

Children's Right to Identity in Ecuador¹

Factsheet for the Committee on the Rights of the Child

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Creation of identity

- The right to birth registration and acquisition of nationality is recognised in the [Constitution of Ecuador](#), [Childhood and Adolescence Code](#), [Organic Law on the Management of Identity and Civil Data](#) and [Civil Registration Law](#). All individuals born in Ecuadorian territory and those born abroad to an Ecuadorian mother or father have the right to nationality (art. 7, [Constitution of Ecuador](#)).
- In 2018, the birth registration rate was estimated 90% by the DIGERCIC^{2,3}. In 2016 the State had implemented the project "Institutional strengthening of Ecuador's civil registry through the certification of internal processes according to ISO 9001:2015 standards", which "included six stages of implementation: planning, human resources training for senior managers, process documentation, creation of the quality management system, internal audit, and external certification" and has positively impacted birth registration⁴. For the period up to 2021, the government's strategic plans were focused on strengthening: (i) mobile registration brigades to provide digital vital birth registration services to citizens in areas that are difficult to access or in places where there are large concentrations of people, (ii) civil registration agencies in health establishments, which allowed people with physical impairments being cared in these centers to approach these services, and (iii) REVIT-births platform that allows healthcare professionals to record and sign medical birth certificates and links that information to the statistics information system⁵. Registration of births which occur both in and out health facilities is always free of charge, unless the health professional fails to certify a live birth, in which case the latter has to pay a fee for each day of delay⁶.
- Birth registration must contain at least the following information (art. 30, [Organic Law on the Management of Identity and Civil Data](#)): "1. Place and date of registration, 2. Unique identification number assigned, 3. Place where the birth occurred, 3. Date of birth, 4. Names and surnames of the child, 5. Sex, 6. Names, surnames, nationality and ID card number of the father and mother or of only one of them, as the case may be, 7. Biometric data, 8. Surname, first names, nationality and ID card number of the applicant(s), 9. Signature of the competent authority, 10. Signature of the applicant(s)."
- According to Consortium for Street Children⁷, although the law states that children are entitled to retroactive registration and replacement of birth⁸ documentation (art. 35 [Childhood and Adolescence Code](#)), proceedings for a child to retroactively register their own birth or to obtain copies of a child's birth certificate⁹ are not child-friendly, which can be an obstacle for some groups of children.
- Child abandonment is classified in the [Organic Criminal Code](#) (art. 153) as an offense punishable by deprivation of liberty.
- The [Civil Code](#) (art. 24) recognises filiation by: "(a) The fact of a person having been conceived within the true or putative marriage of his parents, or within a legally recognised de facto, stable and monogamous union; b) Having been voluntarily recognised by the father or the mother, or by both, in the case of there being no marriage between them; and, c) Having been

judicially declared the child of a specific parent".

- In 2018, a report from the National Health Bioethics Commission (Ministry of Public Health) acknowledged as a problem that, despite the fact that surrogacy has been practised in Ecuador for more than 20 years, there is no legislation in place. In particular, and among others, it highlighted the need to address the issues of filiation and access to origins¹⁰. There is no existing legislation on ART although IVF has been used since 1992 through 11 known fertility centers¹¹. The [proposed Health Code](#), which aimed to prohibit financial compensation of any kind in exchange for the donation of embryos or surrogacy and to allow only for the payment of the costs of care during gestation and delivery, among others, was vetoed in 2020. The legal void in these spheres threatens the right to identity of children born through these practices and puts them at risk of being trafficked and/or sold.
- No surrogacy cases were presented before a court until 2016¹². In 2018, the Constitutional Court (Bicknell-Rothon case against the Ecuadorian state) ruled in favour of a same-sex couple, who had been denied the right to register their daughter (conceived by ART in the UK) with their surnames in the Civil Registry, declaring a violation of the child's constitutional right to identity, among others, and recognising "that a substantial element of her identity is to be recognised as part of her nuclear family"¹³.
- As reported by the Ministry of Interior, between January and November 2018, around 120,500 Venezuelan children entered Ecuador¹⁴. On that same year, between July and November, UNICEF identified 1,192 children unregistered due to lack of documentation, travel permits or travelling alone¹⁵. UNICEF stressed "the need for a continued government presence at border points" and recommended "an administrative register of the population in human mobility with a view to eventual regularization and to guarantee the rights of children in human mobility and to protect them from trafficking and exploitation networks"¹⁶. UNICEF promoted, together with UNHCR and IOM, the development and implementation of the Procedure (or Protocol) for the care of unaccompanied or separated children and adolescents and their families in a situation of human mobility, signed between the Ministry of Government, Ministry of Foreign Affairs and Human Mobility and the Ministry of Economic and Social Inclusion¹⁷.

