish. Accessed April 12, 2025

¹⁵ R4V 'Refugiados y migrantes de Venezuela' (*R4V* December 3, 2024) <<https://www.r4v.info/es/refugiadosymigrantes>> Originally in Spanish. Accessed April 12, 2025

was followed by a political crisis until 2018, gang violence, and political instability ¹⁶. The main destination is the United States, for which they must cross the Darien Gap, but some of them stay in countries such as Colombia or Brazil.

Regarding Ecuadorians, in 2022, they were a big portion of the people crossing the gap, and the number has been increasing over time. In 2022, Ecuadorians were, after Haitians, the largest nationality in the gap¹⁷. The causes for the migrations of Ecuadorians are related to the increased violence present in the country because of drug production, extortion, and economic difficulties for the lower and middle classes after the COVID-19 crisis. For Colombians, the number of people crossing the Darien Gap increased in 2022 and 2023 by 214%¹⁸, making them one of the main nationalities in the dangerous group. The Colombian Ombudsman (Defensor del Pueblo in Spanish) indicated that the reasons for Colombians to cross the border are better work opportunities, family reunification, and the escape from violence and insecurity of the internal armed conflict.

In 2022, 1.300 Chinese crossed the Darien Gap¹⁹ some of the reasons to escape their country of origin are related to political oppression and the dark economic future for some of them. The New

¹⁶ Emmanuela Douyon, 'Haitians Flee a Nation Nearing Collapse' (*Migration Policy Institute* July 5, 2023) <<https://www.migrationpolicy.org/article/haitians-flee-collapse>> Accessed 24 March 2025

¹⁷ BBC Mundo 'Tapón del Darién: 4 factores que explican por qué los ecuatorianos son ahora los sudamericanos que más cruzan la selva camino a EE.UU.', *BBC Mundo* (23 February 2023) <https://www.bbc.com/mundo/noticias-america-latina-64753352> > Originally in Spanish. Accessed March 24, 2025.

¹⁸ Defensoría del Pueblo 'In one year, the number of Colombians crossing the Darién jungle increased by 214%' (*Defensoría del Pueblo*, December 4, 2023) <<https://www.defensoria.gov.co/-/en-un-a%C3%B1o-se-increment%C3%B3-en-214-el-n%C3%BAmero-de-colombianos-que-atravesan-la-selva-del-dari%C3%A9n>> Originally in Spanish. Accessed March 24, 2025.

¹⁹ BBC Mundo 'The growing number of Chinese migrants crossing the Darien jungle to reach the U.S' (*BBC Mundo* February 23, 2023) <<https://www.bbc.com/mundo/noticias-internacional-64070549>> Originally in Spanish. accessed 24 March 2025.

York Times²⁰ collected some of the stories of Chinese in the Gap, and the point in common are the economic struggles that they are facing in China. A large group of the migrants that come from Africa, which in 2023 were over 9.000²¹, are fleeing their countries because of political crises, that as the case of Senegal²², but other nationalities such as Somalia, Cameroon, and Sierra Leone are present in the Darien Gap as well²³. African migrants often cross the Atlantic Ocean to arrive in Brazil and continue their journey in South America²⁴.

Finally, it is important to recall that out of all migrants crossing the Darien jungle, 51% of them are adult men and the rest are women and children²⁵. The difficult conditions of the route may have a special impact on women, children, the elderly, and disabled persons who are often subjected to multiple types of violence.

1.2. Risks and Dangers of the route

Due to difficult access to the Darien Jungle and the impossibility of building a road, there has not been a safe formal route to cross the Gap. In July 2024, the Panama government announced the

²⁰ The New York Times ‘Migrantes chinos en el Darién: la travesía de quienes buscan llegar a EE. UU.’, (*The New York Times* December 6, 2023) <<https://www.nytimes.com/es/2023/12/06/espanol/migrantes-chinos-darien.html>> Originally in Spanish. Accessed 24 March 2025.

²¹ Los Angeles Times ‘Migrantes africanos utilizan Colombia en tránsito aéreo hacia El Salvador para evitar el Darién’ (*Los Angeles Times* December 25, 2023) <<https://www.latimes.com/espanol/internacional/articulo/2023-12-25/migrantes-africanos-utilizan-colombia-en-transito-aereo-hacia-el-salvador-para-evitar-el-darien>> Originally in Spanish. Accessed 24 March 2025.

²² IFRC ‘From Sierra Leone to the Darién: Migrants cross continents for a better future’, (*International Federation of Red Cross and Red Crescent Societies*, May 30, 2025) <<https://www.ifrc.org/article/sierra-leone-darien-migrants-cross-continents-better-future>> Accessed 24 March 2025.

²³ Ibid

²⁴ Ibid

²⁵ Pan American Health Organization, ‘Migración en tránsito: Darién Colombia - Panamá’ (*Pan American Health Organization* June 2024) <<https://www.paho.org/sites/default/files/2024-07/migracion-entransito-dariencolombiapanama-cchd.pdf>> Originally in Spanish. Accessed April 12, 2025.

closing of three unauthorized routes²⁶. The access points were installed with barbed wire barriers, and a humanitarian passage was created by the Panamanian government and through which migrants may receive assistance from UNCHR, UNICEF, and the Red Cross ²⁷. Several experts and authorities criticized the closing of the route, arguing that it was going to lead to the creation of another, and more dangerous, route, which may lead to violations of human rights and environmental protection due to the cutting of trees²⁸. The impact of the barriers had little effect since the migrants cut the fences or crossed above or under them.

Additionally, in January 2024 the Panamanian government indicated that the migrants that cross the Darien Gap were going to will be fined up to \$5,000, in the press release Panama's president indicated that the fine must be adjusted to be affordable but if the migrants do not have the financial resources to comply they would be deported²⁹. Panama's use of barriers, fines, and deportation threats raises serious concerns about access to asylum and the right to effective legal remedies and the non-penalization principle established in the 1951 Refugee Convention. The humanitarian corridor does not offset the lack of genuine access to protection procedures. Thomas Gammeloft indicates that refugees that are not present in the state's territory but still under their jurisdiction are only entitled to a set of rights centered on the non-refoulement obligation³⁰. Panama's actions

²⁶ Deutsche Welle, 'Panamá cierra tres pasos no autorizados en selva del Darién' (*Deutsche Welle* 3 July 2024) <<https://www.dw.com/es/panam%C3%A1-cierra-tres-pasos-no-autorizados-en-selva-del-dari%C3%A9n/a-69554490>> Originally in Spanish. Accessed April 10, 2025

²⁷ BBC News Mundo, 'Las barreras de alambres de púas con las que el gobierno de Panamá cerró varios pasos del tapón del Darién' (*BBC News Mundo*, July 18, 2024) <<https://www.bbc.com/mundo/articles/cpe39xlql70o>> Originally in Spanish. Accessed April 10, 2025.

²⁸ Ibid.

²⁹ DW Español, 'Panama Will Impose Fines of Up to Five Thousand Dollars on Migrants' (*DW Español*, 31 October 2024) <<https://www.dw.com/es/panam%C3%A1-aplicar%C3%A1-multa-de-hasta-cinco-mil-d%C3%B3lares-a-migrantes/a-70658061>> Originally in Spanish. Accessed April 12, 2025

³⁰ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Reprint edn, Cambridge University Press 2011 p. 28

that block the entry of refugees without even assessing their claims, even though the refugees are outside Panama's jurisdictions may violate the principles of non-refoulment.

Migrants crossing the Darien Gap experience compounded human rights violations both from non-state actors and from state failures to provide protection. These include violations of the right to life and physical integrity, due to extortion, armed violence, sexual abuse, and extreme natural conditions³¹. Sexual violence is especially prevalent, with MSF reporting over 676 cases in 2023³², and more than 135 already in the first months of 2024³³. In many cases, entire groups of migrants are kidnapped, robbed, and assaulted³⁴.

Since 2015, several organizations have been providing humanitarian aid to the migrants arriving in Panama through the Darien Gap: The Red Cross, Doctors without Borders, HIAS, UNICEF, etc. These organizations oversee medical care, psychological support, and sanitation services³⁵. The Panamanian government has established some temporary migrant stations in San Vicente, Bajo Chiquito, and Canaan Membrillo, where the organizations can work helping the migrants; however, the efforts are still not enough to cover the needs of the migrants³⁶. Moreover, Panama's National Office for Refugee Attention (ONPAR) has been working with UNHCR to process asylum applications³⁷.

³¹ UNHCR, 'Risks of the Darién' (*UNHCR Panama*) <<https://help.unhcr.org/panama/en/risks-of-the-darien/>> Originally in Spanish. Accessed 28 April 2025.

³² Médicos Sin Fronteras, 'Despite Multiple Warnings, Sexual Violence in the Darién Does Not Stop' (*Médicos Sin Fronteras*, 25 January 2024) <<https://www.msf.org.co/actualidad/pese-a-multiples-alertas-no-se-detiene-la-violencia-sexual-en-el-darien/>> Originally in Spanish. Accessed 28 April 2025.

³³ Médicos Sin Fronteras (n 11)

³⁴ Médicos Sin Fronteras (n 11)

³⁵ Rachel Schmidtke and Caitlyn Yates, 'After the Darien: Aid and Pathways for Migrants in Panama and Costa Rica' (*Refugees International*, 11 October 2024) <<https://www.refugeesinternational.org/reports-briefs/after-the-darien-aid-and-pathways-for-migrants-in-panama-and-costa-rica/>> Accessed April 10, 2025

³⁶ Ibid

³⁷ Ibid

Moreover, reception conditions on both sides of the border are not ideal. In Panama, the destruction of the San Vicente station³⁸ and the suspension of MSF's operations³⁹ have led to overcrowding and inadequate services, with some migrants stranded for over three months⁴⁰. In Necoclí, Colombia, the absence of formal facilities has left migrants, including children, sleeping on the streets and exposed to trafficking, with authorities unable to identify or assist vulnerable individuals.⁴¹

These situations and risks often affect the right to life and physical integrity, as migrants are subjected to extreme geographical dangers, sexual and physical violence, human trafficking, and lack of access to urgent medical care. Through kidnappings, sexual abuse, and degrading reception conditions, the prohibition of torture and inhuman or degrading treatment is sometimes breached. The rights of children are also affected due to family separations, lack of adequate shelter, education, and psychological support. These violations expose the failure of the Panama's government to provide dignified reception conditions and to prevent abuses by third parties. In the following sections, these rights and their violations will be examined through relevant case law from the Inter-American and European human rights systems.

³⁸ CNN Español 'Destrozos en instalación para migrantes en Darién tras pelea' (CNN Español, 2 March 2024) <<https://cnnespanol.cnn.com/2024/03/02/destrozos-instalacion-migrantes-darien-pelea-orix>> Originally in Spanish. Accessed 12 April 2025.

³⁹ France 24 'Panamá suspende a MSF tras denuncia de aumento de violaciones a migrantes en la selva' (*France 24*, 7 March 2024) <<https://www.france24.com/es/minuto-a-minuto/20240307-panam%C3%A1-suspende-a-msf-tras-denuncia-de-aumento-de-violaciones-a-migrantes-en-la-selva-1>> Originally in Spanish. Accessed 12 April 2025

⁴⁰ Rachel Schmidtke, 'Llenar el vacío: apoyo humanitario y vías alternativas para los migrantes en la periferia de Colombia' (*Refugees International*, 19 July 2022). <<https://www.refugeesinternational.org/reports-briefs/llenar-el-vacio-apoyo-humanitario-y-vias-alternativas-para-los-migrantes-en-la-periferia-de-colombia/>> Originally in Spanish. Accessed 12 April 2025

⁴¹ Ibid

1.3. Recent developments

Now, when exploring the Darien Gap migrant crisis for the purposes of this thesis, the consequences of the Memorandum of Understanding signed during Biden's administration with the current Panamanian administration between, were increasingly more significant and the numbers of migrants crossing the Darien Gap has been lowered. In December 2024, 4.558 people crossed the border, which represents 80% less compared to the same month in 2023⁴², therefore it is worth mentioning its content and the implications of the agreements between the countries.

