

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 3rd Cycle, 36th Session

PANAMA

I. BACKGROUND INFORMATION

The Republic of Panama ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* by Law No. 5 of 26th of October of 1977.¹ Panama also acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* in 2011.²

The 2018 *Executive Decree No. 5*³ modified the refugee status determination system established on the previous legislation adopted in 1998 and created an institutional framework that regulates the procedure for the recognition of refugee status and designates the competent authorities for conducting the analysis of asylum applications. The *Executive Decree* prescribes the gender sensitive interpretation of the legal framework, ensuring that all individuals in affected communities have access to their rights on an equal footing, considering their age, gender and diversity (art. 4). Moreover, it explicitly enshrines child protection, by including specific safeguards for children and adolescents with international protection needs, considering their best interest, as well as the implementation of the necessary measures for their protection.

Despite these substantive advances, a number of shortcomings remain. UNHCR regrets the Executive Decree does not include the expanded definition of a refugee contained in the *Cartagena Declaration*. Moreover, the Decree fails to provide sufficient legal certainty with regard to the procedure for submission and consideration of asylum applications and address the weaknesses in ensuring fairness in accelerated processing of manifestly unfounded applications. In addition, the Executive Decree maintains the six-month period without exceptions established for the submission of applications hampers the access to asylum of persons who, for different reasons, could not seek asylum before the established deadline.

Since 2016, asylum applications in Panama have increased considerably, exceeding the capacities of the National Office for the attention of Refugee (ONPAR) mainly due to limited staffing to manage new applications, increasing the existing backlog and the response length. Statistics provided by the ONPAR showed that a total of 22,547 applications had been received since June 2014 to May 2019. The Executive Decree broadened the National Commission for the Protection of Refugees (CONARE) sessions frequency from 4 to 6 sessions yearly⁴ which would support preventing and reducing the backlog in the case management.

¹ Ley No. 5 de 26 de Octubre de 1977 available at <https://www.refworld.org/pdfid/46d7e1bc2.pdf>

² Ley No. 28 y 29 de 30 de Marzo de 2011 available at https://www.gacetaoficial.gob.pa/pdfTemp/26755_A/GacetaNo_26755a_20110401.pdf

³ Available at <https://www.acnur.org/fileadmin/Documentos/BDL/2018/11494.pdf?file=fileadmin/Documentos/BDL/2018/11494>

⁴ Article 24 of the Executive Decree 5 of January 16, 2018 established ordinary sessions every 2 months and extraordinary sessions requested by the commissioners anytime of the year. Available at <http://www.mingob.gob.pa/onpar/wp-content/uploads/sites/2/2018/03/Decreto-N5.pdf>

As of May 2019, according to the information gathered by UNHCR, there were 2'556 recognized refugees⁵ and, according to ONPAR, approximately 10'134⁶ applications are still pending evaluation. The recognition rate is very low, mainly because most of the applications are rejected in the admissibility phase.

The asylum-seeker population is mainly composed of nationals of Nicaragua, Venezuela, Cuba and persons originating from North of Central American countries (Guatemala, Honduras, and El Salvador).

In 2017, the Republic of Panama joined the Comprehensive Framework for Protection and Solutions (MIRPS) through which a national action plan for the improvement of the asylum system was developed and drafted by an interinstitutional and non-governmental organization working group.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation No. 90.11 supported by the Government: “Enhance efforts to ensure the protection of children’s rights, as outlined in the Convention on the Rights of the Child and its Optional Protocols.” (Italy)

UNHCR commends Panama for the adoption of the *Protocol for the identification, referral, and attention of unaccompanied children and adolescents seeking for asylum* signed between the National Secretariat for children, adolescents and family and the Ministry of Interior,⁷ guaranteeing the comprehensive protection of children with international protection needs, based on their best interest.

Linked to 2nd cycle UPR recommendation No. 90.16 supported by the Government: “Step up actions to strengthen the national mechanism for the Prevention of torture.” (Paraguay)

UNHCR commends Panama for the creation of the National Preventive Mechanism against Torture (NPM) as required under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁸ Panama is the 13th state in Latin America to have an operative NPM. This mechanism was established as an independent Directorate of the Ombudsman’s Office and has the mandate to prevent any act of torture and other cruel, inhuman and degrading acts or punishments which may affect any individual who has been deprived of his or her liberty by order of the judicial authorities. The National Preventive Mechanism started operating in Panama after the establishment of its legal framework comprising of *Law No. 26* of March 30, 2011, that ratifies the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,⁹ and the approval of the *Executive Decree No. 378* of August 28, 2018. UNHCR welcomes the establishment of the NPM given its mandate to visit regularly all places where persons may be deprived of liberty. This includes situations where

⁵ As ONPAR hasn’t disclosed the exact number of the recognized refugee population, UNHCR relies on the information obtained as part of the CONARE.

