



RESEARCH REPORT

WOMEN'S EXPERIENCES OF USING SPECIALISED COURTS FOR VIOLENCE AGAINST WOMEN: **LESSONS AND RECOMMENDATIONS FROM ECUADOR**

SUMMARY

This report summarises the findings of a pilot study carried out by a team composed of researchers from the **School of Law** at the **Universidad del Azuay (Ecuador)** and academics affiliated with the **Institute for Global Innovation** at the **University of Birmingham (United Kingdom)**. In this report, we argue that Ecuador is a good case study for considering the effectiveness of specialised courts, given its pro-active approach to legal reform. The study found that the main demand made by survivors, when interacting with the specialised courts, was for protection orders. However, such orders are conditional on survivors pursuing a criminal conviction against abusers. Most women fear retribution, or loss of income, resulting from a conviction. Consequently, most cases are dropped without protection orders being secured. The study recommends the prioritisation of protection orders, access to refuges and support for welfare services that are not conditional on pursuing a criminal conviction, as part of a broader effort to re-think the role of criminal law in efforts to combat violence against women (VAW).

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1.

WHY INVESTIGATE THE EXPERIENCES OF WOMEN WHO USE SPECIALISED COURTS IN ECUADOR?

Violence against women (VAW), which is a form of gendered violence,¹ affects 65 out of 100 Ecuadorian women (INEC 2019). Legal reforms, including specialised courts, have been designed to tackle this problem.² Specifically, the 2008 Constitution of Ecuador enshrined the human right to a life free of violence, with specific mention of gender-based violence (Article 81). In 2013, specialised courts were created to process offences of violence against women and the family.³ In 2014, a new Penal Code introduced additional gender violence offences, including domestic violence and femicide. In 2018, a new 'Law to prevent and eradicate violence against women' was passed. According to its preamble, it aims to 'transform the sociocultural patterns that naturalise, reproduce, perpetuate and maintain inequality between men and women' by protecting and offering redress to violence survivors. On paper, then, Ecuador appears to have a robust legal system in place to address violence against women (VAW). In fact, according to 2018 data from the World Bank's 'Women, Business and Law' report, Ecuador achieved a score of 100/100 in legally protecting women from violence (see Table 1).

VIOLENCE AGAINST WOMEN AFFECTS 65 ^{OUT}/_{OF} 100 ECUADORIAN WOMEN

(INEC 2019)

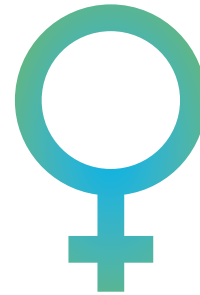
TABLE 1

Ecuador's score on protection of women from violence, according to the World Bank

Is there legislation that <i>specifically addresses domestic violence</i> ? If not, are there <i>penalties aggravated by crimes committed against a spouse or a relative</i> ?	Yes
Is there legislation on <i>sexual harassment at work</i> ?	Yes
Is there legislation on <i>sexual harassment in educational institutions</i> ?	Yes
Are there <i>criminal penalties for sexual harassment at work</i> ?	Yes
Are there <i>civil remedies for sexual harassment in employment</i> ?	Yes
Score 100/100	

Source: ECUADOR in Women, Business and the Law 2018. World Bank Research. <http://documents.worldbank.org/curated/en/926401524803880673/Women-Business-and-the-Law-2018>

However, faced with data suggesting that gendered violence has remained widespread (INEC 2012; 2019), our team wondered how well, in practice, the legal framework in Ecuador responds to the needs of violence survivors. We were interested in whether current legal rules and procedures are informed by women's experiences. We were especially curious about whether the measures offered by the legal system were considered useful by the women they were designed to help. Our research questions aimed at understanding the *lived experiences* of women in their journey through the specialised justice system and procedures.



¹ By gendered violence we mean any behaviour that causes harm to a person because of their gender identity or as a result of a perception of 'transgression' to the gender role considered appropriate. Violence against women, as a structural and systemic problem, is a form of gender violence. This research was focused on gender violence directed towards women in the context of intimate personal relationships.

² The UN Handbook for Legislation on Violence Against Women recommends that laws 'provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women.' (Sec. 3.2.5). Specialised domestic violence courts have been developed in the United States, Canada, Australia and the United Kingdom. Recent innovations can be found in Brazil, Guatemala, Venezuela and Liberia, where there are specialist violence against women courts, and in Spain, where there are 92 courts to address gender-based violence (see, for example, www.endvawnow.org/en/articles/1794-specialist-courts.html?next=1793).