The MOU was signed on July 1, 2024, and its purpose is to “promote collaboration in migration management, including support for safe and effective Panamanian repatriation operations and the review of cases requiring protection”⁴³. Among several articles regarding the provision of technical and economic support, it included advising on best practices “for the administrative procedures about migration matters, which includes the process of investigation with the aim of protection of the migrants subjected to expulsion orders.” Moreover, the “support to Panama with the necessary resources of the centers that handle the immigration measures of those who are not nationals of any of the participant countries, according to the Panamanian law, due process, and respect of human rights.”

The MOU includes support with transport to those who contravene laws and enter unlawfully and collaborate with the administrative measures of the transport of those older than 18 years old of

⁴² Ministerio de Seguridad Pública, ‘Cierre de trochas en Darién reduce el flujo migratorio en un 93%’ (*Ministerio de Seguridad Pública*, 24 enero 2025) <<https://www.minseg.gob.pa/2025/01/cierre-de-trochas-en-darien-reduce-el-flujo-migratorio-en-un-93/>>Originally un Spanish. Accessed 12 June 2025

⁴³ Ministerio de Relaciones Exteriores de Panamá, ‘Memorandum of understanding between the Government of Panama and the United States on migration cooperation’ (*MIRE*, 2025) <https://mire.gob.pa/memorandum-entre-el-gobierno-de-la-republica-de-panama-y-el-gobierno-de-los-estados-unidos-de-america-sobre-asistencia-y-cooperacion-en-asuntos-migratorios/> Originally in Spanish. Accessed 12 April 2025

the identified nationalities in proportion to the increase of the irregular migration influx, which includes planes and plane tickets⁴⁴. In this way, the United States government will allocate economic resources to expedite and increase the efforts of the removal of those in irregular situations.

The consequences of the MOU were not immediate; however, a significant reduction has been evident in the first days of 2025. According to the Panamanian National Migrant Service, by the end of 2024, the number of migrants crossing the Darien gap 2024 decreased to 302,203 compared to the historical number of 520,085 that crossed in 2023⁴⁵. Moreover, for the first 23 days of 2025, the reduction, according to the Panamanian authorities, was about 93% compared to 2024. 1,710 persons crossed the border in that time-lapse, and in 2024, 23,099⁴⁶.

The first action executed under the MOU was done in August 2024. A flight, whose costs were assumed by the United States government, was sent to Colombia with migrants that irregularly crossed the Darien Gap⁴⁷. In the press release held by Panamanian authorities, the security vice minister indicated that some of the migrants who were in the flight have a criminal background, and they clarified that according to the MOE, “allows the deportation of all migrants that crossed irregularly the border and not only those with criminal priors”⁴⁸.

⁴⁴ CNN. ‘Panama and US implement migrant deportation program to combat illegal migration, CNN International’ (CNN, 1 July 2024) <https://edition.cnn.com/2024/07/01/americas/panama-us-darien-migrants-agreement-intl-latam/index.html> Accessed 12 April 2025

⁴⁵ Ministerio de Seguridad Pública de Panamá, ‘Cierre de trochas en Darién reduce el flujo migratorio en un 93%’ (Ministerio de Seguridad Pública de Panamá, January 2025) <<https://www.minseg.gob.pa/2025/01/cierre-de-trochas-en-darien-reduce-el-flujo-migratorio-en-un-93/>> Originally in Spanish. Accessed 12 April 2025.

⁴⁶ Ibid.

⁴⁷ Presidencia Panama ‘Panamá y Estados Unidos ponen en ejecución programa de deportación para combatir la migración ilegal Presidencia de Panamá’ (Ministerio de Seguridad Pública de Panamá, August 20, 2024) <<https://www.presidencia.gob.pa/publicacion/panama-y-estados-unidos-ponen-en-ejecucion-programa-de-deportacion-para-combatir-la-migracion-ilegal>> Originally in Spanish. Accessed 12 April 2025

⁴⁸ Migracion Panama ‘Panamá y Estados Unidos ponen en ejecución programa de deportación para combatir la migración ilegal’ (Migracion Panama, 1 August 2024) <<https://www.migracion.gob.pa/panama-y-estados-unidos->

The Panamanian National Migrant Service department has indicated that by February 2025, 44 flights with deported migrants that irregularly crossed the Darien Gap have been completed, 42 of them have been financed by the United States government, and the remaining 2 by the Panamanian government⁴⁹. According to the government agency, the people were deported due to the infringement of migration laws and a previous criminal record, such as human trafficking, sexual aggression, and control station evasion⁵⁰.

After the signature of the agreement, a biometric system was put in place for the Panamanian government with the support of the United States government. According to the government, this system is helping the authorities to identify individuals with criminal backgrounds in their home countries⁵¹. In Las Lajas, where a Temporary reception station for migration reception is, the Border National Service has apprehended migrants with criminal backgrounds and turned them over to the Migration National Service of Panama⁵².

As part of the process to access refugee protection in Panama, that is contained in the Executive decree No. 5 of 2018, the individual must apply for protection within the first six months after their entry to the country (Art. 30), they will have to fill out a form and submit it to the Refugee

[ponen-en-ejecucion-programa-de-deportacion-para-combatir-la-migracion-ilegal/](#) > Originally in Spanish. Accessed 3 June 2025.

⁴⁹ Migracion Panama. 'Panamá y Estados Unidos refuerzan cooperación para el control fronterizo y la migración irregular' (*Migracion Panama*, February 3, 2025) <<https://www.migracion.gob.pa/panama-y-estados-unidos-refuerzan-cooperacion-para-el-control-fronterizo-y-la-migracion-irregular/#:~:text=De%20estos%2044%20vuelos%20masivos,fueron%20deportados%2043%20ciudadanos%20colombianos.>> Originally in Spanish. Accessed 12 April 2025

⁵⁰ Ibid

⁵¹ Migracion Panama 'Gracias al sistema biométrico se puede detectar personas con antecedentes' (*Servicio Nacional de Migración*, August 22, 2024) <https://www.migracion.gob.pa/gracias-al-sistema-biometrico-se-puede-detectar-personas-con-antecedentes/> Originally in Spanish. Accessed 12 April 2025

⁵² Servicio Nacional de Fronteras 'Una condena de 84 meses y detención provisional para tres de los implicados en robo agravado de autos en Barú' (*Servicio Nacional de Fronteras*, August 26, 2024) <https://www.senafront.gob.pa/una-condena-de-84-meses-y-detencion-provisional-para-tres-de-los-implicados-en-robo-agravado-de-autos-en-baru/> Originally in Spanish. Accessed 12 April 2025

Attention Office (ONPAR) who will interview to determine if the application has the requirements to get refugee status. After this determination, the application is sent to the National Commission for Refugee Protection (CONARE), the institution in charge of making the final determination⁵³. CONARE is a group of government officials in charge of the determination of refugee status.

According to Article 43 of the Decree, if the first determination made by ONPAR is not satisfactory, the individual may appeal against the decision with a reconsideration request within five days after receiving the decision. The timeframe for the CONARE determination, which has to be submitted and sustained within five days as well⁵⁴.

Article 68 of the decree indicates that only the apprehension measures that the authorities consider necessary will be applied until the individual has regularized their immigration status or has obtained protection in another country⁵⁵. Mr. Gehad Madi, special rapporteur for human rights of migrants, on the visit held from February 13 to 19 of 2025, expressed his concern for the months that the applicants must wait in the Las Lajas Temporary station of migration, which often leads the applicants to abandon their requests⁵⁶. He also expressed his concern for the “racial profiling” and biometric process that people are subjected to, and whose data is shared with the United States government⁵⁷.

⁵³ Executive Decree No. 5. 2018 Article 43

⁵⁴ Ibid. Articles 43, 57, and 64.

⁵⁵ Ibid. Article 68.

⁵⁶ Gehad Madi, ‘Declaración de fin de visita - Panamá 13 a 19 de febrero de 2025’ (*Relator Especial de la ONU sobre los derechos humanos de los migrantes*, 2025) https://www.ohchr.org/sites/default/files/documents/issues/srmigrants/SRMigrantsEndofVisitStatement_Panama_ES_P.pdf Originally in Spanish. Accessed 12 April 2025

⁵⁷ Ibid.

Finally, as part of the agreements that followed the MOU, in February 2025, the United States government sent to Panama 299 migrants from India, China, Uzbekistan, Irán, Vietnam, Türkiye, Nepal, Pakistan, Afghanistan, and other nationalities⁵⁸. Panama will serve as a “bridge” country to receive migrants who were for over a month in a hotel as part of temporary custody and not detention, as indicated by the Minister of Public Security, however, according to news reports, the migrants were not allowed to leave the hotel or use their phones and more than 128 that did not agree to return to their countries of origin, were sent to the San Vicente Temporary Station for migrants in Darien⁵⁹.

As of May 2025, the migrants detained in Darien were released and they were given a permit to stay in the country⁶⁰. However, it has been denounced that migrants were put in a bus for seven hours to Darien without the proper information about the destination, Moreover, BBC interviewed migrants who indicated that the shelter conditions were not proper, and they were mistreated by Panamanian authorities⁶¹. They stated that they did not have medicine or food. The United Nations arrived in San Vicente several days after the migrants arrived⁶².

⁵⁸ BBC Mundo ‘¿Por qué la selva del Darién es una de las rutas migratorias más peligrosas del mundo?’ (*BBC Mundo*, February 19, 2025) <<https://www.bbc.com/mundo/articles/cx29gryx813o>> Originally in Spanish. Accessed 12 April 2025

⁵⁹ Ibid

⁶⁰ Nicholas Dale Leal, 'Asiáticos, africanos o rusos a Panamá y a Costa Rica: la maquinaria de deportaciones de Trump a Latinoamérica' (*El País*, 4 May 2025) <https://elpais.com/us/migracion/2025-05-04/asiaticos-africanos-o-rusos-a-panama-y-costa-rica-las-deportaciones-de-trump-mas-alla-de-los-venezolanos-enviados-a-el-salvador.html> Originally in Spanish. Accessed 3 June 2025.

⁶¹ Cecilia Barria, Santiago Vanegas and Ángel Bermúdez, ‘Los migrantes deportados por EE.UU. que están aislados en un hotel de Panamá y piden ayuda a través de las ventanas’ (*BBC News Mundo*, 19 February 2025) <<https://www.bbc.com/mundo/articles/cx29gryx813o>> Originally in Spanish. Accessed 12 April 2025.

⁶² Ibid

To the BBC, Juanita Goebertus from Human Rights Watch indicated that some migrants were abandoned in the bus stations of Panama City without any place to stay⁶³. According to the report, some of these migrants are in a limbo where they do not want to leave Panama for their home country, they do not have an immigration status in a third country, and their temporary permission expires after 30 days⁶⁴. Furthermore, we will analyze the key developments of the Darien Gap and Panamanian situation in light of the European Court of Human Rights and the Inter-American Court of Human Rights. First, we will review the case law regarding safety, life protection obligations, and reception conditions. Secondly, about asylum procedures and effective remedies, thirdly, about penalization and detention of refugees, and fourth externalization and solidarity.