⁶ Please note that figures managed by UNHCR differ from the figures from ONPAR. UNHCR understands that there are 14,714 pending applications, according to the statistics published by ONPAR in the web page of the Ministry of Interior (Ministerio de Gobierno in Spanish), however, the figure shared recently with UNHCR indicates that there are 10,134 pending applications. The lack of reliable data on refugees and asylum seekers remains a major concern.

⁷ There is no online version of the document. Please visit the following link where the information about the signing of the protocol was uploaded <http://www.mingob.gob.pa/mingob-y-senniaf-firman-protocolo-para-la-identificacion-referencia-y-atencion-de-ninas-ninos-y-adolescentes/>

⁸ Available at https://www.gacetaoficial.gob.pa/pdfTemp/28225_B/GacetaNo_28225b_20170223.pdf

⁹ Available at: https://www.gacetaoficial.gob.pa/pdfTemp/28602/GacetaNo_28602_20180831.pdf

asylum-seekers are deprived of liberty in migratory detention centres (referred in Panama as shelters).

Linked to 2nd cycle UPR recommendations supported by the Government No. 90.64: “Increase protection of domestic violence by implementing the existing legislation, investigating and punishing the perpetrators, creating a sufficient number of shelters and providing police protection (Germany); No. 90.65: “Strictly apply without delay Law No. 82/2013, which criminalizes violence against women” (Ghana); No. 90.66 “Take all necessary measures to ensure Law No. 82/2013, punishing acts of violence against women, is quickly followed by an implementing regulation, and the protocols are developed to guarantee its proper enforcement (Belgium); No. 90.73: “Take further measures to combat gender-based violence, trafficking in women and girls and sexual exploitation” (Ukraine)

UNHCR commends Panama for the approval of the *Executive Decree No. 100* of April 20, 2017¹⁰ which regulates *Law No. 82* of 2013¹¹, that constitutes the legal framework to prevent violence against women and reforms the criminal code to criminalize femicide and punish acts of violence against women. This initiative constitutes an important step in promoting women’s rights and equality, as it ensures effective action to prevent and respond to gender-based violence, improving safeguards and protection for women and girls, including asylum-seekers and refugees in Panama.

Additional positive developments

UNHCR commends Panama for the promulgation of the *Executive Decree No. 10* of January 16, 2019¹², which regulates *Laws No. 28* and *No. 29* of March 30, 2011, that ratifies the 1954 Convention relating to the Status of Stateless Persons. This instrument establishes the procedure for the recognition of the statelessness condition in the Republic of Panama and entitles the Panamanian Ministry of Foreign Affairs, as a competent authority to carry out the process of recognition of the status of statelessness.

III. KEY PROTECTION ISSUES, CHALLENGES, AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Shortcomings in access to protection mechanisms for victims of trafficking

Linked to 2nd cycle UPR recommendation No. 90.78 supported by the Government: “Strengthen the fight against trafficking in human beings, in particular, women, by implementing educational and awareness-raising campaigns and enhancing support measures available to victims” (Italy)

In Panama, trafficking of human beings was recognized as a crime in 2011 with the adoption of *Law 79* of November 9, 2011¹³. Due to its geographical location, Panama is located in a complex mixed movement flow environment and susceptible to the arrival of irregular migrants. Panama is, as well, a country of origin, transit, and destination for men, women, girls and boys subject to sex trafficking and forced labour, many of them being in need of international protection. Despite efforts made by the local authorities to pursue and criminalize those who commit this serious crime, the legislation does not contain any protection measures for asylum-seekers or refugees who are victims of human trafficking. Additionally, the increase of people on the move and lack of resources place recent arrivals at significant risk of exploitation.

¹⁰, Executive Decree 100 of April 20, 2017, Available at https://www.gacetaoficial.gob.pa/pdfTemp/28262_A/60769.pdf

¹¹ Available at <http://www.organojudicial.gob.pa/wp-content/uploads/2016/11/Ley-82-de-2013.pdf>

¹², Available at <https://www.refworld.org/es/pdfid/5c461a884.pdf>

¹³, Available at https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/PAN/INT_CAT_ADR_PAN_25567_S.PDF

The National Plan against Human trafficking for the period 2017 – 2020 was approved in 2018 through the *Executive Decree No. 125* of April 16, 2018. This document lacks specific provisions to either consider asylum seekers or refugees as possible victims of human trafficking or to extend protection to them considering at least a referral mechanism to the asylum system.

