



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Ecuador for the 13th Session of the
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Prepared by

Students

Emily Van Volkinburg, J. D. Candidate, 2013
Jennifer Villani, J.D. Candidate, 2013
Jason Martin, J.D. Candidate, 2012
Michael Housley, J.D. Candidate, 2012

Professors

Cheryl Wattley
Lindsay Robertson
Taiawagi Helton
Alvaro Baca

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Executive Summary:

The International Human Rights Clinic of the University of Oklahoma College of Law, U.S.A., submits the following report to the 13th Session of the UPR Working Group of the Human Rights Council. This report concerns indigenous peoples in the Republic of Ecuador and surveys Ecuador's compliance with certain human rights obligations. The government of Ecuador recognizes itself as a multinational and multi-ethnic state and has made efforts to incorporate the numerous indigenous communities into its system of government. The report and attached annex focus on four selected areas: (1) Education; (2) Judicial Rights; (3) Vulnerable peoples; and (4) Healthcare. The Clinic notes the expressed intent of the government of Ecuador to comply with its international commitments, but notes that few initiatives have been implemented sufficiently to realize these goals. Each section of this report includes recommendations for continuing Ecuador's domestic accomplishments and maintaining fidelity to its international obligations.

I. EDUCATION

Normative and Institutional Frameworks

International Provisions: Ecuador is a party to the UDHR, which focuses on education in Article 26, the ICESCR and its optional protocol, ICCPR, and the Declaration on the Rights of Indigenous Peoples, where education is mentioned specifically in Article 14. Additionally, it has ratified the Convention on the rights of the Child, the American Convention on Human Rights, and the International Labour Organization Convention No. 169, which addresses the rights of indigenous and Tribal Peoples in Articles 26 to 29.

Domestic Undertakings: Articles 26 to 28 of the Constitution of Ecuador focus solely on education, but it is also mentioned in Articles 11, 23, and 66 in the section on Equality, Articles 44-46, and 347 in Child Rights, Article 43 in the section on Gender, Article 47-49 in the section on Disabilities, Articles 7-8 in the section on Citizenship, Articles 56-60 in the section on Minorities and Indigenous Peoples, Article 66 in the section on Religion, Article 69 in the section on Parents, and Articles 79-81, and 417, all of which discuss the protection of the right to education. The constitution requires children to receive a "basic level of education," which consists of three cycles of three years apiece in primary school. It also establishes that Primary and Secondary education be provided free of charge, and that bilingual education be implemented and protected.

Ecuador has also enacted La Ley Orgánica de Educación Intercultural Bilingüe, La Ley de Educación #127, La Ley de Cultura, and El Código de la Niñez y Adolescencia. Each of these laws further protects and defines the educational structure set forth by the Constitution.

Human Rights on the Ground

Access to Education: There is significant discrepancy of access to education between the general population of Ecuador and the indigenous populations. While schools are free of cost to attend, parents are often required to pay substantial fees. Additionally, schools are not always located in easily accessible areas, especially for those living in rural location. The issues of cost and location of schools are particularly relevant for students in pursuit of higher education, which consists of any schooling beyond the nine (9) years required by law.

Bilingual Education: While the Constitution creates a preference for bilingual education, it is often not implemented. The majority of schooling is conducted in Spanish, with only

several hours a week devoted to other languages. Additionally, there is a lack of educational materials available in indigenous languages.

Indigenous Input in Education: While the government has taken significant steps to promote native input in the education system, it has not been fully realized. The indigenous communities are not given enough ability to create an education system that provides for the conservation of their culture. Funding is also an issue, as the appropriate resources are not available to implement the bilingual education that is called for in the Constitution.

Recommendations:

- Collect and publish education statistics of indigenous groups.
- Further assess the ability of students in rural communities to attend schools and implement programs to assist if necessary.
- Increase the quality and prevalence of bilingual education throughout the country.
- Further promote literacy and encourage students to complete primary education in both indigenous and non-indigenous communities.
- Determine and reduce hidden fees required to attend schools, such as the cost of supplies, uniforms and school taxes.