⁶³Santiago Vanegas and Sheida Hooshmandi, 'No podemos volver a nuestro país ni quedarnos aquí ni encontrar a dónde ir: los migrantes de Asia y África atrapados en Panamá tras ser deportados de EE.UU.' (*BBC News Mundo* 27 March 2025) <<https://www.bbc.com/mundo/articles/cddy8n6p1p7o>> Originally in Spanish. Accessed 12 April 2025

⁶⁴ Ibid

2. Typology of Violations and Legal Standards

2.1. Safety, life protection obligations, and reception conditions

The right to life is the fundamental human right, protected under Article 2 of the European Convention on Human Rights (ECHR)⁶⁵ and Article 4 of the American Convention on Human Rights (ACHR)⁶⁶. Both provisions establish that states must not only refrain from arbitrary deprivation of life but also take positive measures to protect individuals from foreseeable risks, particularly when the state is aware of real and immediate danger.

In the Darien Gap, this obligation is seriously compromised. As developed in the previous chapter, the conditions of the route are extremely dangerous since migrant's risk of drowning, dying from exhaustion or exposure, and being attacked by criminal groups. Despite being aware of these recurring dangers, Panamanian authorities have not implemented an adequate search and rescue strategy and for instance, Doctors Without Borders reported that in 2023 alone, at least 55 migrants died, and dozens more went missing while attempting the crossing⁶⁷ Closely tied to this is the right to personal integrity, protected under Article 3 ECHR and Article 5 ACHR that prohibit torture and inhuman or degrading treatment or punishment; According to MSF⁶⁸, over 670 cases of sexual violence were documented in 2023 alone.

⁶⁵ Council of Europe. "Convention for the Protection of Human Rights and Fundamental Freedoms." Council of Europe Treaty Series 005, Council of Europe, 1950 Article 2.

⁶⁶ Organization of American States. "American Convention on Human Rights." Treaty Series, No. 36, Organization of American States, 1969 Article 4.

⁶⁷ The Guardian and Agence France-Presse (n 10)

⁶⁸ Médicos Sin Fronteras (n 11)

The case of *Safi and Others v. Greece* decided by the European Court of Human Rights in which a fishing boat carrying migrants was intercepted by the Greek coastguard near Farmakonisi and according to the applicants, the coastguard attempted to tow the boat back toward Turkey at high speed in rough seas, causing it to capsize and in which some of the migrants drowned. In this regard, the Court emphasized that Article 2 of the Convention is not only an obligation to refrain from *intentional taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction*⁶⁹. For the Court, the positive obligation is connected to the need to establish that the authorities *knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk*⁷⁰.

Following the protection under Article 2, in *Alhowais v Hungary*, the case involves a Syrian national who attempted to cross from Serbia to Hungary via the Tisza River in 2016, along with his brother, cousin, and other migrants. Hungarian police allegedly prevented their entry, instructing them to return to Serbia. Some migrants attempted to swim back, but the applicant's brother drowned⁷¹. According to the Court: “*The State’s duty to safeguard the right to life must also be considered to extend to the provision of emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident. The State’s duty in this context also involves the setting up of an appropriate regulatory framework for rescuing persons in distress and ensuring the effective functioning of such a framework.*”⁷²

⁶⁹ *Safi and Others v Greece* App no 5418/15 (ECHR, 7 July 2022) [149]

⁷⁰ *Safi and Others v Greece* App no 5418/15 (ECHR, 7 July 2022) [150]

⁷¹ *Alhowais v Hungary* (App no 59435/17) ECHR 2 February 2023.

⁷² *Alhowais v Hungary* App no 59435/17 (ECHR, 2 February 2023) [118]

The development of the ECTHR interpretation of Article 2 includes several obligations that the state has when the authorities know about the risk that people are facing. The Court recognizes the right to control and expel aliens; however, it has indicated that the migration control policies cannot justify practices that are not compatible with the Convention.⁷³

Regarding the reception conditions in *M.S.S. V. Belgium And Greece*, the Court stated that States are not obliged to provide all persons a home of financial assistance⁷⁴, however, the Court also reiterated the special conditions of vulnerability of asylum seekers who need special protection⁷⁵ and the possible breach of Article 3 of the Convention when a person is left with serious deprivation incompatible with human dignity⁷⁶. In the case in particular, the Court found Greece is responsible since it did not take the actions to prevent the applicant from being homeless, with no resources or access to sanitary facilities, and without any means of providing for his essential needs⁷⁷. For the ECTHR, the applicant had been a victim of humiliating treatment. In particular, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not create for them a situation of stress and anxiety, with particularly traumatic consequences⁷⁸.

For unaccompanied children, the ECTHR has indicated that children have to be provided with adequate accommodation, in *M.A. v. ITALY* in which a minor was subjected to sexual violence, the Court considered that the conditions of the Osvaldo Cappelletti center were not appropriate

⁷³ Ibid 133

⁷⁴ *MSS v Belgium and Greece* App no 30696/09 (Grand Chamber, ECHR, 21 January 2011) [249]

⁷⁵ Ibid 251

⁷⁶ Ibid 253

⁷⁷ Ibid 263

⁷⁸ Ibid 233

since it was not equipped to provide the applicant with appropriate psychological assistance and the authorities inaction let a minor subjected to inhuman treatment.⁷⁹

In the case of *O.M. V. Hungary*, the Court considered that States must assess asylum seekers who claim to be part of a vulnerable group in the country from which they had to leave, since not doing so could lead to situations that reproduce the conditions that forced the applicant to leave their home country. The decisions of the authorities should contain adequate reflection on the individual circumstances of the applicant⁸⁰. The assessment of the particular conditions of the applicants was also reiterated by the Court in the case of *H.M. and Others V. Hungary*, where a pregnant woman with a high-risk pregnancy received medical attention but the particular conditions of anxiety and psychological with to her vulnerability increase the threshold of the Article 3 of the Convention.

Now, one of the pillars of the Interamerican system of Human Rights is the principle *pro-persona* which states: *when interpreting a treaty provision priority should be given to the application of the rule that grants greater protection to the rights of the person and/or the rights should be interpreted broadly and in favor of the individual*⁸¹

The Interamerican Commission has tackled some of the rights related to migration from different perspectives. Regarding the right to safety and life. The Court, in an advisory opinion OC-21/14, established that the states must approach migration from a preventive scope⁸². According to the Commission, States must address the origins of migration, and they should prevent and solve the

⁷⁹ *MA v Italy* App no 70583/17 (ECHR, 31 August 2023) [48].

⁸⁰ *OM v Hungary* App no 9912/15 (Fourth Section, ECHR, 5 July 2016) [53]

⁸¹ *Corte IDH, Opinión Consultiva OC-25/18: La Institución del Asilo y su Reconocimiento como Derecho Humano en el Sistema Interamericano de Protección* (30 May 2018) [149]

⁸² *Corte IDH, Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional Serie A No 21* (19 August 2014) [64]

causes of migration⁸³. The Commission states: ‘Situations of a mass influx of persons,’ individual determination may be impracticable, but even in these cases, states should guarantee access to ‘protection from refoulment, and basic humanitarian treatment.’⁸⁴

The IACHR has indicated that States may protect their border if they act under limits and procedures that safeguard the life and human rights of a person⁸⁵. For the Court, a State must apply a test to determine the use of force (1), it must be formulated by law (2), exceptional (3), planned and (4) proportionally limited by the authorities and only used when other measures have been exhausted⁸⁶.

In the case of *Nadege Dorzema and others vs. Dominican Republic*, in which security officers shot a car that was transporting migrants and that refused to stop in a border control station causing the death of some of the migrants, the Court indicated that there is lack of rules or policies about the prevention of the use of the force and since the migrants did not represent a threat, the use of the force was not necessary and the State could have used another type of measures to address the specific situation⁸⁷.

⁸³ Ibid

⁸⁴ *Vélez Loor v Panama* (Inter-American Court of Human Rights, Judgment of 23 November 2010, Preliminary Objections, Merits, Reparations and Costs) [262]

⁸⁵ CIDH, Informe de Fondo No 174/10, Caso 12.688 *Nadege Dorzema y otros* (República Dominicana) (12 November 2010) [107] (citing Corte IDH, *Bulacio v Argentina*, Judgment (Merits, Reparations and Costs), 18 September 2003, Serie C No 100)

⁸⁶ CIDH, Informe de Fondo No 174/10, Caso 12.688 *Nadege Dorzema y otros* (República Dominicana) (12 November 2010) [109]

⁸⁷ *Nadege Dorzema and Others v Dominican Republic* (Inter-American Court of Human Rights, Judgment of 24 October 2012) [84]

The Commission also indicated that the interception policy of the United States, which in the case of Haitians in boats trying to arrive in the U.S exposed them to a risk of death that was foreseeable and therefore violated their right to life contemplated in Article 1 of the American Declaration⁸⁸. Finally, the IACHR has emphasized the need for investigations that led to the determination of the violation of a right and the reparation for the victim⁸⁹. In this regard, the Commission cites the ECTHR that has indicated that States “*have to cooperate efficiently with authorities of other States that are interested in the investigation of a case that occurred outside of their territory, especially when the trafficking of persons have taken place in their territory or to its nationals taken into consideration that this is not a problem that it is important only for a State*”.⁹⁰

Now, regarding the reception conditions, the Commission developed inter-American principles for migrants, refugees, and victims of trafficking, even though these principles are not binding, it shows the interpretation and orientation of the system. Principle 16 recognizes the need to protect people in vulnerable situations to avoid any type of discriminatory or exclusionary practice against them in the transit country. Principle 62 includes the State's responsibility to provide humanitarian assistance to migrants. Finally, Article 52 indicates that States must guarantee identification to those in need of international protection or children, moreover, authorities must provide immediate access to information in the ports of entry about the right to asylum, the process to obtain international protection in the language of the person⁹¹.

⁸⁸ CIDH, Caso Comité Haitiano de Derechos Humanos y otros contra Estados Unidos, Caso 10.675, Informe No 51/96, Decisión en cuanto al mérito (13 March 1997)

⁸⁹ *Velásquez Rodríguez v Honduras* (Inter-American Court of Human Rights, Judgment on the Merits, 29 July 1988) Serie C No 4 [166, 176]

⁹⁰ OEA/Ser.L/V/II. Doc. 46/15 (31 December 2015) (citing *Rantsev v Cyprus and Russia* App no 25965/04 (ECHR, 7 January 2010) [289])

⁹¹ Principios Interamericanos sobre los Derechos Humanos de todas las Personas Migrantes, Refugiadas, Apátridas y las Víctimas de la Trata de Personas (Resolución 04/19, Comisión Interamericana de Derechos Humanos, 7 December 2019) principle 47

Regarding children, the Interamerican Commission in OEA/Ser.L/V/II has indicated that the procedures that involve migrant children, such as expulsion, detention, or international refugee protection, should reflect specific standards of protection that take into consideration the special measures that children need⁹². This standard reflects the development of the principle of the superior interest of the minors by the Interamerican system.

2.2. Asylum procedure – Due process

Article 13 of the ECHR⁹³ and Articles 8 and 25 of the ACHR⁹⁴ guarantee the right to an effective remedy and access to fair proceedings. In Darien a five-day deadline to appeal negative decisions is unrealistic given the conditions at reception sites. Moreover, many migrants are unaware of their right to apply for asylum at all. As Mr. Gehad Madi, UN Special Rapporteur on the Human Rights of Migrants, noted during his February 2025 visit, the existing procedures not only lack transparency but discourage individuals from pursuing claims due to long waiting periods and uncertainty⁹⁵.

The right to seek asylum is protected under multiple instruments, including Article 14 of the Universal Declaration of Human Rights and the 1951 Refugee Convention. The principle of non-refoulment, which prohibits returning individuals to a country where they risk persecution, is a key principle of refugee law and is reflected in Article 3 ECHR⁹⁶ and Article 22(8) ACHR⁹⁷.