³ According to the resolutions No. 052A-2018 and 11-2018, issued by the Judicial Council and the National Court of Justice, respectively.

2.

RESEARCH QUESTIONS



A *How and why do survivors of gendered violence approach the specialised justice system?*



B *What are the expectations of the survivors when they file a complaint?*



C *How does the specialised system respond to complainants' needs?*



D *What would be required to provide a more effective response to survivors' needs?*

3.

WHAT WE DID

The study incorporated both fieldwork and document analysis. The research protocol had the required ethical clearance from the University of Birmingham.

Interviewees

- 12 survivors of gendered violence who filed a complaint at a specialised court
- Six judges from the specialised courts
- Three 'first-contact'⁴ officers from the specialised courts
- Six case workers from the University of Azuay (Universidad del Azuay)'s Pro-Bono Law Clinic, who were advising and monitoring cases of VAW between 2018 and 2019

Documentary sources

- 80 case files from Universidad del Azuay's Pro-Bono Law Clinic, processed by the specialised courts between 2013 and 2018. A database was created based on these files, including the key information (claims, requested protective measures, severity and nature of the reported events, completed procedural steps and reasons for interruption of the process).
- Statistical data provided by the Ecuadorian Judicial Council with information on the VAW complaints presented in Cuenca between 2013 and 2019.

Coding

The information was analysed through thematic coding of recurring discursive patterns. For this, qualitative data analysis software was used (NVivo). Analytical categories were taken both from the literature and the interviewees' testimonies.

⁴ When a person arrives at the specialised courts to file a complaint, she can use the services of the 'first-contact' officers. These are lawyers who listen to the complainant and adapt the narration to the legal requirements in writing. The complaint is then sent to the judge's office which decides if protective measures are needed. The office can also refer the complainant to a forensic physician, psychologist and/or social worker.



4. MAIN FINDINGS

A.

The study revealed that courts tend to prioritise the progress of the criminal trial, while survivors' main need was protection. Also, little attention is paid to non-criminal mechanisms for the protection of survivors, or to providing redress for the damages suffered.



B.

Survivors mainly report physical and verbal aggression. They almost always file a report as a last resort and generally in a high-risk situation.



'Going to justice is always a last resort.'

(Law clinic case worker, 14 February 2019).



'[The defendant] raised her against a piece of furniture and took her by the neck with his hand, preventing her from breathing, while repeating: "you are a bitch, who have you been with?" Then, he released her and went to the kitchen; she tried to leave but he did not allow her, instead, he took a knife and again grabbed her by the neck with his hand while with the other hand he held the knife and threatened: "you don't know who you got yourself in trouble with, you don't know what I am capable of doing". Then he stabbed the knife into the sofa and placed a padlock on the exit door, then tore the sweater [the complainant] was wearing, with his hands.'

(Complaint excerpt, case file 013-A01-13, 2013).

C.

The path followed by women before they file a complaint at court includes non-judicial social assistance offered by local governments, international agencies and NGOs.



'I had cancer and I looked for help in Social Action [municipal social welfare office] and that's when the social worker [made a] report. I had not even realised it said, "she needs psychological help". [...] Then the social worker there said "go to the [NGO]" and there I looked for a psychologist, and that was where the psychologist helped me [...], that was what strengthened me, until the day came when I had the courage to report my husband.'

(Lourdes, 14 February 2019).

D.

The main demand presented in the complaints is the issuance of a protection order with measures that facilitate the cessation of violence (See Figure 1).

