

## Ecuador

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

The new Ecuadorian Constitution (Constitución de la República del Ecuador, 2008), adopted after the election of the indigenous leader Rafael Correa, recognises family “in its various forms” as the “fundamental core of society” (art. 67). Article 67 further states that: “Marriage is the union of a man and a woman and shall be based on the free consent of the persons entering into this bond and on the equality of rights, obligations and legal capacity.” Marriage and family relations are governed by the Civil Code (first adopted in 1857, last updated in 2015).

The Civil Code grants men and women equal rights to enter marriage, and requires the consent of both parts for the marriage to be lawful (Civil Code, art. 81 y 82). Forced marriage is prohibited (art. 96): “Is cause of annulment of the marriage the lack of free and spontaneous consent on the part of one or both contracting parties, at the time of the marriage.”

De facto unions are recognised by the Constitution (art. 68), and regulated by art. 222 of the Civil Code. They are granted the same rights as married couples over their children, they have the right to adopt (heterosexual couples only), and have the same prerogatives regarding the administration of their common goods and property.

#### b) Child marriage

The legal age of marriage is 18 years old for both women and men (Civil Code, art. 83), but it can be lowered to 16 with the authorisation of parents or legal guardians. Child marriage is prohibited (art. 95-2) and civil servants who authorise a child marriage can lose their position (art. 89). The legal age of marriage was raised in 2015, after a campaign led by Plan International Ecuador called “Por Ser Niña” (for being a girl) (UNICEF, 2016).

There are no clear policy or programme to ensure enforcement of the law.

#### c) Household responsibilities

Women have the same right as men to be head of household, and article 136 of the Civil Code specifies that marriage shall be based on the basis of mutual rights and duties. Women are not required to obey their husband, and spouses owe each other fidelity, help and mutual support in every circumstances of their lives (art. 136). They choose together where to establish their marital residency (art. 137), and women have no restrictions regarding their ability to choose where to live. Both spouses are expected to provide for the collective needs of the household within the limit of their capacities (art. 138). However, the burden of unpaid domestic tasks falls more on women (ILO, 2013).

The Constitution (art. 83) provides women and men with the same duty to raise and take care of their children, and they can both be legal guardians of the children (Civil Code, art. 24, 233, 247, 268, 273,

274). Couples in de facto unions have the same rights and duties as married couples regarding their children (Civil Code, art. 222, 233, 247; Constitution, art. 68).

However, men are still the administrator of the household by default, unless specified otherwise in the marital contract (Deree et. al., 2012). Nonetheless, the approval of the non-administering spouse is required for major transactions such as sale of estate or loans. De facto unions are entitled to the same property rights as married couples if they have been stable for at least two years (Deree et. al., 2012).

#### **d) Divorce**

Women and men have the same rights to initiate and finalise a divorce, either by mutual consent (Civil Code, art. 107) or for a cause (art. 110).

If the divorce is declared for a cause, the injured spouse has the right to revoke donations made to the other part during their common life (art. 114). The custody of the children and allocation of assets is to be decided by a judge if no mutual agreement is reached (art. 108), and in case of disagreement regarding the children, children and girls under 18 are considered the responsibility of the mother unless specified otherwise by the judge (art. 108-1).

Although most women are aware of their rights within marriage, they often lack the legal knowledge regarding their rights over property and assets in case of divorce or dissolution of the union (Deree et. al., 2010). This prevents them from receiving their full share of the assets, leading to what some authors have called “patrimonial violence” (Deree et. al., 2010). This occurs because of the lack of legal knowledge but also because of cultural norms according to which women should trust their husband; discussing material property is viewed as a breach of the trust and a threat to the harmony of the union.

#### **e) Inheritance**

Women and men, daughters and sons, have the same rights to inheritance, and there is no distinction made between land or non-land assets in the Civil Code (art. 834, 1023, 1029, 1036, 1201). The surviving spouse is entitled to a share of the assets (art. 834, 1023, and 1201), and the compulsory conjugal portion for intestate inheritance is 25% of the assets of the defunct (art. 1201). The same inheritance rights apply for married couples and de facto unions (art. 1998).

For intestate succession, the law gives priority to children over the surviving spouse, and half of the estate must be allocated in equal shares to children, irrespective of their sex. In the presence of forced heirs, the surviving spouse can inherit between 25% and 50% of the estate, if he/she had been designated as beneficiary in the deceased’s spouse will. The Civil Code is less favourable to surviving spouses than several Latin American countries where the spouse is the first in order of inheritance (Deree et. al., 2012)

The Civil Code also specifies that customary law does not precede or supersede the law (art. 2), however, in practice, it can be a barrier to women’s succession rights. In particular, in some Amazonian indigenous communities, inheritance tends to be patrilineal (FAO, Gender and Land Rights database).