⁹² OEA/Ser.L/V/II. Doc. 46/15 (31 December 2015) [298]

⁹³ Council of Europe (n 65)

⁹⁴ Organization of American States (n 66)

⁹⁵ Gehad Madi (n 56)

⁹⁶ Council of Europe (n 65)

⁹⁷ Organization of American States (n 66)

About the removal proceedings and the access to asylum, the ECTHR has indicated that in *M.S.S. V. Belgium and Greece* that the assessment of Article 3 in an asylum claim requires close and independent scrutiny by a national authority, that there are substantial grounds for fearing a real risk of treatment contrary to Article 3⁹⁸. Moreover, the Court has indicated that asylum seekers must be provided with adequate information about the asylum procedure to be followed and their entitlements in a language they understand and have access to a reliable communication system with the authorities⁹⁹. The interviews must be done by trained staff, and legal aid must be accessible¹⁰⁰.

In the case of *M.S.S. V. Belgium and Greece*, the court also found other shortcomings such as insufficient information on the asylum procedures, a shortage of interpreters, a lack of training of the staff responsible for conducting the individual interviews, and excessively lengthy delays in receiving a decision¹⁰¹. The effectiveness of procedural guarantees is also related to the specific timeframes that the applicants have. According to the Court in the case of *I.M V. France*, in which an applicant had to file an asylum application in a fast-track procedure, in French without any linguistic assistance, and meeting certain procedural requirements¹⁰². Unreasonable time frames for asylum procedures or appeals may lead to ineffective remedies.

When interpreting Article 8 in the case of *B.A.C. V. Greece*, the ECTHR has indicated that the need for an effective and accessible procedure implies that the asylum request be examined in a

⁹⁸ *MSS v Belgium and Greece* App no 30696/09 (Grand Chamber, ECHR, 21 January 2011) [293]

⁹⁹ *Ibid* 300

¹⁰⁰ *Ibid* 319

¹⁰¹ *Ibid* 301

¹⁰² *IM v France* App no 9152/09 (ECHR, Fifth Section, 2 February 2012, final 2 May 2012)

Cited in European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng-pdf accessed April 25, 2025

reasonable time. According to the Court, the applicant must live in an insecure situation for a long time, and in this regard, a reasonable time of processing is necessary, and it must be ensured by the authorities¹⁰³.

The IACHR has also indicated that “the due process is a right that must be guaranteed regardless of the immigration status of a person (...) every foreign person, even if they are in an irregular migration status, must have the possibility of defend their rights and interests effectively and equality conditions”.¹⁰⁴ Moreover, has indicated that even when states have the right to establish policies to control the entry to their territory, those measures cannot be incompatible with international standards of protection of rights¹⁰⁵.

For the IACHR, a process that could result in the expulsions should always assess personal circumstances and meet the following minimum standards: (a) the person subjected to the process must be informed of the charges against them and the reasons for the expulsion or deportation. The notifications should include (I) the possibility of exposing their reasons to stay (ii) the possibility to request and receive consular assistance and legal advice and if necessary, translation or interpretation (b) in case of receive a negative decision the person should have the right to submit their case to review to the competent authority and (c) be formally notified about the decision of expulsion that must be motivated according to the law”¹⁰⁶. The assistance of an interpreter is

¹⁰³ *BAC v Greece* App no 11981/15 (ECHR, 13 October 2016) [36]

¹⁰⁴ *Vélez Loo v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [143]

¹⁰⁵ *Caso de Personas Dominicanas y Haitianas Expulsadas v República Dominicana* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 August 2014) Serie C No 282 [350]

¹⁰⁶ *Caso de Personas Dominicanas y Haitianas Expulsadas v República Dominicana* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 August 2014) Serie C No 282 [356]

particularly relevant when the case involves a minor. For the Court, the presence of an interpreter is a minimum and essential requirement for the children to be heard and taken into consideration¹⁰⁷.

The Commission has developed the first requirement, which includes the possibility for the person to collect evidence and prepare their case, which is impossible if the term of execution is unreasonably short¹⁰⁸. Therefore, the Commission has indicated that the summary of expedited removal proceedings is contrary to the due process standards¹⁰⁹. Moreover, the Court has stated that even though the recognition of refugees and asylees is often a task of administrative authorities, the agents should be responsible under the law, superiors, and control organisms.¹¹⁰

For the Court, the decision that the authority makes about the request for refugee protection by an applicant has to be based on the facts and the law, and duly and expressly substantiated with the aim that it is possible to exercise the right to appeal that is a minimum standard of due process¹¹¹. Moreover, regarding the right to appeal, for the Court to determine if a decision was formally issued, the authorities must provide all information about how to exercise the right to appeal and provide a reasonable timeframe to submit it¹¹².

Finally, the violation of the minimum guarantees of the due process may also violate the non-refoulment principle since the due process guarantees are the standard in which a process should be conducted under rule of law, if they are not followed, Panama or any other state cannot

¹⁰⁷ Corte IDH, *Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional* Serie A No 21 (19 August 2014) [124].

¹⁰⁸ CIDH, Informe de Fondo No 49/99, Caso 11.610 *Loren Laroye Riebe Star, Jorge Barón Guttlein y Rodolfo Izal Elorz* (México) (13 April 1999) [60]

¹⁰⁹ Ibid 60.

¹¹⁰ Corte IDH, *Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional* Serie A No 21 (19 August 2014) [120].

¹¹¹ Corte IDH, *Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional* Serie A No 21 (19 August 2014) [257]

¹¹² Ibid 257

objectively prove that the right assessment was conducted ensuring the principle of non-refoulment. The Commission, citing the European Court of Human Rights, agreed on certain conditions that may affect the right, which include trial in absentia, conducted with total disregard for the right of defense, detention, without access to a tribunal, and the denial of legal counsel¹¹³.

2.3. Detention

The prohibition of torture and inhuman or degrading treatment is absolute under international law. It is enshrined in Article 3 ECHR¹¹⁴, Article 5 ACHR¹¹⁵, and Article 7 of the International Covenant on Civil and Political Rights (ICCPR)¹¹⁶. It is further reinforced by the UN Convention Against Torture (CAT), to which Panama is a party since 1987.

The ECTHR has recognized the right of the states to detain aliens under Article 5 of the Convention; however, it has stated the principles that should govern the detention since the detention cannot be arbitrary. The main criteria indicated in the case of *Saadi v. the United Kingdom* is that such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorized entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure applies not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their

¹¹³ *Inter-American Commission on Human Rights, Debido proceso en los procedimientos para la determinación de la condición de persona refugiada y apátrida, y el otorgamiento de protección complementaria* OEA/Ser.L/V/II. Doc. 255 (5 August 2020) [129 citing *Othman (Abu Qatada) v United Kingdom* App no 8139/09 (ECHR, 17 January 2012) [259]]

¹¹⁴ Council of Europe (n 65)

¹¹⁵ Organization of American States (n 66)

¹¹⁶ United Nations (General Assembly). “*International Covenant on Civil and Political Rights*.” Treaty Series, vol. 999, Dec. 1966. Article 7.

own country; and the length of the detention should not exceed that reasonably required for the purpose pursued¹¹⁷.

The conditions of the detentions have been highlighted by the court in cases not necessarily related to asylum seekers. In the case of *Georgia V. Russia*, the ECTHR indicated that Article 3 prohibits ill-treatment that reaches a minimum level of severity, considering factors such as the duration of treatment, its physical and mental effects, and the state of health of the victim. Even without physical injury, treatment can be considered degrading if it humiliates or debases the individual, or induces feelings of fear, anguish, or inferiority¹¹⁸. Moreover, the Court stresses that the conditions must respect human dignity. Suffering and humiliation must go beyond the unavoidable hardship of detention, and the state must ensure adequate healthcare and well-being during detention¹¹⁹.

For the case in particular, the Court found Georgian nationals were detained in police stations and detention centers for foreigners under extremely difficult conditions. The detention involved overcrowding, inadequate hygiene, lack of food and water, and a lack of individual sleeping places, with detainees having to take turns sleeping due to insufficient space, and those conditions were incompatible with the dignity of detainees¹²⁰.

Additionally, the detention of mentally ill persons requires special consideration due to their inherent vulnerability and the fact that their mental health conditions may affect their ability to comprehend the situation or respond to the conditions of detention. In *Melnik v. Ukraine*, the Court

¹¹⁷ *Saadi v United Kingdom* App no 13229/03 (ECHR, 29 January 2008) [72].

¹¹⁸ *Georgia v Russia (I)* App no 13255/07 (ECHR, 3 July 2014) [192–194]

¹¹⁹ *Ibid* 195- 200.

¹²⁰ *Ibid* 202- 206.

identified three crucial factors that should be carefully considered when assessing the compatibility of an applicant's health with detention. First, the medical condition of the individual should be thoroughly assessed, considering both the severity of the mental illness and any associated physical health issues. Second, the adequacy of the medical assistance and care provided within the detention facility must be evaluated to ensure that it meets the required standards of care for individuals suffering from mental health conditions. Lastly, the Court emphasized the advisability of maintaining the detention measure considering the applicant's health status¹²¹.

The Court has also indicated that since children are particularly vulnerable, they require special attention from asylum authorities. The conditions under which children are detained must therefore be appropriate to their needs. In the case of *K.K.S. v. Hungary*¹²², the Court addressed a situation where a minor was held in a transit zone and was exposed to freezing conditions. The child did not have access to education, which the Court noted is a crucial element for a child's development. The lack of education and recreational activities, as well as the prison-like conditions of detention, raised serious concerns. In this case, the children were placed in an environment that lacked adult supervision and failed to provide basic learning and development opportunities¹²³. The Court made it clear that such conditions were incompatible with the need for special care and protection that children require¹²⁴.

The Interamerican Commission has indicated that the detention of asylum seekers and refugees it is not justified by international law, it is not a crime and it constitutes a sanction in terms of Article 3 of the 1951 convention, it could also mean a violation of the international human rights law and

¹²¹ *Melnik v Ukraine* App no 72286/01 (ECHR, 28 March 2006) [94].

¹²² *KKS v Hungary* App no 32660/18 (ECHR, 3 October 2024) [19]

¹²³ Ibid 19

¹²⁴ Ibid 19

it may be a barrier to exercise the right to seek and get asylum¹²⁵. Moreover, the Court has indicated that the States cannot detain minors who are accompanied or not accompanied by their progenitors¹²⁶.

Migration detention must be the last resort, and, according to the Commission, alternative measures should be explored. It has been recommended that people in vulnerable conditions, pregnant women, the elderly, torture survivors, and trafficked persons should not be detained¹²⁷. Regarding children, the Commission has emphasized the need for States to prohibit the detention of children since having them in such a condition would never be aligned with their best interest¹²⁸.

The Court, in the case of Vélez Llor vs. Panamá, which, for Dembour,¹²⁹ is the case that will be remembered for the safeguards that the court identified as having to be in place when state authorities resort to immigration detention. The court indicated that “*State’s punitive power is exercised only to the extent strictly necessary to protect fundamental legal rights from the most serious attacks that damage or endanger them. The contrary would lead to the abusive exercise of the State’s punitive power.*”¹³⁰. The statement before frame the Courts position about the aim of the migration detention that should not be a punitive purpose as well as has been indicated by the Commission that has stated that detention should be only permissible after an evaluation has been

¹²⁵ CIDH, *Observaciones a la solicitud de Opinión Consultiva presentada por el Estado de Ecuador*: La institución del asilo en sus diversas formas y la legalidad de su reconocimiento como derecho humano de todas las personas conforme al principio de igualdad y no discriminación (4 May 2017) [49]

¹²⁶ Corte IDH, *Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional* Serie A No 21 (19 August 2014) [283.6].

