

FOLLOW UP TO THE PREVIOUS REVIEW

1. During its third review in 2017, Ecuador accepted 162 of the 187 recommendations made by other states, stating that 158 of these were already implemented or in the process of being implemented. Additionally, it noted 25 others.^{1, 2, 3}
2. Amnesty International welcomes Ecuador's partial implementation of some of the recommendations, including those regarding the design of a protection mechanism for human rights defenders at risk and the decriminalization of abortion in cases of rape. Regretfully, many other recommendations have not been implemented at all.

Indigenous peoples

3. Ecuador accepted all but one of the recommendations regarding Indigenous peoples' rights.^{4, 5, 6} However, these recommendations have not been fully implemented and more is needed to ensure the right to free, prior and informed consent, in line with human rights standards.

Human rights defenders

4. Ecuador accepted all recommendations to establish protection mechanisms for human rights defenders at risk and guarantee a safe and enabling environment for them.⁷
5. Nevertheless, threats and attacks targeting them remain a concern, while authorities have failed to implement a comprehensive protection policy, including a protocol to investigate threats and attacks against them.

Sexual and reproductive rights

6. Although Ecuador noted the only recommendation regarding the decriminalization of abortion, particularly in cases of rape, incest and severe fetal impairment, on 28 April 2021, the Constitutional Court ruled to decriminalize abortion in cases of rape.⁸
7. On 17 February 2022, the National Assembly approved the corresponding bill, with very restrictive gestational limits of 12 weeks in general, and 18 weeks for priority groups. On 15 March, the President modified the bill, restricting access to abortion even more. The National Assembly has to approve either the original or the modified bill.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Indigenous peoples

8. Even though the right to free, prior and informed consent of Indigenous peoples is recognized in article 57 of Ecuador's Constitution, and international instruments ratified by it, there is no adequate legislation to guarantee it in line with international standards.
9. Ecuador noted a recommendation to repeal Decree 1247 and establish clear procedures to implement the right to free, prior and informed consent of Indigenous peoples, arguing that the decree was in line with its constitution and that it had already regulated 94 consultations.^{9, 10}
10. Nevertheless, on 13 December 2019, the Constitutional Court ruled that Decree 1247 contravened the Constitution and jurisprudence on the matter.¹¹ It also ordered the National Assembly to issue organic laws regulating this right within one year.¹²
11. In November 2020, Indigenous leaders criticized a Bill on Free, Prior and Informed Consultation, submitted by the President to the National Assembly, which had not been adequately consulted with Indigenous peoples.

Human rights defenders

12. There are ongoing delays in the design and implementation of a policy to protect human rights defenders, including a protocol to investigate threats and attacks against them, despite the situation of risk and impunity they face.
13. In December 2019, authorities formed an “inter-institutional table” to design such policy, led by the Ombudsman's Office and the Secretariat of Human Rights.
14. On 9 March 2020, during a meeting with Amnesty International, staff of the Attorney General's Office noted that there was “a [legal] gap on how such cases should be handled” and that it was working on internal guidelines for investigating them.
15. In September and October 2020, the Ombudsman's Office consulted some human rights defenders and organizations for the design of the policy.
16. The Human Rights Alliance of Ecuador has expressed concerns over the lack of a clear process for integrating observations made by civil society, and the absence of a “participatory diagnosis” of the situation of human rights defenders as a basis for the policy.¹³
17. In May 2020, Ecuador ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which entered into force on 22 April 2021, which includes obligations to protect environmental defenders from attacks, threats and intimidation.

Sexual and reproductive rights

18. Abortion remains criminalized in most cases, denying vital healthcare to pregnant people.
19. In August 2020, the National Assembly approved a new Health Code, which would have improved access to sexual and reproductive health care, but in September 2020 the President vetoed it in its entirety.
20. In September 2019, the National Assembly rejected a bill to modify the Criminal Code to decriminalize abortion in cases of foetal impairment and rape, but as noted above, on 28 April 2021, the Constitutional Court only decriminalized abortion on grounds of rape.¹⁴ On 17 February 2022, the National Assembly approved the corresponding bill, which was later modified by the President.