## 2. Restricted Physical integrity

### a) Violence against women

The Constitution contains provisions against violence against women; article 19 prohibits sexist publicities, article 66 guarantees the right to physical integrity and to a life without violence, and article 331 condemns sexual harassment at work. The law 103/1995 condemns domestic violence, and the decree n. 620/2006 establishes the National Plan for the Eradication of Violence Against Girls, Teenagers and Women (Plan Nacional para la Erradicación de la Violencia contra la Niñez, Adolescencia y Mujeres). The national plan defines four priorities: the transformation of socio-cultural norms through awareness raising campaigns, the creation of a system of information and reporting of cases of violence, the implementation of a system of protection of children and adolescent victims of violence, and a better access to justice for victims (CEDAW, 2013; UNICEF, 2014).

Prevention and eradication of VAW has been included within the broader development objectives of the Ecuadorian state; the National Plan of Good Living (Plan Nacional del Buen Vivir – PNBV). Specific targets of reduction of VAW are integrated in the PNBV 2009-2013: reduce physical violence prevalence to 8%, psychological violence to 5%, and sexual violence to 2%. The plan also aims at eradicating aggression of teachers in schools and high schools, and at reaching 75% of resolution of penal processes (UNICEF, 2014). According to a national survey conducted in 2011, which forms the basis for these targets and the national plan of action, 6 out of 10 women aged over 15 have experienced at least one form of violence throughout their lives, but only 11.5% of the victims have reported the crime (UNICEF, 2014).

The state provides some services to victims; in 1994, Commissioners for Women and the Family (Comisaría de la Mujer y la Familia) have been created to deal with complaints from women victims of violence. In 2008, a National Council for Gender Equality (Consejo Nacional para la Igualdad de Género) has been implemented as part of the Government, with the responsibility to oversee the implementation of the different legislations and plans of action, and to provide services to women victims of violence (CEDAW, 2013; UNICEF, 2014).

### b) Domestic violence

The law 103/1995 (ley Contra la Violencia a la Mujer y la Familia) penalises domestic violence. It provides the judge with the possibility to remove the perpetrator from the home (art. 13-2), and to prohibit contact with the victim (art. 13-4). The law covers physical, sexual, and emotional violence (art. 2). It also protects former spouses (art. 13) and unmarried intimate partners (art. 3). The law 103/1995 establishes special court procedures for victims of violence and guarantees them free access to justice (art. 8, 11 and 12). The Penal Code sets a penalty of seven to thirty days of privation of liberty for the perpetrator of domestic violence (art. 159).

The UNICEF (2014) reports that in 2014 there were twenty-nine judicial units against VAW in nineteen provinces, with the support of 79 specialised judges. In 2016, available statistics reported the existence of 50 judicial units and 78 specialised courts (U. S. Department of State, 2016). In provinces

where this service is not available, victims of violence can go to the Judicial Units for Family, Women, Childhood and Adolescence. In 2004, Special Units for Violence Against Women and the Family were established in the capital of the provinces of Guayas, Galápagos, Pichincha, El Oro and Manabí. These institutions provide judicial advice to victims, as well as psychological support and access to social workers (UNICEF, 2014). However, human rights activists claim that there are 16 000 cases of domestic violence pending in the court system, which is insufficiently staffed to deal with the caseload, and judges lack of a specialised training on gender-based violence (U. S. Department of State, 2016).

In 2012, there were fifteen specialised day-care centres for women victims of domestic violence (CEDAW, 2013). These facilities, launched in 2009, provide medical, psychological and legal assistance to victims of sexual and domestic violence. The *Consejo Nacional por la Igualdad de Género* provides a list of special judicial unites, prosecutors, and public defenders on its website, however, no support line for victims could be found.

The CEDAW committee (2013) also reports the existence of the campaign “Wake up, Ecuador: machismo means violence”, carried out between December 2009 and December 2010, based on education and communication tools and the dissemination of mass media messages to generate support for the fight against VAW across the country. More recent campaigns or information on the monitoring and enforcement of the law could not be found.

### c) Rape

The Penal Code (art. 171) establishes rape as a criminal offence punishable with a sentence of nineteen to twenty-two years of privation of liberty. The Code also criminalises marital rape (art. 155 to 158), abuse of a minor older than 14 years old but younger than 18 (art. 167), and sexual abuse (art. 170).

According to local experts, reporting rape can be a traumatic process; victims must submit to a gynaecological evaluation administered by medical experts, and many fear retaliation from the perpetrator and/or social stigma (U. S. Department of State, 2016).