¹²⁷ CIDH, *Resolución 04/19*, Principios Interamericanos sobre los Derechos Humanos de todas las personas migrantes, refugiadas, apátridas y víctimas de la trata de personas (San Salvador, 7 December 2019) Section XV, principle 71

¹²⁸ Ibid

¹²⁹ Marie-Bénédicte Dembour (n 120) 374

¹³⁰ *Vélez Llor v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [182].

done and the considerations regarding the fulfillment of legitimate interest of the State, such as ensuring a person's appearance for immigration status determination and possible deportation have been taken into account.¹³¹ For the Commission, the single fact that a person has criminal priors is not enough to sustain a detention after the person has served a criminal sentence, and the “public security reasons” are not acceptable.¹³²

The requirements set by the Court are: i) that the purpose of the measures that deprive or restrict liberty is compatible with the Convention; ii) that the measures adopted are appropriate to achieve the objective pursued; iii) that they are necessary, in the sense that they are indispensable to achieve the desired end and that there is no less burdensome measure and iv) that they are strictly proportional measures, in such a way that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or disproportionate in comparison with the advantages that are obtained through such restriction and the fulfillment of the objective pursued”¹³³.

Regarding the detention conditions, the Court has indicated that these conditions should not have a side effect for the person in detention and States may consider that these conditions do not produce any other effect on rights, integrity, and personal and familiar wellbeing¹³⁴.

The Commission, when reviewing the detention conditions in the Bahamas requested interim measures for the State of Bahamas of provide hygiene conditions and medical treatment and to take the special measure to address the situation of unaccompanied minors to ensure that legal

¹³¹ CIDH, *Informe sobre inmigración en Estados Unidos: Detenciones y debido proceso* [39] (citing CIDH, Informe de Admisibilidad y Fondo No 51/01, Caso 9903 *Rafael Ferrer-Mazorra y otros (Los Cubanos del Mariel)* (Estados Unidos) (4 April 2001) [219, 221, 242]

¹³² Ibid 39.

¹³³ *Vélez Loor v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [166].

¹³⁴ Ibid 209

assistance was accessible and to take immediate steps to substantially reduce overcrowding at the detention center¹³⁵.

2.4. Externalization and solidarity

The term externalization has been widely used by scholars and the public in general, and it refers to *“the process of shifting functions that are normally undertaken by a State within its territory so that they take place, in part or in whole, outside its territory (...) This attempt to shift or share responsibility is a frequent practical corollary of States shifting border control or asylum functions outside their territory”*¹³⁶.

In Europe, through the Dublin system, some externalization practices took place. The Dublin regulation is based on the determination of a “Safe Third Country.” The hierarchical system established in Dublin indicates which country is responsible for processing an asylum application¹³⁷. The Court has indicated that States must refrain from expelling an asylum seeker if there are (...) *“substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment”*.¹³⁸

However, the Court has indicated that the presumption that a State that is part of the Dublin Regulation will respect human rights is not irrebuttable¹³⁹. Therefore, States, even under the scope of the Dublin regulation, have the responsibility of making an individualized examination of the

¹³⁵ CIDH, MC 535/14, Personas migrantes detenidas en el Centro de Detención Carmichael Road, Bahamas (13 February 2015) [66]

¹³⁶ David Cantor et al, ‘*Externalisation, Access to Territorial Asylum, and International Law*’ (2022) 34(1) International Journal of Refugee Law 120, 122–123

¹³⁷ Ibid 142

¹³⁸ *Saadi v Italy* App no 37201/06 (GC, ECtHR, 28 February 2008) [125]

¹³⁹ *Tarakhel v Switzerland* App no 29217/12 (ECtHR, 4 November 2014) [103]

situation of the person concerned. Moreover, States must examine the reception arrangement for asylum seekers along with the applicant's situation to determine if returning an applicant would constitute a violation of Article 3 of the Convention.

The IACHR indicated in the advisory opinion OC-25/18 that intercepting asylum seekers in international waters to prevent their applications from being assessed by potential host countries violates the principle of non-refoulment, as it prevents an evaluation of the specific risks faced by everyone. The same applies to the externalization of borders and migration control measures carried out outside national territory.¹⁴⁰

Finally, for Cantor and Bachelor¹⁴¹, the Interamerican System has created a generous scheme of protection for persons, whether they benefit from protection under the refugee regime, with complementary protection and an innovative principle for refugee protection.

¹⁴⁰ *Inter-American Court of Human Rights, Advisory Opinion OC-25/18* (30 May 2018) requested by the Republic of Ecuador, *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection* (Interpretation and Scope of Articles 5, 22.7 and 22.8 in relation to Article 1.1 of the American Convention on Human Rights) [122]

¹⁴¹ David James Cantor and Stefania Eugenia Barichello, ‘*The Inter-American Human Rights System: A New Model for Integrating Refugee and Complementary Protection?*’ (*The International Journal of Human Rights*, 2013) 17(5–6) 701

3. Comparative Analysis: The Protection of Migrants' Rights in the Inter-American and European Human Rights Systems – Key differences

3.1. Immigration Detention and the Principle of Necessity

One of the clearest points of difference between the Inter-American and European systems lies in how each interprets and limits the use of immigration detention. For both systems, it is fundamental that the detention is lawful and does not lead to inhumane treatment; however, they differ on the principle of necessity.

The ECtHR has developed the legality of immigration detention, but it does not explicitly require it to be a measure of last resort. In *Saadi v the United Kingdom*, the Court confirmed that detention must be lawful, non-arbitrary, in good faith, not excessively lengthy, and proportionate¹⁴². By lawful detention, the ECtHR understands that it must conform to the substantive and procedural rules of national law¹⁴³ and it has indicated that asylum detention may only be ordered based on an individual assessment, considering the availability of alternatives.¹⁴⁴ Additionally, the ECtHR has generally deferred detention to state discretion as long as it remains connected to a legitimate aim and the conditions are not degrading¹⁴⁵. Dembour critiques this approach, arguing that the Court has not embraced the principle of necessity with sufficient clarity¹⁴⁶, however, it goes in line with an approach that grants considerable discretion to states as it focuses on formal compliance and procedural aspects, which reflects the doctrine of margin of appreciation present in the

¹⁴² *Saadi v the United Kingdom* App no 13229/03 (ECtHR, 29 January 2008) [74].

¹⁴³ *Amuur v France* App no 19776/92 (ECtHR, 25 June 1996) [50].

¹⁴⁴ *O.M. v Hungary* App no 9912/15 (ECtHR, 5 July 2016) [52].

¹⁴⁵ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) [232]–[233].

¹⁴⁶ Marie-Bénédicte Dembour (n 120) 182.

European system of Human Rights. The ECtHR does not elaborate on its jurisprudence on the substantive necessity of immigration detention as the IACHR does.

The right to be provided with the reasons why the person is being arrested should be relied promptly and, in a language understood by the applicant; otherwise, the arrest may be considered arbitrary¹⁴⁷. These procedural safeguards do not only apply to immigration detention but to any type of detention, which shows that the ECtHR does not treat immigration detention as categorically different from other forms of deprivation of liberty.

The Inter-American Court has applied a more restrictive standard for immigration detention grounded in the *pro homine* principle that asks to interpret law in the most protective way possible, limiting restrictions of rights. In the case of *Vélez Looz v. Panama*, the Court held that any deprivation of liberty must be strictly necessary, individualized, carried out under certain conditions, it should only occur in exceptional circumstances, and it cannot have a punitive purpose¹⁴⁸. In this sense, authorities and states must have a catalogue of alternative and less restrictive measures that could fulfill the aim pursued in the detention¹⁴⁹. For the ECtHR, the most important principle is lawfulness while for the IACHR is necessity.

Another significant difference between the courts is the approach in how each court frames migrant's responsibility for their legal situation, which it may see reflected in their decisions and arguments. Dembour points out that the ECtHR sometimes implies that migrants bring their misfortunes upon themselves by using irregular channels or documents¹⁵⁰. In contrast, the IACHR

¹⁴⁷ *M.A. v Cyprus* App no 41872/10 (ECtHR, 23 July 2013) [227]–[229]

¹⁴⁸ *Vélez Looz v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [166]

¹⁴⁹ *Ibid* 171

¹⁵⁰ Marie-Bénédicte Dembour (n 120) 386

does not attribute blame to migrants for their status, for example, in *Vélez Loor*, the Court explicitly identified that undocumented migrants or people with irregular immigration status are a group in a vulnerable situation and they are the ones most exposed to violations of human rights and their immigration status does not justify discrimination¹⁵¹. Dembour has indicated that the position of the ECtHR has been considering migrants as aliens while the ACHR has the approach of considering migrants first as humans¹⁵².

Regarding immigration detention of children, both courts have a different approach. The ECtHR has indicated that the detention of children should be the limited as far as possible and should not exceed that reasonably required for the purpose pursued¹⁵³ and established the need for states to seek alternatives to the detention. The IACHR has indicated that the detention of children is strictly prohibited no matter what the purpose of the detention is¹⁵⁴. For the courts, children are individuals with special vulnerability and the irregular entry, immigration status of being accompanied or not, should not even be taken into consideration. However, once again, the IACHR takes a stricter standard for detention of children.

This divergence is particularly relevant in assessing Panama's use of temporary reception stations (ETRs) in the Darien Gap, where migrants including families and children are routinely held in

¹⁵¹ *Vélez Loor v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [100]

¹⁵² Marie-Bénédicte Dembour, 'The Alien in the Social Imagination of the Founding Texts' in *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford, 2015; online edn, Oxford Academic, 21 May 2015), Conclusion Part II.

¹⁵³ *Popov v France* Apps nos 39472/07 and 39474/07 (ECtHR, 19 January 2012) [98]–[99]

¹⁵⁴ CIDH, *Resolución 04/19, Principios Interamericanos sobre los Derechos Humanos de todas las Personas Migrantes, Refugiadas, Apátridas y Víctimas de la Trata de Personas* (San Salvador, 7 December 2019) Section XV, princ 71

conditions resembling *de facto* detention. When viewed through the ECtHR's lens, Panama's actions may fall within the bounds of permissible immigration control. However, under the IACHR's jurisprudence, these practices could amount to arbitrary and unlawful detention, especially if less coercive alternatives such as community-based hosting or supervised release are not assessed and documented. However, the conditions of the reception centers have to be adequate and should not lead to inhumane treatment, in this aspect, both courts have a similar standard.

If Panama adopt the ECtHR's standard regarding detention it may be a risk of legitimizing *de facto* detention regimes connected to immigration control policies and to prioritize administrative convenience over individual rights. In contrast, applying the IACHR's stricter necessity standard forces states like Panama to explore and document less intrusive alternatives, thereby fostering a more rights-respecting, humane approach to migration governance which may also create higher standards that could set eventual responsibility for the states.

3.2. Right to life and reception conditions

In the right to life and access to protection and the protection of the right to life both courts agree on the need for protection of the life of migrants before migration control. The ECtHR has been consistent regarding the full application of article 2 of the ECHR that offers not only the respect portion of not intentionally attacking the right to life but also the positive obligations of states to take appropriate steps to protect life and in the case of *Safi and Others v Greece* the court indicated that Greek authorities had the duty to act when they knew of the risks of the life caused by a high-

speed tow-back in the sea¹⁵⁵. In the case in particular, the Court held that when the state has effective control of individuals they are obliged to protect the right to life¹⁵⁶.

In a further development, the ECtHR has indicated that it is part of State's duty to create and effectively implement emergency rescue systems¹⁵⁷, for example, air sea rescue in order to help individuals in distress when the state has been made aware of a risk, should have known about a risk or when the right to life was in risk due to have effective control¹⁵⁸.

As seen, the ECtHR has a very protective approach to the right to life and, different than with detention, is less willing to accept limitations even if the states argue sovereignty and their right to control migration and irregular entry, moreover, and in a similar way to the IACHR, it goes beyond the right itself and set obligations for states. Indeed, the right to life is one of the rights that accept less limitations, however, the approach of migrants as "aliens" as established by Dembour¹⁵⁹ is not found here, the obligation to protect life is absolute and they do not accept limitations. The IACHR, has developed its jurisprudence in a similar way regarding the right to life but going even further with the standards for the states.