Potential consideration(s)

- What steps is the State taking in order to implement child friendly procedures that allow for a child to retroactively register their own birth?
- What measures is Ecuador putting in place to address child abandonment?
- How does Ecuador plan to overcome the current legal void regarding surrogacy and ART and to preserve the identity of children born through international surrogacy and ART arrangements?



2 Modification of identity

- The modification of information regarding filiation contained in the Unique Personal Register will require a court order (Art. 76, [Organic Law on the Management of Identity and Civil Data](#)).
- The Technical Regulation on Foster Care states that “the care unit must carry out all relevant actions at the time of admission to the service so that children have the respective identity documents (registration, birth certificates, citizenship cards, etc.), within a period of no more than 30 days from their admission”¹⁸.
- Regarding family foster care (art. 222 [Childhood and Adolescence Code](#)), it must be secured that the child’s relations develop in a family context which enables the construction of his/her identity and personality. Art. 225 adds that the family should “preferably be of the child’s ethnic group, people or culture”.
- Residential care is foreseen as a last resort measure when family placement is not possible. For the duration of such measure, the responsible entity has the obligation to preserve, improve, strengthen or re-establish family relations, prevent abandonment and seek the reintegration of the child into the biological family or his/her adoption¹⁹.
- According to the Ministry of Social and Economic Inclusion (MIES), in November 2019, 2.469 children were in institutional care units, an 82.46% of which belonged to the mestizo ethnic group²⁰. Prevalence by age group was as follows: 8-12 (33.5%), 13-15 (22.76%), 16 and over (18.51%) and 3-7 (17.47%)²¹.
- The law only foresees full adoptions, meaning that adoption extinguishes the family relations between the adoptee and the members of his/her biological family, prioritizing national adoptions over international adoptions (arts. 152 and 153 [Childhood and Adolescence Code](#)). Art. 46 [Organic Law on the Management of Identity and Civil Data](#), states that “the registration and recording of the adoption shall generate a new birth registration, which shall not mention such circumstance, with the prior cancellation of the original registration, by means of a record that accounts for the adoption and maintains the initial unique identification number (UIN) assigned in the live birth statistical certificate”. The adoptee may take the surnames of his/her natural parents when reaching the age of majority (Art. 315 of the [Civil Code](#)). Donations to entities in charge of institutional care are allowed, regardless of their public, private or mixed nature, at any moment of the procedure, as long as it does not interfere with the adoption process in course²².

Potential consideration(s)

- What specific preventive measures are being implemented to reduce the number of children belonging to the mestizo ethnic group in institutional care units and to preserve the cultural identity of those children?
- What monitoring measures are in place to ensure that children are not unduly declared adoptable and that their identity is not unduly modified?