II. JUDICIAL RIGHTS

Normative and Institutional Frameworks

International Provisions: Ecuador has adopted the following international instruments that affect the judicial rights of indigenous peoples: International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Covenant on Civil and Political Rights (ICCPR), American Convention on Human Rights, and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Domestic Undertakings: The new Constitution states that Ecuador is a multicultural, multi-ethnic entity that recognizes the collective rights of indigenous peoples. Article 171 provides that authorities within indigenous communities can exercise jurisdictional duties based on their ancestral traditions and that the authorities will apply the norms and procedures that are appropriate to the resolution of internal conflicts. When the interests of indigenous communities are affected by governmental action, Articles 57 and 398 guarantee prior consultation so that the tribe will be fully informed in a timely manner and can have input into the decision-making. Article 397 ensures that when there is environmental damage on indigenous land, the State will act quickly in restoring the ecosystem. Judges, under Article 172, must administer the law subject to the Constitution and ratified international law.

Human Rights on the Ground

While there has been progress on the removal of explosives and equipment from the land of the indigenous People of Sarayaku, the government of Ecuador has yet to provide reparations or restore the ecosystem after oil exploration on the indigenous land. The exploration for oil on the land of the indigenous people of Sarayaku highlights the lack of proper consultation by the Ecuadorian government when making decisions. A public official in Ecuador stated that even when the government consults with a tribe, they do so in a manner that is not genuine, prior, or representative of the indigenous community. This lack of proper consultation violates the Constitution of Ecuador and the ILO

Convention 169. Despite the recognition of indigenous law by the Constitution, government officials and the media have attacked its use by giving the impression that lynching and death are common results of indigenous justice. However, indigenous law is a community-based approach that has a formal process where indigenous leaders and community members decide claims instead of a sole decision-maker, like a judge, in traditional law. Claims that indigenous law is ineffective and primal are not only false, but undercut the usefulness of its approach and strengthen anti-indigenous beliefs.

Recommendations:

- Ecuador should begin to give effect to the right of consultation when a government project affects an indigenous community
- Ecuador should take the necessary steps for providing reparations to the indigenous People of Sarayaku for the harm caused by the unlawful exploration of oil on their land, as required by their Constitution and the ILO Convention 169.
- Ecuador should educate people about the process of indigenous law in order to strengthen its use and end the conflation of indigenous law and lynching.

III. VULNERABLE PEOPLES: WOMEN, CHILDREN, AND DISABLED PERSONS

Normative and Institutional Frameworks

International Provisions: Ecuador is a party to The Convention on the Elimination of Discrimination Against Women. Ecuador is a signee to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Ecuador is also a party to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, (Convention of Belem Do Para). Ecuador is a Party to International Labor Organization (ILO) No. 169. Ecuador is a party on the Convention of the Rights of the Child. Ecuador is a party to the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

A. WOMEN

Domestic Undertakings: Article 70 of The Ecuadorian Constitution mandates that the state create policies to achieve equality between the sexes and provide assistance for their enforcement. There is a council called the National Council for Women, CONAMU.

Human Rights on the Ground

Discrimination against women is apparent in the workplace and education. Women earn one third less than men. Only seven percent of Ecuadorian women have higher education. Indigenous women in particular are unemployed and underemployed. Many feel that their only option for employment is to sell artisanal goods or work vending items in the streets. It was reported that up to 80% of women experience physical, psychological, or sexual abuse. Ecuadorian authorities usually refer female victims to the judicial system, but many reasons lead to women dropping charges, such as familial pressure and fear of testifying at trial. The government has taken steps to alleviate violence against women by establishing courts that specialize in women's issues and family violence.

Recommendations:

- Provide preventive education to the Ecuadorian public about gender discrimination and gender-based violence, especially in the areas of education and employment.

- Provide trained advocates to assist women navigating the judicial system to know their legal rights, which would prevent dropping charges and encourage reporting of crimes.
- Develop assistance programs, including mentoring programs, to encourage women to pursue higher education.