The IACHR establishes a more protective and holistic approach to the right to life indicating, similar as the ECtHR that states should not only address immediate risks but anticipate and prevent risks to the right to life, its further development comes along with the standard regarding the obligation of the states to address structural causes of vulnerability¹⁶⁰. Moreover, and in line

¹⁵⁵ *Safi and Others v Greece* App no 5418/15 (ECtHR, 7 July 2022) [125]–[132]

¹⁵⁶ *IBID* [125]–[132]

¹⁵⁷ *Alhowais v Hungary* App no 59435/17 (ECtHR, 2 February 2023) [81]–[87]

¹⁵⁸ *Ibid*

¹⁵⁹ Marie-Bénédicte Dembour (n 143) Conclusion part II.

¹⁶⁰ *IACHR, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (19 August 2014) [74]–[78]

with the ECtHR, the IACHR held that exposing individuals to danger in order to control migration may breach international obligations of the states¹⁶¹. Finally, the obligation of investigating actions of state agents is present in the IACHR jurisprudence where the need for international and state cooperation is mentioned and the possible presence of shared responsibility for border control¹⁶².

It is worth mention that one of the reasons that could cause that the IACHR goes beyond the classical obligations of protection and establishes the need of addressing structural roots of migration has to be with the historical migration flows in the American continent in which many of the states that are part of the Interamerican System have a big number of emigrants rather and immigrants and part of the emigration is related to structural economic inequalities and violence. On the other hand, many of the states that par part of the ECHR have received large flows of migration and have developed a stricter perspective regarding migration.

The ECtHR held that conditions of extreme material deprivation, such as homelessness, lack of access to sanitation, and the absence of basic subsistence, could breach Article 3 of the Convention¹⁶³. Yet, the Court did not impose an obligation to provide shelter or resources per se and indicated that states are not obliged to guarantee housing or welfare to all individuals, however, it assessed whether the state's failure to act, when aware of the individual's circumstances, could lead to degrading treatment.

¹⁶¹ *Inter-American Commission on Human Rights*, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (OEA/Ser.L/V/II.106 Doc. 40, 28 February 2000) citing *Haitian Interdiction Case (United States)* [163].

¹⁶² CIDH, Informe de Fondo No. 49/99, Caso 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein y Rodolfo Izal Elorz (México) (13 April 1999) [60].

¹⁶³ *M.S.S. v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) [250]–[263]

On the other hand, the Advisory Opinion OC-21/14 of the IACHR made clear that reception conditions are not merely a matter of administrative adequacy but of human rights compliance¹⁶⁴. It emphasized that states must anticipate risks through early intervention and design reception systems that guarantee basic humanitarian protection and with a preventive nature.

Again, regarding the reception conditions, the ECtHR makes a factual assessment to determine the individual suffered inhumane treatment in the state that received them, the IACHR conducts an assessment of the reception infrastructure and in the *Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* specifically requires states to provide certain conditions of reception such as identification mechanisms, language and humanitarian assistance¹⁶⁵. Furthermore, it is clear that the individual case approach of the ECtHR, in contrast with the holistic principles of the Interamerican system that could be explained by the mandates of each of the institutions and considering that the Interamerican Commission has more margin of maneuverability.

Another important aspect of the reception conditions has to do with the cooperation with UN and international bodies, in *Pacheco Tineo v. Bolivia*, the IACHR found that Bolivia failed to provide the applicants access to refugee determination procedures and failed to offer an opportunity for consultation with UNHCR, constituting a violation of their rights¹⁶⁶; the ECtHR acknowledges the importance of access to asylum and the need of individualized assessments of claims, however, it has not imposed an obligation to ensure migrants can meet with UNHCR or other international

¹⁶⁴ *IACHR, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* (19 August 2014) [73]–[79]

¹⁶⁵ *Inter-American Commission on Human Rights, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* (OEA/Ser.L/V/II.Doc.46/15, 7 December 2015) principles 16, 52, 62.

¹⁶⁶ *IACHR, Case of the Pacheco Tineo Family v Plurinational State of Bolivia* (Judgment of 25 November 2013, Preliminary Objections, Merits, Reparations and Costs) 159

bodies to receive legal orientation. The ECtHR focuses more narrowly on procedural fairness within domestic legal systems rather than active facilitation of international protection mechanisms as the IACHR does.

The Panamanian asylum system shows limitation regarding the minimum guarantees, since it is unknown the offering of legal aid to asylum seekers or orientation with UNCHR and the five-days appeal deadline sets higher burdens on the applicants. Furthermore, the MOU with the U.S. has prioritized expedited removals and logistical deterrence over protection and its results are evident with the deportation of people with criminal records without properly assessing their claims.

Here the Inter-American framework offers not just higher standards but actionable obligations that Panama could implement. The thesis thus defends the idea that regional learning from the IACHR is essential, particularly because the ECtHR tends to prefer legality, lawfulness over the most protective standard of human protection that the IACHR establish. Following the ECtHR's approach could allow Panama to keep arguing the need of strict migration control policies, domestic discretion and sovereignty which could eventually perpetuate a system that is requiring a higher standard of protection due to its evident influence from the United States. The IACHR's model would impose a positive duty on Panama to proactively inform, assist, and refer migrants to protection mechanisms, increasing institutional responsibility and ensuring that human rights obligations are met. Finally, Panama should implement complete rescue systems that guarantee the right to life of the migrants.

3.3. Due Process

The main difference between the two systems regarding asylum procedures has to be with how the courts extend all procedural guarantees the Inter-American system consistent with their jurisprudence has established that any authority that whose decisions may affect rights have to act under the full guarantees of the due process regardless of the nature of the authority (administrative, legislative or judicial)¹⁶⁷ and this was especially relevant in the case of *Velez Loo*¹⁶⁸. In asylum procedures, the ECtHR has not applied the right to a fair trial; instead, the Court relies on the right to an effective remedy and protections against ill-treatment assessed in an case by case scenario, for example in *I.M. v. France*, the ECtHR criticized the use of accelerated asylum procedures that deprived applicants of sufficient time and linguistic support to file claims¹⁶⁹, in this case along with *M.S.S. v. Belgium and Greece* the court based its decision of articles 3 and 13 of the convention and not in article 5 of fair trial¹⁷⁰.

This thesis will not try to cover the reasons why each court rules in the way they do; however, the InterAmerican system has developed a very protective jurisprudence regarding judicial guarantees and has indicated that states have the duty to treat individuals as truly part of a process and not only just as an object of it¹⁷¹. The history of the states and regions that are part of the Inter-

¹⁶⁷ *Vélez Loo v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [142]

¹⁶⁸ *Ibid* 171

¹⁶⁹ *IM v France* App no 9152/09 (ECHR, Fifth Section, 2 February 2012, final 2 May 2012)

Cited in European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence* https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng-pdf accessed April 25, 2025

¹⁷⁰ *MSS v Belgium and Greece* App no 30696/09 (Grand Chamber, ECHR, 21 January 2011) [259] [366]

¹⁷¹ *Vélez Loo v Panama* (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218 [145]

American system, many of which were affected by authoritarian regimes and arbitrary processes, has added to the position of the court.

This difference when applying procedural standards could have real and immediate consequences in the Darien since, as developed in previous chapters, migrants and asylum seekers are regularly subject to language barriers, and lack of legal counsel and unrealistic timeframes, for example, to file an appeal. Moreover, Panama's use of measure to quickly return migrants, particularly after its 2024 Memorandum with the U.S., raises serious questions about the absence of individualized hearings and assessments, legal advice, appeals mechanisms, fulfillment of the principle of non-refoulment and transparency in terms of human rights and dignity. Under ECtHR standards, since based on the law, these procedures may be acceptable and may allow certain margin of appreciation to Panama, under IACHR standards, they are more likely to be considered violations of due process and the right to an effective remedy.

3.4. The Externalization of Asylum

The ECtHR has developed legal responses to externalization practices, particularly through its jurisprudence on the Dublin Regulation, which assigns responsibility for processing asylum claims to the first EU country of entry, among other criteria, and it's been focused on reception conditions and the obligations of states of ensuring that the applicants are not subjected to inhumane treatment. The Inter-American system does not have an extensive jurisprudence on externalization but has put focus on state integration and the duty to ensure substantive protection regardless of regional dynamics.

As noted by Giupponi, the margin of appreciation, a doctrine frequently used by the ECtHR, is absent from Inter-American jurisprudence¹⁷², and this leads to the application of stricter and unique standards to state conduct that fill the gaps that in the ECtHR are filled with the margin of appreciation. The IACHR has gone further in identifying certain rights as *jus cogens*, or peremptory norms of international law, particularly in the context of torture, arbitrary detention, and non-refoulement. Some scholars argue and critique that this is grounded in a natural law framework that prioritizes universal human dignity over regional consent mechanisms, which also adds to the argument of the IACHR as an activist court.¹⁷³

The 2024 Memorandum of Understanding between Panama and the United States, which facilitates the rapid removal of non-nationals without human rights guided procedures is an example of an externalization practices. This agreement has led to collective expulsions, reduced procedural safeguards, and increased vulnerability of migrants in the Darien which outcomes that directly contravene both IACHR and, increasingly, ECtHR jurisprudence.

While the ECtHR provides useful precedents for monitoring state cooperation, the IACHR offers a standard that categorically opposes any form of asylum outsourcing that compromises human dignity and access to protection. Considering the incipient cooperation mechanisms and union of the States that form America and the clear influence of the United States a strong standard of prohibition of externalization is needed.

¹⁷² Belen Olmos Giupponi, 'Assessing the Evolution of the Inter-American Court of Human Rights in the Protection of Migrants' Rights: Past, Present and Future' (2017) 21(9) International Journal of Human Rights 1477) 1484

¹⁷³ Ibid 1486.

Conclusion

A foundational best practice is adopting a human rights-based approach to border governance, grounded in the pro-homine principle, non-discrimination, and the protection of life and physical integrity developed by the IACHR. However, both courts emphasize that irregular entry and immigration status of a person do not remove a person from the protection under international law or the fulfillment of human rights. The pro homine principle of the IACHR and the positive obligations doctrine under Article 2 ECHR require states to prioritize life and safety over the sovereign power to control the irregular entry of migrants.

In practice, this includes that the Panama government avoids and eliminates dangerous interception practices like fences, limiting the use of force to its maximum expression, and carry out the test establish by the IACHR. Additionally, it is necessary to consolidate efforts to provide humanitarian assistance to rescue and attend the individuals while crossing the Gap and once they arrive to Panama.

The ECtHR cases, especially the case of *M.S.S. v. Belgium and Greece*, established that states must avoid creating conditions of serious deprivation, and the IACHR similarly mandates appropriate shelter, healthcare, and psychological support, especially for vulnerable groups such as children, pregnant women, and survivors of violence. Furthermore, both courts, as best practice, have the need for humane reception conditions that consider individual vulnerabilities and do not lead applicants to suffer inhumane treatment.

Panama should guarantee access to food, medicine, and sanitation, children should not be detained under any circumstances, as indicates by the IACHR, and they should have access to spaces adapted to child and vulnerable people needs. The services and orientation provided to the migrants

after they crossed the border should be gender centered and, considering the diversity of nationalities and languages of the individuals that cross the Darien Gap, interpretation and culturally appropriate services should be provided. Moreover, it is important that the Panamanian government do not obstruct the work of humanitarian organizations such as MSF and instead, reinforce the collaboration with international organizations as UNCHR, as it has been ruled by the IACHR.