Freedom of expression and peaceful assembly

21. In June 2020, the Ministry of Defence issued Agreement 179, which allowed the Armed Forces to use lethal force against protesters, in violation of international human rights law and standards. In July 2020, the Constitutional Court suspended the application of the Agreement and in May 2021 declared it was unconstitutional.¹⁵

THE HUMAN RIGHTS SITUATION ON THE GROUND

Indigenous peoples

22. Both authorities and companies have continued to disregard Indigenous peoples' rights through policies and large-scale projects, such as oil and mining, that have not received their free, prior and informed consent and/or that have affected their territories, environment, health, water and/or food sources.
23. Indigenous peoples in the Ecuadorian Amazon have faced higher risks in the context of the Covid-19 pandemic due to lack of access to drinking water, food, medical supplies, health services, tests and vaccines, resulting from long-term inequality, exclusion and discrimination.
24. In August 2020, the government published a protocol for the prevention and care of Covid-19 in Indigenous, Afro-Ecuadorian and Montubio peoples. Indigenous and human rights organizations in the Amazon stated that Indigenous peoples had not been adequately consulted on the protocol, that it did not reflect their demands, and that they had been excluded from the Emergency Operations Committees in charge of implementing it.

25. In October 2019, the Sarayaku People filed an action in local courts to demand the full implementation of a 2008 ruling by the Inter-American Court on Human Rights that ordered Ecuador to apologize, consult with and recompense the Sarayaku People over an oil project which damaged their ancestral lands and put their lives at risk.
26. On 7 April 2020 an oil spill in the Amazon polluted the Coca and Napo rivers, affecting the environment, water, food and livelihoods of nearly 120,000 people, of whom approximately 27,000 were Indigenous of the Kichwa and Shuar nationalities (ethnicities) living in 105 communities.¹⁶
27. The oil spill was caused by the rupture of pipelines of the Trans Ecuadorian Oil Pipeline System (SOTE) and the Heavy Crude Oil Pipeline (OCP), owned by the state oil company Petroecuador and the private company OCP Ecuador, at Cascada de San Rafael, in Sucumbíos province.
28. On 29 April 2020, a group of Indigenous and human rights organizations filed constitutional protection proceedings and requested precautionary measures on behalf of the people affected by the oil spill.
29. On 1 September 2020, a judge rejected the petition and refused precautionary measures, stating that the petitioners had not proved a violation of rights. The petitioners claimed that there had been procedural irregularities in the case and that the judge had not respected due process guarantees. That month, the judge filed a criminal complaint against the petitioners for allegedly endangering his and his family's physical integrity. Since then, the petitioners, who are human rights defenders, have faced a criminal investigation.¹⁷
30. In March 2021, the Orellana Provincial Court rejected an appeal submitted by communities affected by the 2020 oil spill in the Coca and Napo rivers. In May 2021, the Constitutional Court agreed to review rulings in the case and in June 2021 it agreed to review a request to protect their human rights.¹⁸
31. In 2018, the A'i Cofán people of Sinangoe initiated legal proceedings against the Ecuadorian state for having granted 20 mining concessions and processing another 32, in violation of their rights to free, prior, and informed consent, to a healthy environment and to water, among others.
32. The first instance ruling, issued in August 2018, recognized "that there was contamination in the water of the rivers that are part of the territory of the Sinangoe community." Additionally, in November 2018, the second instance ruling ordered to leave the granted concessions without legal effect and to definitively suspend those that were pending. In 2019, the Constitutional Court decided to analyse the case to establish jurisprudence in this regard.¹⁹
33. On 27 January 2022, the Constitutional Court issued a ruling confirming the violation of their "rights to prior consultation, to nature, to water, to a healthy environment, culture and territory", as well as ordering comprehensive reparation measures.²⁰