B. CHILDREN

Domestic Undertakings: The Ecuadorian Constitution (Articles 42, 44, 45, and 46) gives children the right to health and education. It also prohibits labor by children under fifteen. Ecuador adopted both the Work Code and The National Plan for the Prevention and Progressive Eradication of Child Labor in 2005. Ecuador also has a National Decade Plan for the Total Protection of Boys, Girls, and Adolescents.

Human Rights on the Ground

Child Labor: Child labor is the most significant problem facing Ecuadorian youth because it disrupts or ends their education. It is especially prevalent among indigenous youth. Children frequently work at banana plantations, flower farms (especially roses), garbage dumps, or on the streets vending goods. Children on the streets are highly vulnerable to violence, as well as sexual and economic exploitation. Ecuador is a destination for human trafficking of children, as well as commercial sex tourism.

Recommendations:

- Continue its efforts, described in The National Decade Plan, to end child labor by having more inspections of plantations, flower farms, and children on the street.
- Create stiffer penalties for businesses found to be employing children.
- Continue to enforce the provisions of the Criminal Code for those involved in human trafficking, as well as develop social services that might include providing therapy, educational, and vocational training for victims of child labor or trafficking in persons.

C. DISABLED PERSONS

Domestic Undertakings: The Ecuadorian Constitution (articles 47-49) provides for specialized attention for persons with disabilities, including adequate access to all goods and services.

Human Rights on the Ground

Ecuador is difficult for the disabled to navigate. There are not ramps and handrails. Also, there is not sufficient identification of indigenous disabled persons. But, we note with great pleasure, that Vice-President Lenin Moreno has made great strides in identifying and assisting disabled Ecuadorians. The government has provisions for reserving jobs for the disabled and has greatly increased its budget for social services for disabled persons.

Recommendations:

- Enforce existing regulations affecting the disabled, and implement measures to ease day to day life through better access to ramps, etc. for disabled Ecuadorians.
- Continue to expand and strengthen social services for the disabled, especially in the areas of employment, education, and access.

IV. THE RIGHT TO HEALTH

Normative and Institutional Framework

International Obligations: As a member of the U.N., the Republic of Ecuador is a party to the Convention to Eliminate All Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (CESCR), and endorses the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). They also ratified Convention No. 169 of the ILO. Article 5 of the CERD guarantees all citizens of states-parties the rights to “public health, medical care, social security and social services.” Article 12 of the CESCR ensures that member countries ensure “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Article 25 of the ILO No. 169 states that “health services shall be community-based” and take into account their “traditional preventive care, healing practices, and medicines.” Article 2 of the UNDRIP states that “individuals have the right to be free from any kind of discrimination.”

Domestic Undertakings

The constitution of Ecuador, approved by referendum on July 25, 2009 guarantees a right to health care guided by principles of universality. Article 358 of the Constitution declares a national health system that recognizes social and cultural diversity. Article 360 guarantees the promotion of primary healthcare as well as promoting and complementing the ancestral and alternative medicines. Article 362 says public state health services shall be universal and free of charge at all levels of care. Article 363 (6) guarantees healthcare for the life of women, especially during pregnancy, childbirth, and postpartum. The Ministry of Public Health and the Ecuadorian Social Security Institute are the main governmental organizations charged in providing healthcare.

Human Rights on the Ground

The death rate in 2001 was 5.8 per 1,000 and has dropped to 5.0 per 1,000. The infant mortality rate was 13 per 1,000 births. The Law for the Provision of Free Maternity and Child Health Care (LMGAI) is attributed for bringing down these rates. An increase in participation among international education programs has increased the amount of medical professionals trained to provide medical services in rural communities. The largest reason that the indigenous population’s health status is poorer than the rest of the country is lack of access caused by poverty. Increased funding has begun to target these communities that have little to no access to medical services because traveling costs are prohibitively high.

Recommendations:

- Create more community based hospitals that employ individuals that are trained and grew up in the rural areas that they will be treating, increasing trust amongst the indigenous in modern medicine and decreasing the amount of discrimination.
- Increase funding to the LMGAI and target rural communities. Increasing the rate of skilled birth attendants to all births to continue the decline in infant mortality rates.
- Continue the recent expansion of medical spending for rural areas of Ecuador by hiring more medical professionals as well as expanding the number of medical centers in rural areas.