Regarding the fairness of the asylum procedure, both courts recognize the need for individual assessments, and in the case of the IACHR, collective expulsion is prohibited. The ECtHR stresses the need for legal aid, linguistic support, and reasonable timeframes to file appeals. A best practice for Panama should be the initiation of a process to reform their asylum processing system in order to create realistic deadlines and ensure that applicants understand their rights through translation services and legal aid. Finally, Panama should refrain from removing individuals without doing a proper assessment of their individual circumstances, even if they have criminal priors.

The best practice regarding detention has been developed by the IACHR, and it indicates that detention of migrants must be the last resort and should be used only when necessary and proportionate. The important judgment of *Vélez Llor v. Panama* is especially relevant since the IACHR directly criticized Panama for its punitive detention practices. Furthermore, it is necessary that Panama explores alternatives to detention and refrains from detaining individuals with vulnerable conditions.

Both systems underscore the importance of the principle of non-refoulment, including in contexts of externalized migration control, in the IACHR's advisory opinions and the ECtHR's jurisprudence, such as the case of *Tarakhel v. Switzerland*, we see that states remain responsible

for violations even when they act through third countries or external borders. In this regard, Panama must ensure that the MOU with the United States and its following agreements are subjected and exercised through a strict human rights basis and that the political agenda do not cause the violation of human rights of the thousands of migrants that are crossing its borders seeking safety and a better future.

Bibliography

Alhowais v Hungary (App no 59435/17) ECHR 2 February 2023.

Amuur v France App no 19776/92 (ECtHR, 25 June 1996)

BAC v Greece App no 11981/15 (ECTHR, 13 October 2016)

BBC Mundo 'The growing number of Chinese migrants crossing the Darien jungle to reach the U.S' (BBC Mundo February 23, 2023) <<https://www.bbc.com/mundo/noticias-internacional-64070549>> Originally in Spanish. accessed 24 March 2025.

BBC Mundo '¿Por qué la selva del Darién es una de las rutas migratorias más peligrosas del mundo?' (BBC Mundo, February 19, 2025) <<https://www.bbc.com/mundo/articles/cx29gryx813o>> Originally in Spanish. Accessed 12 April 2025

BBC Mundo 'Tapón del Darién: 4 factores que explican por qué los ecuatorianos son ahora los sudamericanos que más cruzan la selva camino a EE.UU.', BBC Mundo (23 February 2023) <https://www.bbc.com/mundo/noticias-america-latina-64753352> > Originally in Spanish. Accessed March 24, 2025.

BBC News Mundo, 'Las barreras de alambres de púas con las que el gobierno de Panamá cerró varios pasos del tapón del Darién' (BBC News Mundo, July 18, 2024) <<https://www.bbc.com/mundo/articles/cpe39xlq170o>> Originally in Spanish. Accessed April 10, 2025.

Belen Olmos Giupponi, 'Assessing the Evolution of the Inter-American Court of Human Rights in the Protection of Migrants' Rights: Past, Present and Future' (2017) 21(9) International Journal of Human Rights 1477) 1484

Caitlyn Yates, 'As More Migrants from Africa and Asia Arrive in Latin America, Governments Seek Orderly and Controlled Pathways' (Migration Policy Institute October 22, 2019) <<https://www.migrationpolicy.org/article/extracontinental-migrants-latin-america> > Accessed April 12, 2025

Caso de Personas Dominicanas y Haitianas Expulsadas v República Dominicana (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 August 2014) Serie C No 282 [350]

Cecilia Barría, Santiago Vanegas and Ángel Bermúdez, 'Los migrantes deportados por EE.UU. que están aislados en un hotel de Panamá y piden ayuda a través de las ventanas' (BBC News Mundo, 19 February 2025) <<https://www.bbc.com/mundo/articles/cx29gryx813o>> Originally in Spanish. Accessed 12 April 2025.

- CIDH, Caso Comité Haitiano de Derechos Humanos y otros contra Estados Unidos, Caso 10.675, Informe No 51/96, Decisión en cuanto al mérito (13 March 1997)
- CIDH, Informe de Fondo No 174/10, Caso 12.688 Nadege Dorzema y otros (República Dominicana) (12 November 2010) [107] (citing Corte IDH, *Bulacio v Argentina*, Judgment (Merits, Reparations and Costs), 18 September 2003, Serie C No 100)
- CIDH, Informe de Fondo No 49/99, Caso 11.610 Loren Laroye Riebe Star, Jorge Barón Guttlein y Rodolfo Izal Elorz (México) (13 April 1999)
- CIDH, Informe de Fondo No. 49/99, Caso 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein y Rodolfo Izal Elorz (México) (13 April 1999).
- CIDH, Informe sobre inmigración en Estados Unidos: Detenciones y debido proceso [39] (citing CIDH, Informe de Admisibilidad y Fondo No 51/01, Caso 9903 Rafael Ferrer-Mazorra y otros (Los Cubanos del Mariel) (Estados Unidos) (4 April 2001) [219, 221, 242]
- CIDH, MC 535/14, Personas migrantes detenidas en el Centro de Detención Carmichael Road, Bahamas (13 February 2015) [66]
- CIDH, Observaciones a la solicitud de Opinión Consultiva presentada por el Estado de Ecuador: La institución del asilo en sus diversas formas y la legalidad de su reconocimiento como derecho humano de todas las personas conforme al principio de igualdad y no discriminación (4 May 2017) [49]
- CIDH, Resolución 04/19, Principios Interamericanos sobre los Derechos Humanos de todas las personas migrantes, refugiadas, apátridas y víctimas de la trata de personas (San Salvador, 7 December 2019) Section XV, princ 71
- Cited in European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng-pdf accessed April 25, 2025
- CNN Español 'Destrozos en instalación para migrantes en Darién tras pelea' (CNN Español, 2 March 2024) <<https://cnnespanol.cnn.com/2024/03/02/destrozos-instalacion-migrantes-darien-pelea-orix>> Originally in Spanish. Accessed 12 April 2025.
- CNN. 'Panama and US implement migrant deportation program to combat illegal migration, CNN International' (CNN, 1 July 2024) <https://edition.cnn.com/2024/07/01/americas/panama-us-darien-migrants-agreement-intl-latam/index.html> Accessed 12 April 2025
- Corte IDH, Opinión Consultiva OC-21/14: Derechos y garantías de niñas y niños en el contexto de la migración y/o en necesidad de protección internacional Serie A No 21 (19 August 2014)
- Corte IDH, Opinión Consultiva OC-25/18: La Institución del Asilo y su Reconocimiento como Derecho Humano en el Sistema Interamericano de Protección (30 May 2018)

Council of Europe. “Convention for the Protection of Human Rights and Fundamental Freedoms.” Council of Europe Treaty Series 005, Council of Europe, 1950

David Cantor et al, ‘Externalisation, Access to Territorial Asylum, and International Law’ (2022) 34(1) International Journal of Refugee Law 120, 122–123

David James Cantor and Stefania Eugenia Barichello, ‘The Inter-American Human Rights System: A New Model for Integrating Refugee and Complementary Protection?’ (The International Journal of Human Rights, 2013) 17(5–6)

Defensoria del Pueblo 'In one year, the number of Colombians crossing the Darién jungle increased by 214%' (Defensoría del Pueblo, December 4, 2023) <<https://www.defensoria.gov.co/-/en-un-a%C3%B1o-se-increment%C3%B3-en-214-el-n%C3%BAmero-de-colombianos-que-atravesan-la-selva-del-dari%C3%A9n>> Originally in Spanish. Accessed March 24, 2025.

Deutsche Welle, 'Panamá cierra tres pasos no autorizados en selva del Darién' (Deutsche Welle 3 July 2024) <<https://www.dw.com/es/panam%C3%A1-cierra-tres-pasos-no-autorizados-en-selva-del-dari%C3%A9n/a-69554490>> Originally in Spanish. Accessed April 10, 2025

DW Español, 'Panama Will Impose Fines of Up to Five Thousand Dollars on Migrants' (DW Español, 31 October 2024) <<https://www.dw.com/es/panam%C3%A1-aplicar%C3%A1-multa-de-hasta-cinco-mil-d%C3%B3lares-a-migrantes/a-70658061>> Accessed April 12, 2025.

DW Español, 'Panama Will Impose Fines of Up to Five Thousand Dollars on Migrants' (DW Español, 31 October 2024) <<https://www.dw.com/es/panam%C3%A1-aplicar%C3%A1-multa-de-hasta-cinco-mil-d%C3%B3lares-a-migrantes/a-70658061>> Originally in Spanish. Accessed April 12, 2025
1 Thomas Gammeltoft-Hansen, Access to Asylum: International Refugee Law and the Globalisation of Migration Control (Reprint edn, Cambridge University Press 2011 p. 28

Emmanuela Douyon, 'Haitians Flee a Nation Nearing Collapse' (Migration Policy Institute July 5, 2023) <<https://www.migrationpolicy.org/article/haitians-flee-collapse>> Accessed 24 March 2025

Executive Decree No. 5. 2018

France 24 'Panamá suspende a MSF tras denuncia de aumento de violaciones a migrantes en la selva' (France 24, 7 March 2024) <<https://www.france24.com/es/minuto-a-minuto/20240307-panam%C3%A1-suspende-a-msf-tras-denuncia-de-aumento-de-violaciones-a-migrantes-en-la-selva-1>> Originally in Spanish. Accessed 12 April 2025

Gehad Madi, ‘Declaración de fin de visita - Panamá 13 a 19 de febrero de 2025’ (Relator Especial de la ONU sobre los derechos humanos de los migrantes, 2025)

Georgia v Russia (I) App no 13255/07 (ECHR, 3 July 2014)

https://www.ohchr.org/sites/default/files/documents/issues/srmigrants/SRMigrantsEndofVisitStatement_Panama_ESP.pdf Originally in Spanish. Accessed 12 April 2025

Human Rights Watch, ‘“Hell Was My Only Option”: Abuses against Migrants and Asylum Seekers Pushed to Cross the Darién Gap’ (Human Rights Watch, November 2023) <<https://www.hrw.org/report/2023/11/09/hell-was-my-only-option/abuses-against-migrants-and-asylum-seekers-pushed-cross#4065>> Accessed 12 April 2025

IACHR, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (19 August 2014)

IACHR, Case of the Pacheco Tineo Family v Plurinational State of Bolivia (Judgment of 25 November 2013, Preliminary Objections, Merits, Reparations and Costs).

IFRC ‘From Sierra Leone to the Darién: Migrants cross continents for a better future’, (International Federation of Red Cross and Red Crescent Societies, May 30, 2025) <<https://www.ifrc.org/article/sierra-leone-darien-migrants-cross-continents-better-future> > Accessed 24 March 2025.

IM v France App no 9152/09 (ECTHR, Fifth Section, 2 February 2012, final 2 May 2012)

Inter-American Commission on Human Rights, Debido proceso en los procedimientos para la determinación de la condición de persona refugiada y apátrida, y el otorgamiento de protección complementaria OEA/Ser.L/V/II. Doc. 255 (5 August 2020) [129 citing Othman (Abu Qatada) v United Kingdom App no 8139/09 (ECTHR, 17 January 2012) [259]]

Inter-American Commission on Human Rights, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (OEA/Ser.L/V/II.106 Doc. 40, 28 February 2000) citing Haitian Interdiction Case (United States).