B Falsification of identity

- As to adoption, articles 153, 163 and 166 of the [Childhood and Adolescence Code](#) prohibit: (i) undue financial gain; (ii) the adoption of the unborn child by pre-determined candidates; (iii) private and independent adoptions; (iv) pre-assignment of a family to a child, except in cases in which the child finds difficulties in being adopted and (v) matching prior to the legal declaration of adoptability.
- Child marriage, which results in an illegal modification of the identity of the child, is forbidden by law since the amendment of the [Civil Code](#) in 2015²³. After the bill was passed, marriages of girls under the age of 15 decreased from 8,598 to 1,367 (2015), according to World Vision²⁴. However, the same organization reports an increase of forced children unions, a lack of data registration to allow a clear picture of the issue and the existence of children brides marrying adults²⁵. UNICEF (2020) reported that between a 20% and a 29% of women aged 20 to 24 were married for the first time before the age of 18²⁶. Mary Cabrera, member of the Advisory Committee of Girls Not Brides, declared that girls hide or escape fleeing from forced arranged unions²⁷, which may place them at risk of being sold and trafficked by trafficking networks.
- In 2019, a National Action Plan against Human Trafficking was presented. According to data referred by the National Secretary of Human Rights of Ecuador in 2020, the 47.6% of people who were trafficked were aged under 18²⁸. She also highlighted the fact that women and girls of African descent are the most likely to be trafficked due to their ethnicity and geographical condition, especially those at the country borders²⁹.
- Art. 46 of the [Constitution of Ecuador](#) forbids child labour under the age of 15 and foresees that adolescents may exceptionally work only if their work fulfils some standards. Moreover, art. 46 of the [Childhood and Adolescence Code](#) sets the right of the child to be protected against labour exploitation and forced and/or harmful labour. The Child Labour Eradication Project has been implemented by the government between 2008 and 2021, aiming to eradicate child labour between ages 5 and 14 and forced labour and to promote acceptable working conditions in companies³⁰. According to data published by the government, between May and July 2020 (during the Covid-19 pandemic), 63 cases of children were located by government brigades and referred to protection systems³¹. World Vision warned of a serious setback in this regard since child labour increased due to the effects of the Covid-19 pandemic³².

Potential consideration(s)

- What monitoring and sanction measures has Ecuador put in place to avoid forced children unions and marriages and to restore the child’s identity in cases in which these occurred?
- What measures is the State considering and/or implementing in order to address the increase of child labour due to the effects of the Covid-19 pandemic?



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Preservation of identity and access to origins

- The Unique Personal Register (Art. 73, [Organic Law on the Management of Identity and Civil Data](#)) contains information on vital events and unique identity features, including address and cultural identification of citizens, if they offer this information. Information subject to the principle of confidentiality and publicity can only be accessed by authorization of the owner, by the legal representative or by means of a court order (art. 75).
- The care unit must have individual files for children in foster care in chronological order and updated every three months containing the following information, among others: birth certificate, citizenship card, reception or entry form to the programme, copy of the mother's and fathers' citizenship card, Global Family Project (PGF) and Community Prevention Plan³³.
- Art. 153 of the [Childhood and Adolescence Code](#) establishes that adoptees have the right to know their condition as adoptees, their origins, their personal history and their biological family, unless the latter is expressly forbidden by the biological family. The Technical Adoption Units and the Judicial Units for Family, Women, Children and Adolescents are in charge of keeping information on origins in adoption cases³⁴. The above mentioned art. 153, rules that if the adoptee is of under legal age, the circumstances of his/her application and his/her psycho-emotional development shall be analysed³⁵. The representatives will be able to access this information immediately. The adoption office conducts the search and contacts the biological family and, when access to this information is granted, psychological support is provided³⁶.
- In 2018, a report from the National Health Bioethics Commission (Ministry of Public Health)³⁷ acknowledged as a problem that, despite the fact that surrogacy has been practised in Ecuador for more than 20 years, there is no legislation in place. In particular, and among others, it highlighted the need to address the issues of filiation and access to origins³⁸. The lack of such specific regulation prevents from ensuring that the identity of children born through surrogacy and other ART is preserved and that they can access their origins.

Potential consideration(s)

- How is Ecuador ensuring that information concerning the identity of gamete donors and biological mothers is preserved in cases of ART and surrogacy?
- What services are provided to children born through ART/surrogacy searching for their origins?

¹ Prepared by Gisela Sin Gomiz, with inputs from Mia Dambach and Cécile Jeannin.