No specific provisions could be found for the prevention or enforcement of legislations relative to rape, and more generic services for victims of violence are included within the National Plan for the Eradication of Violence Against Girls, Teenagers and Women.

### d) Sexual harassment

Sexual harassment is defined as: “the person who requests an act of a sexual nature, for himself or for a third party, prevailing from a situation of labour, teaching, religious or similar authority, is a tutor or guardian, minister of worship, education or health professional, responsible for the care of the patient or who maintains a family bond or any other relationship that implies the subordination of the victim” (Penal Code, art. 166). The definition covers harassment at work and in education establishments, and the act of sexual harassment can lead to with a sentence of one to three years of privation of liberty.

No specific civil remedies are provided, but the Penal Code (art. 11-2) guarantees victims a generic right to reparation and compensation, adapted to the crime suffered. A municipal ordonnance for the city of Quito adopted in 2012 addresses street harassment, in particular in public transports, and stipulates that such action should be penalised, but it does not specify the sentence.

### e) Female genital mutilation

There is no evidence that female genital mutilation is practiced in Ecuador and there is no specific legislation addressing it (UNICEF, 2016).

### f) Abortion

Abortion is illegal, and women can be charged with six months to one year of imprisonment for consenting to an abortion or provoking one themselves (Penal Code, art. 149). Penalties also apply to the practitioner and increase if the abortion was committed without the consent of the pregnant woman (art. 148). The Penal Code (art. 151) lists two exceptions: when the abortion is the only way to prevent a danger for the life or health of the woman, or if the pregnancy is the result of rape on a mentally disabled woman. The majority of the population, 64%, believes that abortion is never justifiable (World Value Survey, 2014).

### *More*

Femicide is recognised as a crime in the Penal Code, and art. 141 stipulates: “the person who, as a result of power relations manifested in any type of violence, gives death to a woman because of her gender, will be sanctioned with a custodial sentence of twenty-two to twenty-six years”. If the victim was an intimate partner, or had had previously any intimate, marital, family, or affective relationship with the perpetrator, the sentence can be increased (art. 142).

The Council for the Regulation of Information and Communication (CORDICOM) passed a regulation in 2015 (CORDICOM-PLE-2015-057) to promote communicational contents that are intercultural, participative, inclusive, non-violent or discriminatory, and with an emphasis on human rights and equality.

## 3. Restricted Access to productive and financial resources

### a) Secure access to land and assets

Women and men have the same rights to own, use and make decisions over land (Constitution, art. 66, 69, 321). In particular, article 321 of the Constitution recognises and guarantees “the right to property in all of its forms, whether public, private, community, State, associative, cooperative or mixed- economy”.

Right to land ownership is reinforced by the law of agrarian development (ley de desarrollo agrario, n. 74/1994, art. 7, 8, 50, 51) which recognises collective and individual property rights to men and women. Articles 50 and 51 emphasise that men and women can possess land, without distinction on their civil status. The article 36 further recognises the right for indigenous and Afro-Ecuadorian communities to reclaim their lands at no cost. Joint titling for married couples is guaranteed by the Agrarian Reform of 1964 (Deree and Leon, 2001).

The most recent legislation regarding land was voted in 2016 (law n. 711/2016 de tierras rurales y territorios ancestrales); it guarantees the right to land for indigenous communities and ancestral populations, and establishes female heads of households and mothers who support their families as a priority population for land redistribution (art. 15). The law also states that the Government must

be guarantor of preferential rural credits to be attributed to women and small peasants (art. 34). However, the mechanisms through which women would be prioritized is left undefined, and no mention is made of joint titling (Deree, 2017). Since 2008, 60 100 hectares of land have been redistributed to 11 081 beneficiaries, 33% of which were women. Regarding land titling, ancestral communities have received collective titles to about 500 000 hectares, benefiting almost 20 000 persons, 47% of which are women (Deree, 2017).

As for non-land assets, the Constitution guarantees women and men the right to property. Article 324 stipulates: “the State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate”. However, in the Civil Code, the administration of the household’s assets is attributed by default to the husband, unless the spouses have a signed agreement stating otherwise (art. 180, 230). The spouse who is in charge of administering goods and assets needs the authorisation of the other spouse for major transactions (art. 181).

Same rights are given to couples in de facto union regarding land and non-land assets (Civil Code, art. 222). Men and women have the same rights over their common land and non-land assets when they divorce, and in case of disagreement the allocation of assets and property is to be decided by a judge (Civil Code, art. 108 and 117).

However, there are some discrepancies between the Civil Code and customary practices. Most land titles are actually attributed to the husband and remain under their disposition. In rural areas, the double signature for the acquisition of estate or property is not common, which means that only the name of the buyer, often the husband, is stipulated in the contract. Thus, women end up losing access to land and property (FAO, Gender and Land Rights database).