Recommendations:

UNHCR recommends that the Government of Panama:

- a) To consider strengthening the capacity of the National Commission against Trafficking in Persons on the international protection needs of victims of trafficking in persons;
- b) To consider adopting a standard operating procedure to ensure effective referral mechanism of victims of trafficking to relevant services, including to the asylum system; and
- c) To consider measures to enhance dialogue and consultation among relevant national institutions to ensure strengthening the protection of persons in mixed flows.

Additional Protection Challenges

Issue 2: Inconsistent access to the territory and to the asylum procedure

The increase in the numbers of asylum-seekers has burdened the national asylum system and its reception capacity. Each month, thousands of persons enter the Panamanian territory through different points of entry (land border or airport), some of them in transit to the Northern part of the continent and others with the intention of staying in Panama for economic reasons or for needs of international protection. The patterns of these flows make of Panama a country for both transit and asylum. However, access to the territory and the procedure remains challenging.

Most asylum-seekers enter the territory through regular points of entry (land border or the International Airport) as tourists for fear of being rejected, denied entry or returned as they do not meet migratory requirements and migration authorities focus on border security over human rights. Several reports of cases of deportations of persons in need of international protection at the Tocumen Airport and other land border areas were recorded in the last years. Undefined responsibilities among competent authorities and the lack of protocols, are make difficult the identification of person with international protection needs.

On the other hand, the absence of the ONPAR at border points (land borders and airports) remains a challenge that hinders the access to the asylum procedure at entry points for refugees. An asylum claim can only be filed in person at ONPAR's offices or conducted by an Eligibility Officer from ONPAR that needs to travel, sometimes long distances, to conduct the initial interview that initiates the asylum claim. This provokes lengthy or no access to the asylum procedure. Also, the primary recipient authorities are not always aware of the RSD process nor of their obligation to enhance and allow the access to the asylum process to persons in need of international protection.

Recommendations:

UNHCR recommends that the Government of Panama:

- a) Ensure access to the territory and asylum procedures in line with international standards and to prevent cases of *refoulement*;
- b) Strengthen asylum capacity and legal assistance to asylum-seekers to enable the submission of asylum applications at border areas and the international airport;
- c) Enhance the institutional framework by adopting protocols that include a mechanism for the identification and referral of persons with international protection needs that clearly identifies the responsibilities assigned to the primary reception authorities; and
- d) Develop a training program focusing on capacity-building of newly recruited border officials that includes modules on international protection.

Issue 3: Ineffective asylum procedures

Despite the progress made with the enactment of the *Executive Decree No. 5*, there are certain procedural issues that raise concern with respect to the guarantee of due process. The Decree does not establish a clear procedure for processing applications that leads to an unclear division of mandates between the ONPAR and CONARE. Oftentimes, decisions on the substance of asylum applications at the admissibility phase are only decided by ONPAR instead of CONARE as mandated by law.

Additionally, the Executive Decree prescribes an accelerated procedure at the admissibility phase to determine applications which are clearly abusive or manifestly unfounded.¹⁴ The accelerated procedure consists in decisions being made on a basis of list of situations pre-approved by CONARE. The accelerated procedures lack significant due process guarantees, particularly lack of individual assessments. Instead, UNHCR has advocated for the approval of an enhanced mechanism to review claims that could be considered as unfounded, including minimum procedural guarantees.

Another issue affecting the asylum procedures is related to the time limits within which asylum applications must be submitted. The new Executive Decree limits the time to file an asylum claim to a period of six months which limits the access to asylum and hinders the right of persons in need of international protection to access the procedure. On top of this, the legislation does not provide any exceptions to this rule, leaving refugees without protection and allowing cases of refoulement.

Lastly, the Executive Decree does not include defined period within which decisions in asylum claims must be rendered. This shortcoming resulted in increasing the waiting time for asylum decisions, leaving asylum-seekers in precarious circumstances, due to the limited access to rights based on the legal status and lack of documentation.

Recommendations:

UNHCR recommends that the Government of Panama:

- a) Expedite and streamline the refugee status recognition process by developing an Operational Manual that can develop a more detailed guidance regarding timeframes and overall implementation of the Executive Decree; and
- b) Clarify the criteria for the application of the accelerated procedures and ensure adequate safeguards.

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¹⁴ Art. 53 of the Executive Decree No. 5 of January 16, 2018. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2018/11494.pdf?file=fileadmin/Documentos/BDL/2018/11494>