Human rights defenders

34. Human rights defenders continue to lack appropriate protection mechanisms to safeguard their lives and personal safety. Authorities have failed to ensure effective investigations into threats and attacks against human rights defenders, particularly those working to defend Indigenous peoples' rights and the environment.
35. Attacks on human rights defenders have frequently gone unpunished, while authorities' unfounded accusations against them, that have the purpose of intimidating them, have been immediately investigated. Authorities have yet to design and implement a policy to protect human rights defenders at risk, including a protocol for adequately investigating threats and attacks against them.
36. Amnesty International exposed failures of the Attorney General's Office in response to a series of attacks and death threats in 2018 in the Pastaza province against women human rights defenders Patricia Gualinga, Nema Grefa, Salomé Aranda and Margoth Escobar, members of the Mujeres Amazónicas collective.
37. The authorities' lack of capacity and will to adequately and effectively provide protection and conduct criminal investigations into the attacks and death threats against these defenders, placed their lives at risk. The lives of others protecting the Amazon from political and economic interests linked to large-scale extractive projects in Indigenous territories were also at risk.²¹
38. No one has been brought to justice in connection with threats and attacks against these human rights defenders.
39. In June 2020, the prosecutors in charge of the cases of attacks and threats against human rights defenders Patricia Gualinga and Margoth Escobar requested to close the investigations without any relevant progress.²²

40. On 11 April 2019, digital rights defender Ola Bini was detained by police after the Minister of the Interior accused him of “cooperating with attempts to destabilize the government”. He was released after 70 days in pre-trial detention, following a court order that acknowledged his detention was arbitrary. Ola Bini was later charged with the crime of “unauthorized access to a computer system”. After numerous delays, his trial started on 19 January 2022.
41. Amnesty International found that the undue interference of government authorities in Ola Bini’s case violated due process, the investigation’s independence, and the right to the presumption of innocence.²³

Justice and impunity

42. On 3 October 2019, protests erupted in multiple cities in response to austerity measures announced by then President Moreno. Hours later, the President declared a state of emergency throughout the country, authorizing the use of the armed forces and the Police for public security operations.
43. On 11 October 2019, after verifying audiovisual evidence, Amnesty International identified five episodes that exemplified the unnecessary and excessive use of force by security forces during the protests.²⁴
44. According to the Ombudsman’s Office, during the October 2019 protests, 1,192 people were detained, eight people were killed and 1,340 were injured. More than 70% of the detainees were released and charges were pressed against the remaining.²⁵
45. On 17 March 2021, the Special Commission for Truth and Justice, created by the Ombudsman’s Office, published its report on the issue, which identified 123 cases of violations to the right to personal integrity, 38 of violations to the right to personal liberty, 6 of extrajudicial executions, 22 of attempted extrajudicial executions, 3 incidents of sexual violence and 20 of eye injuries by security forces.²⁶
46. While investigations into the human rights violations committed during the protests continue, no law enforcement officials have been charged or prosecuted yet.

Detainees

47. At least 316 people deprived of their liberty were killed in prisons in alleged clashes between rival gangs in 2021, including 79 people on 26 February, 119 people on 28 September, and 62 people between 12 and 13 November. The deaths occurred in a context of overcrowding, neglect and a failure to ensure the rights of people deprived of their liberty.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Ecuador to:

Indigenous Peoples

- Ensure the right to free, prior and informed consent of Indigenous peoples on policies, projects and legislation that may affect them, in line with human rights standards.
- Promptly, thoroughly, and impartially investigate the 7 April 2020 and 28 January 2022 oil spills in the Amazon, establish the relevant criminal and administrative responsibilities, and guarantee truth, justice and reparations for affected communities.

Human rights defenders

- Implement a comprehensive policy to protect human rights defenders, including a protocol to investigate threats and attacks against them, in adequate consultation with them.

Justice and impunity

- Promptly, thoroughly, and impartially investigate the human rights violations committed in the context of the October 2019 protests with the aim of guaranteeing truth, justice, and reparations for victims, including by bringing those with command responsibility to justice.

Sexual and reproductive rights

- Decriminalize abortion in all circumstances and ensure that pregnant persons seeking or obtaining it, and medical practitioners providing it, are not subject to criminal sanctions.
- Ensure timely and effective access to safe and legal abortion services for all pregnant people who need them.

Detainees

- Promptly, thoroughly, and impartially investigate the deaths of detainees, establish the relevant criminal and administrative responsibilities, and guarantee truth, justice and reparations to victims.