### **b) Secure access to formal financial resources**

No restrictions could be found regarding women’s right to open a bank account or access credit. Besides, the right to obtain loans and mortgages is guaranteed by article 375 of the Constitution in relation to the right to a healthy environment and decent housing (CEDAW, 2013).

The CEDAW Committee (2013) notes the existence of a credit programme to facilitate the access of women in extreme poverty to sustainable micro-enterprises. The law on rural land and ancestral territories (Ley orgánica de tierras rurales y territorios ancestrales, n. 711/2016, art. 34) also stipulates that the state should be guarantor of preferential rural credits for women and small peasants.

### **c) Workplace rights**

Ecuador is signatory of the following ILO Conventions: C100 – Equal Remuneration, C111 – Discrimination, C156 – Workers with Family Responsibilities, and C189 – Decent Work for Domestic workers (ILO, Normlex, Country Profiles).

The Constitution (art. 331) guarantees the principle of non-discrimination in employment: “the State shall guarantee to women equal access to employment, vocational and professional training and advancement, equitable pay, and the option of self-employment. All necessary measures shall be taken to eliminate inequality. Any form of discrimination, harassment or violent action, of any nature, whether direct or indirect, affecting women at work is forbidden”.

The law provides pregnant women with protection against unfair dismissal (Constitution, art. 43; Labour Code, art. 153) and guarantees them the right to maternity leave. Maternity leave lasts twelve weeks, and women receive 100% of their wages through the social security system (Labour Code, art. 152). The Labour Code also provides father with a paternity leave of ten days, at 100% replacement rate of their salary, paid through social security.

The principle of equal remuneration for work of equal value is stated both in the Constitution (art. 326) and in the Labour Code (art. 79).

Women and men have the same right to choose their profession. However, there is a restriction for women on the weight they can be asked to lift at work (Labour Code, art. 139).

No specific programmes to enforce, or sanctions for employers who do not respect the laws on gender equality, could be found. And in fact, gender gaps still exist in the labour market. Women are over-represented in part-time employment and informal employment, a gender pay gap persists despite women being on average more educated and working longer hours, and women are over-represented among domestic workers who do not have access to social security (World Economic Forum, 2013; U. S. Department of State, 2016).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

Women have the same as men to acquire, change and confer their nationality to their children and spouses (Constitution, art. 7; Ley No. 11. RO/ 132 de 1989, art. 3-4; Law of Naturalisation, n. 66/1976). Women can more easily confer Ecuadorian citizenship to a foreign husband than the reverse (Law of Naturalisation, n. 66/1976, art. 4-3 y 9).

Women have the same rights to apply for an ID card and no restrictions could be found regarding the possibility to travel outside of the country.

### **b) Voting**

The Constitution (art. 61) guarantees all citizens the right to vote and be elected, take part in debates of public interest, be consulted, present projects of popular initiative to the legislator, and the right to be part of parties and movements. It also states the principle of equal opportunities for men and women in accessing public positions. Voting is compulsory since 1936 for those aged between 18 and 65 years old, unless they have a certificate of illiteracy, and citizens who abstain can be forced to pay a fine (The Electoral Commission, 2006).

### **c) Political voice**

Ecuador has adopted a law of quotas in 2009 (Ley Orgánica Electoral y de Organizaciones Políticas de la República del Ecuador, Código de la Democracia), in line with the principle of equal representation stipulated in the Constitution (art. 65).

The law of quotas applies for the National Assembly and local elections, and demands gender parity on candidate lists (art. 99 and 160). A failure to comply leads to the invalidation of the list (art. 105). No financial incentives are provided, however, the law recommends that parties also apply the

principle of parity for their internal elections and nomination of candidates for internal structures (art. 94 and 343).

#### **d) Access to justice**

The Constitution guarantees the right for victims to demand reparation and claim their rights (art. 97 and 98), and no restrictions could be found regarding women's right to sue, be sued or testify in a court of justice.

The CEDAW Committee (2013) notes the creation of a working group "Women and Justice" in 2012 as part of a process of restructuring of the judicial branch, which aims at mainstreaming gender in the justice system. The working group is responsible for designing protocols for other state bodies regarding the treatment of women victims of violence and the fair processing of their cases. The CEDAW Committee also highlights the setting-up of four citizens' advice offices within the Ministry of Justice in the cities of Quito, Guayaquil, Cuenca and Lago Agrio. Finally, a diploma "Gender, Justice and Human Rights" was launched in the cities of Quito and Cuenca, and to date, thirty-nine grants have been awarded to practitioners (judges, prosecutors and public defenders).



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