² Dirección General de Registro Civil, Identificación y Cedulación (DIGERCIC)

³ CENTRE OF EXCELLENCE for CRVS Systems & Global Partnership for Sustainable Development Data (GPSDD). (2019). Compendium of Good Practices in Linking Civil Registration and Vital Statistics (CRVS) and Identity Management Systems: Ecuador, p. 5. https://www.data4sdgs.org/sites/default/files/2020-01/CRVS_Ecuador_e_WEB.pdf

⁴ Organization of American States (OAS). (n.d.). *FEATURE: Towards Universal Civil Registry: with OAS Support, Ecuador's Civil Registry Obtains ISO 9001 Certification*. OAS - Organization of American States. Retrieved August 11, 2021, from https://www.oas.org/en/media_center/press_release.asp?Codigo=E-046/17

⁵ Ecuador | Centre of Excellence for Civil Registration and Vital Statistics Systems. (2020). Centre of Excellence for CRVS Systems. <https://crvssystemsc.ca/country-profile/ecuador>

⁶ See footnote 3, p. 10.

⁷ Consortium for Street Children. (2019, April 11). *The Legal Atlas for Street Children*. <https://www.streetchildren.org/legal-atlas/map/ecuador/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/>

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Restoration of identity

- Art. 2 of the [Organic Law Reforming the Organic Law on Human Mobility](#) recognises the family unity as a right and establishes the obligation for the State to seek family reunification when members of the same family are in different countries. Ecuadorian nationals have the right to maintain and transmit their cultural identity outside the country, which will be promoted by the State through consular offices and diplomatic representation (art. 10).
- The National Action Plan against Human Trafficking establishes the protocol for children victims of trafficking: the Directorate of Inclusion of the Foreign Community is responsible for coordinating with the embassy or consulate of the country of origin for the safe return of the child or for the obtention of the documentation that will allow the regularization of his/her immigration status and the Directorate for the Prevention of Human Trafficking and Migrant Smuggling is responsible for requesting an exceptional temporary residence visa for the child if he/she wishes to remain in Ecuadorian territory³⁹.

Potential consideration(s)

- What measures is Ecuador implementing to ensure reintegration of trafficked children and child brides into their families of origin?
- Is Ecuador envisaging to be part of the ICCS Convention No. 34 to better ensure the portability of the child's identity across borders as well as the ratification of the 1996 Hague Convention?

⁸ Gobierno de Ecuador. (n.d.). *Inscripción ordinaria y extraordinaria de nacimiento con atención médica – Registro Civil*. Registro Civil, Identificación y Cedulación. Retrieved August 8, 2021, from <https://www.registrocivil.gob.ec/solicitud-de-inscripcion-ordinaria-y-extraordinaria-de-nacimiento-con-atencion-medica-2/>

and Gobierno de Ecuador. (n.d.-b). *Inscripción ordinaria y extraordinaria de nacimiento sin atención médica – Registro Civil*. Registro Civil, Identificación y Cedulación. Retrieved August 8, 2021, from <https://www.registrocivil.gob.ec/solicitud-de-inscripcion-ordinaria-y-extraordinaria-de-nacimiento-sin-atencion-medica-2/>

⁹ Gobierno de Ecuador. (n.d.-a). *Emisión de Copia del Acta Registral: Nacimiento, Matrimonio, Defunción, Unión de Hecho y Registro de Género / Cambio de Nombre – Registro Civil*. Registro Civil, Identificación y Cedulación. Retrieved August 8, 2021, from <https://www.registrocivil.gob.ec/solicitud-de-emision-de-certificado-integro-del-acta-de-nacimiento-matrimonio-defuncion-y-union-de-hecho-2/>

¹⁰ Pacheco, V. M. (2018). *Criterio y recomendaciones bioéticas sobre la maternidad subrogada en Ecuador*. Ministerio de Salud Pública - Comisión Nacional de Bioética en Salud. <https://www.salud.gob.ec/wp-content/uploads/2018/02/MATERNIDAD-SUBROGADA-CRITERIO-CNBS.pdf>

¹¹ Torres, G. & Shapiro, A. & Mackey, T. (2019). A review of surrogate motherhood regulation in south American countries: Pointing to a need for an international legal framework. *BMC Pregnancy and Childbirth*. 19, p. 7. 10.1186/s12884-019-2182-1 and Espinoza-Campoverde, K. & Álvarez, J. & Ormaza-Ávila, D. & Narváez, C. (2020). Maternidad subrogada desde la perspectiva constitucional en el Ecuador. *IUSTITIA SOCIALIS*. 5. 547. 10.35381/raji.v5i8.590.