Inter-American Court of Human Rights, Advisory Opinion OC-25/18 (30 May 2018) requested by the Republic of Ecuador, The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection (Interpretation and Scope of Articles 5, 22.7 and 22.8 in relation to Article 1.1 of the American Convention on Human Rights)

International Organization for Migration, 'The Americas | Missing Migrants Project' (Missing Migrants Project, 2025) <<https://missingmigrants.iom.int/region/americas>> Accessed 12 April 2025

Julie Turkewitz, 'En números récord, los venezolanos arriesgan una travesía mortal para llegar a la frontera de EE. UU.' (The New York Times en Español, October 7, 2022) <<https://www.nytimes.com/es/2022/10/07/espanol/darien-venezolanos.html> > Originally in Spanish. Accessed April 12, 2025

KKS v Hungary App no 32660/18 (ECTHR, 3 October 2024)

Los Angeles Times ‘Migrantes africanos utilizan Colombia en tránsito aéreo hacia El Salvador para evitar el Darién’ (Los Angeles Times December 25, 2023)

Inter-American Commission on Human Rights, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking (OEA/Ser.L/V/II.Doc.46/15, 7 December 2015) principles 16, 52, 62.

Los Angeles Times ‘Migrantes africanos utilizan Colombia en tránsito aéreo hacia El Salvador para evitar el Darién’ (*Los Angeles Times* December 25, 2023) <<https://www.latimes.com/espanol/internacional/articulo/2023-12-25/migrantes-africanos-utilizan-colombia-en-transito-aereo-hacia-el-salvador-para-evitar-el-darien>> Originally in Spanish. Accessed 24 March 2025.

M.A. v Cyprus App no 41872/10 (ECtHR, 23 July 2013) [227]–[229]

MA v Italy App no 70583/17 (ECTHR, 31 August 2023) [48].

Médicos Sin Fronteras ‘Sexual Violence in the Darién: “They Tried to Rape Me, They Groped Me, and Left Me with Bruises”’ (Médicos Sin Fronteras, June 18, 2024) <<https://www.msf.es/noticia/violencia-sexual-darien-intentaron-violarme-me-manosearon-y-me-dejaron-varios-morados>> Originally in Spanish. Accessed April 11, 2025.

Médicos Sin Fronteras, ‘Despite Multiple Warnings, Sexual Violence in the Darién Does Not Stop’ (Médicos Sin Fronteras, 25 January 2024) <<https://www.msf.org.co/actualidad/pese-a-multiples-alertas-no-se-detiene-la-violencia-sexual-en-el-darien/>> Originally in Spanish. Accessed 28 April 2025.

Melnik v Ukraine App no 72286/01 (ECTHR, 28 March 2006)

Memorandum of understanding between the Government of Panama and the United States on migration cooperation (Ministerio de Relaciones Exteriores de Panamá) <<https://mire.gob.pa/memorandum-entre-el-gobierno-de-la-republica-de-panama-y-el-gobierno-de-los-estados-unidos-de-america-sobre-asistencia-y-cooperacion-en-asuntos-migratorios/>> Accessed 12 April 2025

Migracion Panama ‘Gracias al sistema biométrico se puede detectar personas con antecedentes’ (Servicio Nacional de Migración, August 22, 2024) <<https://www.migracion.gob.pa/gracias-al-sistema-biometrico-se-puede-detectar-personas-con-antecedentes/>> Originally in Spanish. Accessed 12 April 2025

Migracion Panama ‘Panamá y Estados Unidos ponen en ejecución programa de deportación para combatir la migración ilegal’ (Migracion Panama, 1 August 2024) <<https://www.migracion.gob.pa/panama-y-estados-unidos-ponen-en-ejecucion-programa-de-deportacion-para-combatir-la-migracion-ilegal/>> Originally in Spanish. Accessed 3 June 2025.

- Migracion Panama. ‘Panamá y Estados Unidos refuerzan cooperación para el control fronterizo y la migración irregular’ (Migracion Panama, February 3, 2025) <<https://www.migracion.gob.pa/panama-y-estados-unidos-refuerzan-cooperacion-para-el-control-fronterizo-y-la-migracion-irregular/#:~:text=De%20estos%2044%20vuelos%20masivos,fueron%20deportados%2043%20ciudadanos%20colombianos.>> Originally in Spanish. Accessed 12 April 2025
- Ministerio de Relaciones Exteriores de Panamá, ‘Memorandum of understanding between the Government of Panama and the United States on migration cooperation’ (MIRE, 2025) <https://mire.gob.pa/memorandum-entre-el-gobierno-de-la-republica-de-panama-y-el-gobierno-de-los-estados-unidos-de-america-sobre-asistencia-y-cooperacion-en-asuntos-migratorios/> Originally in Spanish. Accessed 12 April 2025
- Ministerio de Seguridad Pública de Panamá, ‘Cierre de trochas en Darién reduce el flujo migratorio en un 93%’ (Ministerio de Seguridad Pública de Panamá, January 2025) <<https://www.minseg.gob.pa/2025/01/cierre-de-trochas-en-darien-reduce-el-flujo-migratorio-en-un-93/>> Originally in Spanish. Accessed 12 April 2025.
- Ministerio de Seguridad Pública, ‘Cierre de trochas en Darién reduce el flujo migratorio en un 93%’ (Ministerio de Seguridad Pública, 24 enero 2025) <<https://www.minseg.gob.pa/2025/01/cierre-de-trochas-en-darien-reduce-el-flujo-migratorio-en-un-93/>>Originally un Spanish. Accessed 12 June 2025
- MSS v Belgium and Greece App no 30696/09 (ECtHR, 21 January 2011) [232]–[233]
- MSS v Belgium and Greece App no 30696/09 (Grand Chamber, ECTHR, 21 January 2011)
- Nicholas Dale Leal, 'Asiáticos, africanos o rusos a Panamá y a Costa Rica: la maquinaria de deportaciones de Trump a Latinoamérica' (El País, 4 May 2025) <https://elpais.com/us/migracion/2025-05-04/asiaticos-africanos-o-rusos-a-panama-y-costa-rica-las-deportaciones-de-trump-mas-alla-de-los-venezolanos-enviados-a-el-salvador.html> Originally in Spanish. Accessed 3 June 2025.
- O.M. v Hungary App no 9912/15 (ECtHR, 5 July 2016)
- OEA/Ser.L/V/II. Doc. 46/15 (31 December 2015)
- OEA/Ser.L/V/II. Doc. 46/15 (31 December 2015) (citing Rantsev v Cyprus and Russia App no 25965/04 (ECTHR, 7 January 2010) [289])
- OM v Hungary App no 9912/15 (Fourth Section, ECTHR, 5 July 2016)
- Organization of American States. “American Convention on Human Rights.” Treaty Series, No. 36, Organization of American States, 1969
- Pan American Health Organization, ‘Migración en tránsito: Darién Colombia - Panamá (Pan American Health Organization June 2024) <<https://www.paho.org/sites/default/files/2024->

07/migracion-entranito-dariencolombiapanamama-cchd.pdf> Originally in Spanish. Accessed April 12, 2025.

Popov v France Apps nos 39472/07 and 39474/07 (ECtHR, 19 January 2012) [98]–[99]

Presidencia Panama ‘Panamá y Estados Unidos ponen en ejecución programa de deportación para combatir la migración ilegal Presidencia de Panamá’ (Ministerio de Seguridad Pública de Panamá, August 20, 2024) <<https://www.presidencia.gob.pa/publicacion/panama-y-estados-unidos-ponen-en-ejecucion-programa-de-deportacion-para-combatir-la-migracion-ilegal>> Originally in Spanish. Accessed 12 April 2025

Principios Interamericanos sobre los Derechos Humanos de todas las Personas Migrantes, Refugiadas, Apátridas y las Víctimas de la Trata de Personas (Resolución 04/19, Comisión Interamericana de Derechos Humanos, 7 December 2019) principle 47

R4V ‘Refugiados y migrantes de Venezuela’ (R4V December 3, 2024) <<https://www.r4v.info/es/refugiadosymigrantes>> Originally in Spanish. Accessed April 12, 2025

Rachel Schmidtke and Caitlyn Yates, ‘After the Darien: Aid and Pathways for Migrants in Panama and Costa Rica’ (Refugees International, 11 October 2024) <<https://www.refugeesinternational.org/reports-briefs/after-the-darien-aid-and-pathways-for-migrants-in-panama-and-costa-rica/>> Accessed April 12, 2025

Rachel Schmidtke and Caitlyn Yates, ‘After the Darien: Aid and Pathways for Migrants in Panama and Costa Rica’ (Refugees International, 11 October 2024) <<https://www.refugeesinternational.org/reports-briefs/after-the-darien-aid-and-pathways-for-migrants-in-panama-and-costa-rica/>> Accessed April 10, 2025

Rachel Schmidtke, ‘Llenar el vacío: apoyo humanitario y vías alternativas para los migrantes en la periferia de Colombia’ (Refugees International, 19 July 2022). <<https://www.refugeesinternational.org/reports-briefs/llenar-el-vacio-apoyo-humanitario-y-vias-alternativas-para-los-migrantes-en-la-periferia-de-colombia/>> Originally in Spanish. Accessed 12 April 2025

Saadi v Italy App no 37201/06 (GC, ECtHR, 28 February 2008)

Saadi v United Kingdom App no 13229/03 (ECTHR, 29 January 2008).

Safi and Others v Greece App no 5418/15 (ECTHR, 7 July 2022) [149]

Safi and Others v Greece App no 5418/15 (ECtHR, 7 July 2022) [125]–[132]

Santiago Vanegas and Sheida Hooshmandi, ‘No podemos volver a nuestro país ni quedarnos aquí ni encontrar a dónde ir: los migrantes de Asia y África atrapados en Panamá tras ser deportados de EE.UU.’ (BBC News Mundo 27 March 2025) <<https://www.bbc.com/mundo/articles/cddy8n6p1p7o>> Originally in Spanish. Accessed 12 April 2025

Servicio Nacional de Fronteras 'Una condena de 84 meses y detención provisional para tres de los implicados en robo agravado de autos en Barú' (Servicio Nacional de Fronteras, August 26, 2024) <https://www.senafront.gob.pa/una-condena-de-84-meses-y-detencion-provisional-para-tres-de-los-implicados-en-robo-agravado-de-autos-en-baru/> Originally in Spanish. Accessed 12 April 2025

Tarakhel v Switzerland App no 29217/12 (ECtHR, 4 November 2014)

The Guardian 'Record half million people crossed the treacherous Darién Gap in 2023' (The Guardian, 3 January 2024) <<https://www.theguardian.com/us-news/2024/jan/03/record-half-million-people-crossed-darien-gap-2023>> Accessed January 10, 2025

The Guardian and Agence France-Presse, 'Panama says 55 US-bound migrants have died crossing Darién Gap this year' (The Guardian December 19, 2024) <<https://www.theguardian.com/world/2024/dec/19/darien-gap-deaths-immigration>> Accessed April 15, 2025

The New York Times 'Migrantes chinos en el Darién: la travesía de quienes buscan llegar a EE. UU.', (The New York Times December 6, 2023) <<https://www.nytimes.com/es/2023/12/06/espanol/migrantes-chinos-darien.html>> Originally in Spanish. Accessed 24 March 2025.

UNHCR, 'Risks of the Darién' (UNHCR Panama) <<https://help.unhcr.org/panama/en/risks-of-the-darien/>> Originally in Spanish. Accessed 28 April 2025.

United Nations (General Assembly). "International Covenant on Civil and Political Rights." Treaty Series, vol. 999, Dec. 1966

Velásquez Rodríguez v Honduras (Inter-American Court of Human Rights, Judgment on the Merits, 29 July 1988) Serie C No 4

Vélez Lóor v Panama (Inter-American Court of Human Rights, Judgment of 23 November 2010, Preliminary Objections, Merits, Reparations and Costs)

Vélez Lóor v Panama (Inter-American Court of Human Rights, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2010) Serie C No 218

WCS 'El Darién' (Wildlife Conservation Society) <<https://programs.wcs.org/gcf-the5greatforests/es-es/-Sobre-Los-5-Grandes-Bosques-de-Mesoamerica/El-Dari%C3%A9n>> Accessed April 10, 2025