

Status of Human Rights in Ecuador for the 41st Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Republic of Ecuador (Ecuador) for the 41st session of the Universal Periodic Review (UPR).

Background

2. Ecuador is a country located in the western part of South America and has an estimated population of 17 million people¹. The country is predominately Christian, with 74% of the population identifying as Catholic, 10.4% as Evangelical, 1.2% as Jehovah's Witness, 6.4% as other, and 7.9% as atheist².

3. Ecuador's previous UPR was held on 1 May 2017³. As a result of the review, Ecuador received 182 recommendations, 162 of which Ecuador supported⁴. One recommendation, which was supported by Ecuador, was that the government "[f]urther intensify its efforts to combat human trafficking in line with implementing the National Plan and address properly protection of victims of human trafficking"⁵.

4. It was further recommended, but only noted by Ecuador, that the government "[a]dvance in reforming the Criminal Code to decriminalize abortion (Norway); Repeal laws criminalizing abortion in cases of rape, incest and severe fetal impairment and eliminate all punitive measures (Iceland); Reform the Comprehensive Criminal Code in relation to the legal extension of abortion and to decriminalize abortion in cases of rape, incest and severe fetal impairment (Slovenia)"⁶. There were no recommendations made regarding religious freedom.

Legal Framework

5. With regard to human trafficking, Article 66, sec. 17, of the Constitution of Ecuador guarantees "[t]he right to freedom of work. No one shall be obligated to carry out free or forced labor, unless provided by law"⁷. Furthermore, sec. 29 of the same Article prohibits "slavery, exploitation, bondage and smuggling and trafficking in human beings in all their forms"⁸ and requires the state to "adopt measures to prevent and eliminate trafficking in persons and to protect and socially reinsert victims of trafficking and other forms of the infringement of freedom"⁹.

6. Articles 91 and 92 of the Ecuador's Organic Integral Criminal Code layouts the punishment for human trafficking:

Article 91 – Trafficking in Persons

The recruitment, transportation, transfer, delivery, reception or reception for oneself or for a third party, of one more persons, either within the country or from or to other countries for exploitation purposes, constitutes the crime of human trafficking.

Exploitation is any activity that results in a material or economic benefit, an immaterial advantage or any other benefit, for oneself or for a third party, through the submission of a person or the imposition of living or working conditions, obtained from:

1. The illegal extraction or commercialization of organs, tissues, fluids or genetic material from living people, including tourism for organ donation or transplantation.
2. The sexual exploitation of people including forced prostitution, sex tourism and child pornography.
3. Labor exploitation including forced labor, debt bondage and child labor.
4. Promise of marriage or servile de facto union, including precocious, arranged de facto union, as compensation or transaction, temporary or for procreation purposes.
5. The illegal adoption of girls, boys and adolescents.
6. Begging.
7. Forced recruitment for armed conflicts or for the commission of acts punishable by law.
8. Any other type of exploitation¹⁰.

Article 92 – Penalty for the crime of trafficking in persons.

Trafficking in persons will be punished:

1. With imprisonment from thirteen to sixteen years.
2. With a custodial sentence of sixteen to nineteen years, if the offense falls on people from one of the priority attention groups or in a situation of double vulnerability or if there has been an effective, consensual relationship between the victim and the aggressor, conjugal, coexistence, family or economic dependency or there is a link of civil, military, educational, religious or labor authority.

3. With a custodial sentence of nineteen to twenty-two years, if, on the occasion of human trafficking, the victim has suffered serious or irreversible illness or psychological or physical damage.

4. With a custodial sentence of twenty-two to twenty-six years, if the death of the victim is caused by human trafficking.

Trafficking is prosecuted and punished independently of other crimes that have been committed in its execution or as a consequence¹¹.

7. In addition, Ecuador is a party to the International Covenant on Civil and Political Rights (ICCPR). Articles 7, 8, and 24 of the ICCPR address trafficking in persons, as well as forced child labour:

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation¹².

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform or compulsory labour¹³.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State¹⁴.

8. With regard to abortion, Article 363 of the Constitution states, “The State shall be responsible for: . . . Ensuring sexual and reproductive health actions and services and guaranteeing the integral healthcare and the life of women, especially during pregnancy, childbirth and postpartum”¹⁵.

9. Furthermore, Articles 149 and 150 of the Criminal Code govern abortion within the country:

Article 149 – Consensual abortion

The person who causes an abortion to a woman who has consented to it shall be punished with a custodial sentence of one to three years. The woman who causes her abortion or allows another to cause it, will be punished with imprisonment from six months to two years¹⁶.

Article 150 – Non-punishable abortion

Abortion performed by a doctor or other trained health professional, who has the consent of the woman or her spouse, partner, close relatives or her legal representative, when she is not present in the possibility of providing it, it will not be punishable in the following cases:

1. If it has been practiced to avoid a danger to the life or health of the pregnant woman and if this danger cannot be avoided by other means.
2. If the pregnancy is the consequence of rape in a woman suffering from mental disability¹⁷.