¹² Ibidem

¹³ Corte Constitucional de Ecuador. (2018). *Sentencia No. 184–18-SEP-CC | Registro Civil – Gobierno de Ecuador*. https://www.registrocivil.gob.ec/wp-content/uploads/downloads/2018/07/Sentencia_CC_2018.pdf and Defensoría del Pueblo. (2018). *La sentencia de la Corte Constitucional en favor de Satya Bicknell-Rothon constituye un logro para la igualdad en derechos*. <https://www.dpe.gob.ec/sentencia-de-la-corte-constitucional-en-favor-de-satya-bicknell-rothon-constituye-un-logro-para-la-igualdad-en-derechos/>

¹⁴ UNICEF. (2018, October). *UNICEF resalta la aprobación de un protocolo de atención para niños en movilidad humana en Ecuador*. <https://www.unicef.org/ecuador/comunicados-prensa/unicef-resalta-la-aprobacion-de-un-protocolo-de-atencion-para-ninos-en-movilidad-humana-en-ecuador>

¹⁵ Ibidem

¹⁶ Ibidem

¹⁷ UNICEF Ecuador. (2020, December). *Respuesta de UNICEF Ecuador a la crisis de movilidad humana venezolana*, p. 14.

https://www.unicef.org/ecuador/media/6426/file/Ecuador_INFORME_MH_DIC20_20.pdf%20.pdf

¹⁸ Ministerio de Inclusión Económica y Social. (2017). *Norma Técnica Protección Especial Acogimiento Institucional*, p. 15. <https://www.inclusion.gob.ec/wp-content/uploads/2019/01/Norma-T%C3%A9cnica-Acogimiento-Institucional-MIES.pdf>

¹⁹ MIES (2019). Informe acogimiento institucional, p. 3

²⁰ Ibidem

²¹ Ibidem

²² [HCCH Country Profile: Ecuador](#)

²³ World Vision. (2021, May). *Matrimonio infantil se ha duplicado durante la pandemia de covid-19*. <https://www.worldvision.org.ec/sala-de-prensa/matrimonio-infantil-se-ha-duplicado-durante-la-pandemia-de-covid-19>

²⁴ Ibidem

²⁵ Ibidem

²⁶ UNICEF. (2020). *Perfil del matrimonio infantil y las uniones tempranas en América Latina y el Caribe*, p. 6.

²⁷ Ecuador presentó el Estado de la Población Mundial 2020. (2020, August 15). UNFPA Ecuador. <https://ecuador.unfpa.org/es/news/ecuador-present%C3%B3-el-estado-de-la-poblaci%C3%B3n-mundial-2020>

²⁸ Ibidem

²⁹ Ibidem

³⁰ *Proyecto de Erradicación del Trabajo Infantil – Ministerio del Trabajo*. (n.d.). Gobierno de Ecuador. Retrieved August 8, 2021, from

<https://www.trabajo.gob.ec/proyecto-de-erradicacion-del-trabajo-infantil/>

³¹ *Avances 2017 – 2021 PETI – Ministerio del Trabajo*. (n.d.). Gobierno de Ecuador.

Retrieved August 8, 2021, from <https://www.trabajo.gob.ec/avances-2017-2018-peti/>

³² *Grave retroceso de la infancia en Ecuador por la pandemia, advierte ONG*.

(2021, June 2). Swissinfo. https://www.swissinfo.ch/spa/ecuador-infancia_grave-retroceso-de-la-infancia-en-ecuador-por-la-pandemia--advierte-ong/46669760

³³ See footnote 18, pp. 17-18.

³⁴ See footnote 22

³⁵ Ibidem

³⁶ Ibidem

³⁷ See footnote 10

³⁸ Ibidem

³⁹ Gobierno de Ecuador. (2020). *Protocolo de actuación interinstitucional para la atención, protección y asistencia integral a presuntas víctimas y a víctimas de la trata de personas*. https://www.cancilleria.gob.ec/wp-content/uploads/2018/09/6_mesa_intersectorial_comite_interinstitucional_prev_trata_personas.pdf