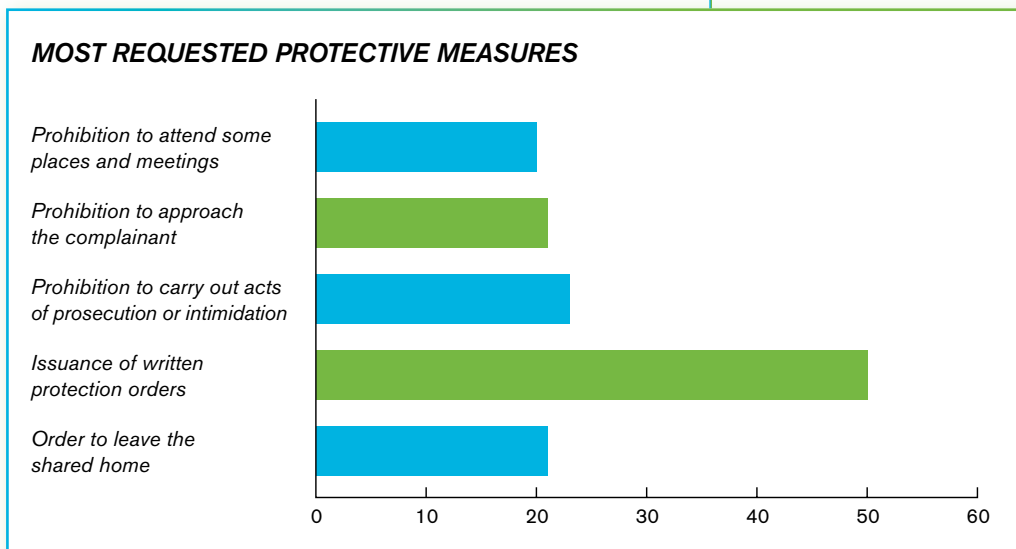


Figure 1. Most frequently requested protective measures: Source: the team's database built from the Law Clinic's files.



'When we receive the complaint, what the complainants asks is that the aggressor leaves the house... yes, that is the most requested thing.'

(First-contact officer, 1 July 2019).



'At the police station, they told me... "he will not come home today." I cried with joy, with happiness, I said, "it cannot be possible", because I wanted him to leave the house.'

(Rosario, 17 May 2019).



E.

There are no legal procedures allowing judges to issue protection orders based on a risk assessment. The orders are made conditional, first, on the notification to the aggressor, and then, on the progress of the criminal process: that is, their continuity is decided at a hearing that most complainants do not attend. Orders become ineffective otherwise (See Figure 2).



'Here, the advice given to the victims is to follow the process to set a precedent, because we also explain to the victims [...] for example: if they file the complaint and they do not come to the hearing, it is like having done nothing, the protective measures become ineffective.'

(First-contact officer, 1 July 2019).

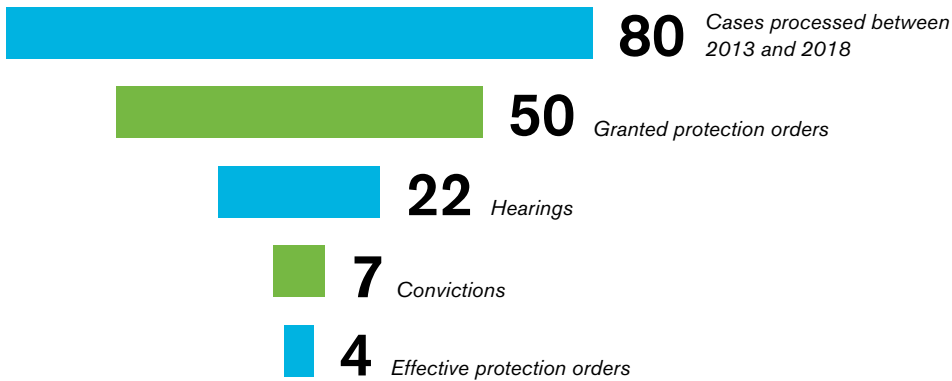
'FUNNEL' EFFECT IN SPECIALISED COURTS OF VAW

Figure 2. Funnel effect regarding effective protection orders. Source: the team's database, built from the Law Clinic's files.

F.

Most cases were dropped from the specialised system when the case file was rerouted to the Public Prosecutor⁵, or when the complainants withdrew from the process, such as when they did not attend the hearing.



'The greatest difficulty in following the legal process is the moment of the hearing, and it is the key moment because [the complainants] give up.'

(First-contact officer, 1 July 2019).



'[...] Because these are infractions that involve cycles of violence, decisions are made [by the complainants] not to participate in the process, then [the complainants] do not come to the hearing, there is no accusation, there is perhaps no evidence, and the result is an acquittal.'

(Specialised judge, 22 March 2019).

⁵ Since the creation of the specialised courts in 2013 until the 2018 issuance of resolutions No. 052A-2018 and 11-2018, by the Judicial Council and the National Court of Justice, respectively, criminal offences were redirected to the Public Prosecutor, while the specialised judges heard misdemeanours only. Presently, the specialised courts are competent to hear all infractions considered violence against women and the family.

G.

Survivors refrain from continuing with the process, usually because they fear:

- i. Engaging in a complex and burdensome criminal trial
- ii. That the aggressor will be imprisoned
- iii. Losing the financial support provided by the aggressor to the complainant and her children
- iv. The worsening of violence, in retaliation
- v. Skepticism and disbelief from judicial officials or the police
- vi. To be deprived of child custody
- vii. To be ostracised by their family and/or stigmatised by their social circles as a 'victim' of violence

“

'Today, as you will see, professor, there are people ... there are women who get the protection order, then are attacked and send [the aggressor to] jail. [...] The judges do not take this into consideration: the aggressors simply get out [of prison], and they come back with more vengefulness, they even kill.'