10. In February of 2022, the Ecuadorian legislature approved regulations which would now permit abortion in all cases of rape¹⁸. Previously, abortion in cases of rape was only permissible if the woman had a mental disability¹⁹.

11. Ecuador is also a party to the Convention on the Rights of the Child (CRC). Under Article 6 of the CRC:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child²⁰.

12. Furthermore, under Article 19 of the CRC:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement²¹.

Human Trafficking

13. Between January 2017 and July 2019, 332 victims of human trafficking were rescued²². Of these victims, 83% were women and 17% men. The two primary destinations for these victims are for sexual exploitation and forced labour. Within Ecuador, it is estimated that as much as 80% of human trafficking victims are women and girls who are used for sexual exploitation²³. However, many of these cases go unreported out of shame and fear²⁴.

14. In 2020, five men were sentenced to 25 years in prison for operating a sex trafficking ring in Ecuador which was also connected to the rape and murder of a 15-year-old girl²⁵. According to reports, the individuals were convicted of grooming girls outside of schools located in poorer districts in the capitol city of Quito²⁶. The girls, who were between the ages of 13 and 16, would be invited to a party where they were supplied drugs and alcohol²⁷. One of the victims told of how they were drugged and told to have sex while being filmed²⁸.

15. Additionally, the human trafficking also involves individuals being smuggled out of Ecuador with the purpose of reaching the United States²⁹. This particular form of trafficking in Ecuador has been exacerbated because of COVID-19, which has severely impacted the Ecuadorian economy and resulted in high unemployment³⁰. As a result, desperate individuals have turned to human smugglers known as “coyotes” to provide them with passage to the United States³¹. In the first half of 2021 alone, more than 88,000 Ecuadorians left for Mexico with hopes of crossing the United States-Mexico border, and more than 54,000 of them are unaccounted for³². Additionally, Ecuadorians make up the 4th largest nationality encountered by U.S. Customs and Border Protection agents at the border³³.

16. In one case, a human smuggling ring was charging individuals between \$10,000 and \$16,000 per person to be smuggled from Ecuador into the U.S.³⁴. As part of a joint operation between the United States and Ecuador, 10 individuals were arrested and charged with “one count of organized crime in connection to the illegal trafficking of migrants”³⁵. According to authorities, these individuals were responsible for smuggling humans from Ecuador over a two-year period³⁶.

17. One of the biggest contributing factors impacting Ecuador’s ability to properly combat human trafficking is a lack of training for prosecutors³⁷. This results in prosecutors not being able to properly identify cases of human trafficking or provide necessary help for the victims³⁸. This hinders their ability to properly investigate and prosecute these cases³⁹. To address this issue, in 2019, Ecuador announced the launch of a new anti-human trafficking plan to more effectively combat this heinous crime and provide proper assistance to the victims⁴⁰. The Anti-TIP (Trafficking in Persons) Plan (2019 -2030) aims to be more effective at combatting human trafficking through developing interagency cooperation as well as establishing clear and defining roles for government actors⁴¹. According to the Ecuadorian Minister of Government, María Paula Romo, the main characteristics of this plan involve “comprehensive protection, investigation and prosecution, prevention and promotion of rights, and governance”⁴². She also emphasized that combatting human trafficking is a priority for the government of Ecuador⁴³.

Abortion

18. Ecuador has slowly begun to erode its long held protections for the life of the unborn. In 2019, a bill was put forth which would expand abortion to allow it in all cases of rape, and in cases of foetal abnormalities⁴⁴. Thankfully, the National Assembly voted against this proposal and, by doing so, upheld protections for the life of the unborn⁴⁵. However, these protections would be short-lived.

19. On 18 April 2021, Ecuador's Constitutional Court ruled in favour of decriminalising abortions in cases of rape⁴⁶. Then, in February of 2022, the Ecuadorian legislature passed a measure now permitting abortion in all cases of rape⁴⁷.

20. Since the creation of the Organic Integral Criminal Code in 1938, Ecuador has upheld protections for the lives of the unborn. However, these protections are slowly being undone. Abortion is one of the gravest of all offenses against human life, and against justice because it entails the deliberate killing of an innocent human being, Ecuador must protect life at all stages. The value of human life is not dependent upon the nature in which it begins, and the life of an unborn baby conceived by rape is no less valuable and deserving of life than any other. Furthermore, babies born with disabilities, such as Down syndrome, are no less deserving of life than otherwise completely healthy babies. In fact, babies born with Down syndrome are capable of living long and otherwise healthy lives⁴⁸. Additionally, the tests used to detect these abnormalities are not consistently reliable⁴⁹. As prenatal screenings are becoming more common, companies are trying to screen for more and more diseases and abnormalities. For example, studies found that a prenatal screening for Prader-Willi syndrome, a genetic multisystem disorder, returned an incorrect positive result 90% of the time⁵⁰.