- ¹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review of Ecuador, UN Doc. A/HRC/36/4, 10 July 2017
- ² Human Rights Council, Report of the Working Group on the Universal Periodic Review of Ecuador: Addendum, UN Doc. A/HRC/36/4/Add.1, 25 July 2017
- ³ Human Rights Council, Report of the Human Rights Council on its thirty-sixth session, UN Doc. A/HRC/36/2, 14 June 2018, para 454
- ⁴ A/HRC/36/4, recommendation 118.151 (El Salvador, Republic of Korea, Sierra Leone, Estonia, Norway, Peru)
- ⁵ A/HRC/36/4, recommendation 118.152 (Mexico)
- ⁶ A/HRC/36/4, recommendation 120.19, (Germany), Noted
- ⁷ A/HRC/36/4, recommendations 118.53 (Belgium, Costa Rica), 118.55 (Estonia), 118.57 (Hungary), 118.58 (Mexico), 118.64 (Czechia), 118.65 (France) and 118.66 (Republic of Korea, Ukraine)
- ⁸ A/HRC/36/4, recommendation 120.17 (Norway, Iceland, Slovenia)
- ⁹ Decree 1247, which issued the Regulations for the execution of free, prior, and informed consultation in the bidding and allocation processes of hydrocarbon areas and blocks (Spanish), 19 July 2012
- ¹⁰ A/HRC/36/4, recommendation 120.19 (Germany)
- ¹¹ The Constitutional Court ruled that the Organic Law of Citizen Participation (12 April 2010) and the Instructions for the application of pre-legislative consultation (27 June 2012) also violated article 84 of the Constitution and contravened Ruling No. 001-10-SIN-CC.
- ¹² Constitutional Court of Ecuador, Ruling No. 38-13-IS/19 and accumulated (Spanish), 13 December 2019
- ¹³ Alianza por los Derechos Humanos Ecuador, Situation of those defending human, collective and nature's rights in Ecuador (Spanish), p. 12, June 2021
- ¹⁴ Amnesty International, Ecuador: Amicus Curiae on decriminalization of abortion on the grounds of rape (Spanish), 27 April 2021, AMR 28/4043/2021
- ¹⁵ Constitutional Court of Ecuador, Ruling No. 33-20-IN/21 and accumulated (Spanish), 5 May 2021
- ¹⁶ Amnesty International, Ecuador: Indigenous communities of the Ecuadorian Amazon, whose lives and safety are threatened by an oil spill and COVID-19, demand respect for due process as they take legal action to defend their rights, 11 May 2020, AMR 28/2294/2020
- ¹⁷ Amnesty International, Ecuador: Amnesty International urges judiciary to promptly notify oil spill ruling to affected Amazon Indigenous Peoples (Spanish), 22 September 2020, AMR 28/3102/2020
- ¹⁸ Alianza por los Derechos Humanos Ecuador, Situation of those defending human, collective and nature's rights in Ecuador (Spanish), p. 40, June 2021
- ¹⁹ Constitutional Court of Ecuador, Ruling No. 273-19-JP/22 (Previous consultation in the community A'i Cofan of Sinangoe) (Spanish), 27 January 2021
- ²⁰ Amnesty International, Ecuador: Amicus curiae -Case of Community Sinangoe (No. 273-19-j) (Spanish), 6 December 2021, AMR 28/4983/2021
- ²¹ Amnesty International, Ecuador: "They will not stop us": Justice and protection for Amazonian Women, defenders of the land, territory and environment, 30 April 2019, AMR 28/0039/2019
- ²² Amnesty International, Ecuador: Concern over impunity for attacks against Amazonian women (Spanish), 3 August 2020, AMR 28/2836/2020
- ²³ Amnesty International, Ecuador: Human rights violations in criminal proceedings against Ola Bini, 26 August 2019, AMR 28/0871/2019
- ²⁴ Amnesty International, Video Post on Twitter, 11 October 2019
- ²⁵ Ombudsman's Office of Ecuador, Seventh executive report on detained persons, National strike – State of exception Ecuador (Spanish), 14 October 2019
- ²⁶ Comisión Especial para la Verdad y la Justicia, Report on the events occurred in Ecuador between 3 and 16 October 2019 (Spanish), p. 239, 17 March 2021