(Hilda, 15 February 2019).

“

'[The most difficult moment for the complainants is] the hearing, because they are afraid of contact with the aggressor, that is, when you explain what the hearing is like, they say: "but then I will see him again..., and what if he wants to hit me or threaten me?"... that's the most difficult moment for them. [...] And the women withdraw from the hearing.'

(Judicial officer of first reception, personal communication, 1 July 2019).

**H.**

Most survivors do not pursue a prison sentence for the aggressor.

“

'I knew it was serious, because if I called the police and they came and arrested him, then I was aware of... Where they will take him? What will they do to him in jail?'

(Lourdes, 14 February 2019).

“

'Many of the users are not even satisfied with the result of the process. I had an occasion, [...] in my office, the complainant and her daughter came to ask me why I had issued a conviction against the husband, because he [financially] provided for them. Perhaps the answer is not jail for everything... it was not the answer she was looking for.'

(Specialised judge, 22 March 2019).

“

'[when] husbands are imprisoned they do not work... I have heard [other violence survivors] say "my husband worked, now he is in prison, now I have to break my back working". [My partner] was bad but at least he brought food, that's why I endured 18 years.'

(Lourdes, 14 February 2019).

I.

Police intervention is generally inadequate: it does not provide timely protection, resources or information for women to alleviate violence.



'On December 24, I called the police and I asked them to help me out of the house and the cops didn't take me out, that is, the cops asked me if I had someplace to go; I said "no I don't have a family, I don't have anyone"... "Then, where are you going to go?" they told me, and I now realise, now that I'm here at the NGO, I realise that the police could have brought me here and, look, if at that moment, if they had helped me, I would have left with my four children, but they didn't help me.'

(Virginia, 14 May 2019).

J.

Very few cases result in a conviction. This pattern was present at the Law Clinic and was confirmed by the statistics from the Judicial Council (see *Tables 2 and 3*). In this way, only **11.2%** of the cases heard by the specialised courts between 2014 and 2019 concluded with a conviction.

TABLE 2

Complaints filed in Cuenca, 2014–19

Total number of complaints	14,826
Case files rerouted to the Public Prosecutor's Office	6,530
Cases processed by specialised courts	8,296
Judgments issued by the specialised courts	3,652
- Convictions	927
- Acquittals	1,952
- Other	773
Cases without a sentence	4,644

Source: Ecuadorian Judicial Processing System (SATJE) and National Directorate of Juridical Studies and Judicial Statistics. Period: 10 August 2014 to 31 May 2019.

TABLE 3

Complaints processed by the Pro-Bono Law Clinic, 2013–18

Total number of complaints	80
Case files rerouted to the Public Prosecutor's Office	16
Cases processed by specialised courts	64
Judgments issued by the specialised courts	22
- Convictions	7
- Acquittals	15
- Other	0
Cases without a sentence	42

Source: database created by the team based on the cases processed by the University of Azuay's Pro-Bono Law Clinic.

5. RECOMMENDATIONS

A.

A welfare system dedicated to assisting violence survivors, unconnected to the criminal justice system, is a priority. Safe spaces and services (ie, health services, housing, legal aid, access to counselling) for survivors and their children are urgently required.

B.

Public policies are needed to alleviate survivors' economic vulnerability. Fear of losing access to resources and support for their children is a central factor preventing women from reporting violence or continuing with a judicial process.

C.

A protective legal process, not connected to the criminal trial, is needed. It should enable judges to issue protection orders based on risk assessment, respecting the principles of due process, to effectively protect women from rights violations. The measures would be revoked only when danger has stopped.

D.

Law enforcement interventions need to be reoriented such that they act in coordination with the social welfare system, and not only the judicial apparatus. In addition, effective police accountability mechanisms should be accessible to complainants and the public.

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6. FUTURE DIRECTIONS

A.

These findings suggest that more investigation is needed into the consequences of the 'turn to law' and the pre-eminence of legal indicators as markers of development, including in the area of violence against women.

B.

Further research is also needed on the limits of criminal justice as a response to human rights violations, more specifically on non-penal alternatives to violence against women.

C.

Given the role of non-judicial agencies in assisting violence survivors, more research is required on the diverse pathways through which women access support besides legal aid, such as healthcare and counselling settings.

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