Conclusion

21. We are encouraged by Ecuador's recent steps to combat human trafficking such as the implementation of the Anti-TIP Plan. We would like to encourage Ecuador to make sure this plan is fully implemented in order to bring traffickers to justice and provide aid and assistance to the victims. It is critical that Ecuador allocate resources and specified training for authorities to properly identify cases of human trafficking. Additionally, Ecuador must educate its people on the dangers and risks of using human smugglers to take them out of the country to the United States-Mexico border. This can be done by providing authorities at the border with the resources and training needed to identify potential cases of human trafficking so they can stop it before they ever leave Ecuador.

22. Furthermore, we would like to encourage Ecuador to protect life at all stages and resist efforts to expand access to abortion in cases of foetal abnormalities. However, we also request that Ecuador reform its current law to protect life of the unborn baby with no exception based on how the baby's life began.

¹ Ecuador, THE WORLD FACTBOOK (12 Jul. 2021), available at <https://www.cia.gov/the-world-factbook/countries/ecuador/>.

² *Id.*

³ Universal Periodic Review – Ecuador, UNHRC, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ECIndex.aspx>.

⁴ UPR – of Ecuador Thematic List of Recommendations, UNHRC, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/EC/MatriceRecommendationsEcuador.docx>.

⁵ *Id.* at A/HRC/36/4 – Para. 118.70.

⁶ *Id.* at A/HRC/36/4 – Para. 120.

⁷ Constitution of Ecuador art. 66 sec.17, https://www.constituteproject.org/constitution/Ecuador_2008.pdf.

⁸ *Id.*

⁹ *Id.* at sec. 29.

¹⁰ Organic Integral Criminal Code art. 91, <https://observatoriologislativocele.com/en/official-record-899-organic-code-of-the-social-economy-of-knowledge-creativity-and-innovation/>.

¹¹ *Id.* at art. 92.

¹² International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 7.

¹³ *Id.* at art. 8.

¹⁴ *Id.* at art. 24.

¹⁵ Constitution of Ecuador art. 363, *supra* note 7.

¹⁶ Organic Integral Criminal Code art. 149, *supra* note 10.

¹⁷ *Id.* at art. 150.

¹⁸ *Ecuador Legislators Approve Regulations Allowing Abortion in Cases of Rape*, THE GUARDIAN (17 Feb. 2022), <https://www.theguardian.com/world/2022/feb/17/ecuador-abortion-rape-cases-legal>.

¹⁹ *Id.*

²⁰ Convention on the Rights of the Child art. 6, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²¹ *Id.* at art 19.

²² *Ecuador: Anatomy of Organized Crime and Its Actors*, PLAN V (13 Aug. 2021),

<https://www.planv.com.ec/ecuador-anatomy-organized-crime-and-its-actors>.

²³ *Human Trafficking in Ecuador*, THE BORGEN PROJECT (7 May 2021), <https://borgenproject.org/human-trafficking-in-ecuador/>.

²⁴ Anastasia Moloney, *Shame Silences Ecuador's Indigenous People Trafficked for Sex*, REUTERS (27 Jul. 2017), <https://www.reuters.com/article/us-ecuador-humantrafficking/shame-silences-ecuadors-indigenous-people-trafficked-for-sex-idUSKBN1AC2NU>.

²⁵ *Texan Who Led Sex Trafficking Ring Linked to Teenager's Murder is Jailed in Ecuador*, THE GUARDIAN (13 Mar. 2020), <https://www.theguardian.com/global-development/2020/mar/13/texan-who-led-sex-trafficking-ring-linked-to-teenagers-is-jailed-in-ecuador>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Adry Tores, *Smuggling Ring That Ferried Scores of Migrants from Ecuador to the United States, Charging up to \$16K per person, is Taken Down by ICE-Backed Sting*, DAILY MAIL (9 Sep. 2021),

<https://www.dailymail.co.uk/news/article-9975215/Ecuadorian-police-dismantles-smuggling-ring-ferried-migrants-Ecuador-United-States.html>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Ecuador and International Organization for Migration Launch Anti-Human Trafficking Action Plan with U.S. Support*, U.S. EMBASSY & CONSULATE IN ECUADOR (18 Dec. 2019), <https://ec.usembassy.gov/ecuador-and-international-organization-for-migration-launch-anti-human-trafficking-action-plan-with-u-s-support>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Ecuador Abortion: In Cases of Rape Decriminalised*, BBC NEWS (29 Apr. 2022), <https://www.bbc.com/news/world-latin-america-56913947>.

⁴⁷ *Ecuador Legislators Approve Regulations Allowing Abortion in Cases of Rape*, *supra* note 18.

⁴⁸ *Data and Statistics on Down Syndrome*, CDC,
<https://www.cdc.gov/ncbddd/birthdefects/downsyndrome/data.html>.

⁴⁹ *When They Warn of Rare Disorders, These Prenatal Tests are Usually Wrong*, NEW YORK TIMES (1 Jan. 2022),
<https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

⁵⁰ *Id.*