

Legal Remedies for Human Trafficking in Ecuadorian Law and Public Policy

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Legal Remedies for Human Trafficking Seminar Spring 2016

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Legal Remedies for Human Trafficking in Ecuadorian law and Public Policy

I. Introduction

Ecuador is a “source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor”.¹ In the country there is little understanding about the trafficking in persons among the general population and the state agents. For instance, in the case No. 901-2009 the Criminal Chamber of the National Court stated that the “exploitation, which is an essential element in the human trafficking, is impossible in newborns or infants because exploitation includes their workforce, without any compensation. Exploitation means to reduce them to servitude or slavery”.² In this case, the judges reduced the analysis to the labor trafficking even when at that time Ecuador was part of international instruments that recognizes more than one form of trafficking, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter Palermo Protocol).

Moreover, there is confusion between the terms human trafficking (*trata de personas*) and human smuggling (*tráfico de personas*). They are used as interchangeable terms even though the law distinguishes between them. In the Ecuadorian law both are considered as crimes, however, the human trafficking is focused on the exploitation which can be

¹ US Department of State, Trafficking in persons report July 2015, page 146.

² 14-XII-2009, Sentencia No. 901-2009, Sala de lo Penal de la Corte Nacional de Justicia, E.E. 28, 24-VII-2013

conducted at a national or international level while the human smuggling is centered on the transportation or movement from one country to another³. According to the Ecuadorian criminal law, the human trafficking (*trata de personas*) is a crime against humanity⁴ that can adopt different forms as it will be explained later in this paper. On the other hand, the human smuggling (*tráfico de personas*) is considered as a crime against migration⁵. Nevertheless, the victims of both criminal offenses have the same rights according to the national law⁶.

Additionally, the application of adequate remedies for victims is still an issue that is closely related to “inappropriate treatment of victims, as well as inadequate laws and law enforcement activities”.⁷ The Ecuadorian Government has ratified important treaties to combat trafficking in persons but, it does not fully comply with these international standards. However, the State is “making significant efforts”⁸ to fulfill its international and constitutional obligations.

To combat the trafficking in persons Ecuador has adopted national and international decisions. At the international level, it has ratified the most relevant instruments to address the human trafficking. On September 17th 2002 Ecuador ratified the United Nations Convention against Transnational Organized Crime (hereinafter Organized Crime Convention) and the Palermo Protocol. When ratifying these treaties, Ecuador made reservations. In relation to the Organized Crime Convention, it made a reservation on the article 10 arguing that “the concept of criminal liability of legal persons is not at the moment

³ Ministerio del Interior, *Diferencias y semejanzas entre Trata y Tráfico*, available at: <http://www.ministeriointerior.gob.ec/poblacion-objetivo/> (author’s translation)

⁴ Delito contra la humanidad (author’s translation), *Código Orgánico Integral Penal*, article 91

⁵ Delito contra la migración (author’s translation), *Código Orgánico Integral Penal*, article 213

⁶ *Código Orgánico Integral Penal*, article 11

⁷ Latin America & Caribbean Law Initiative – American Bar Association, *Trafficking in persons Ecuador*, 2004, page 16

⁸ *Supra*, note 1

embodied in Ecuadorian legislation”.⁹ Additionally, it made a reservation regarding article 35 paragraph 2 of the Convention that refers to the “settlement of disputes”.¹⁰ Likewise, there is a reservation accompanying Ecuador’s ratification of the Palermo Protocol with regard to article 15 paragraph 2 which talks about the “settlement of disputes”.¹¹

At the national level, Ecuador has also adopted different decisions to address the trafficking in persons. First, it has passed legislation to incorporate the international standards within its national law. The Ecuadorian Constitution that was enacted in 2008 and which is the main law of the country has prohibited the “slavery, exploitation, bondage, smuggling and trafficking in human persons in all their forms”.¹² To do so, Ecuador has recognized the importance “to prevent and eliminate trafficking in persons and to protect and socially reinsert victims of trafficking”.¹³ Up to the present, Ecuador has not created a specific law to address the human trafficking. However, it has incorporated some of the international standards within its criminal law. It is due in part for the status of the international human rights instruments under the Constitution which states that “all rights and guarantees that are in the Constitution and in the International Human Rights Instruments shall be directly and immediately enforced by and before any civil, administrative or judicial servant, either by virtue of their office or at the request of the party [...]”.¹⁴ In the same line, article 424 of the

⁹ United Nations Treaty Collection, United Nations Convention against Transnational Organized Crime, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en#EndDec

¹⁰ Id

¹¹ United Nations Treaty Collection, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en#EndDec

¹² Ecuadorian Constitution, article 66 number 29 letter b, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

¹³ Supra, note 4

¹⁴ Ecuadorian Constitution, article 11 number 3: “Los derechos y garantías establecidos en la Constitución y en los instrumentos internacionales de derechos humanos serán de directa e inmediata aplicación por y ante cualquier servidora o servidor público, administrativo o judicial, de oficio o a petición de parte. Para el ejercicio

Constitution establishes that the “International Human Rights Treaties ratified by the State that recognize rights that are more favorable than those enshrined in the Constitution shall prevail over any other legal regulatory system or action by public power”.¹⁵

The *Organic Integral Penal Code*¹⁶ is the most recent law that addresses the trafficking in persons in Ecuador. It defines it as a crime and regulates the sanctions that could vary from 13 to 40 years in prison depending on the circumstances of each case. The new penal code that was enacted in August 2014 “penalizes a range of activities it defines as exploitation, including those prohibited in the [Palermo Protocol]”.¹⁷ This code defines the trafficking in persons as the “recruitment, transportation, transfer, delivery, harboring or receipt of one or more persons, inside the country and from or to other countries, for the purpose of exploitation”.¹⁸ Additionally, it understands the word exploitation as any activity that generates material or economical benefits, immaterial advantages or any other benefit, throughout the submission of a person or the imposition of conditions of life and work obtained from: 1) the extraction or illegal trade of organs, tissues, fluids or genetic material of living persons, including tourism for donation or organ transplant; 2) the sexual exploitation including the forced prostitution, the sexual tourism and the child pornography; 3) the labour exploitation, including the forced labor, the debt bondage and the child work;

de los derechos y las garantías constitucionales no se exigirán condiciones o requisitos que no estén establecidos en la Constitución o la ley. Los derechos serán plenamente justiciables. No podrá alegarse falta de norma jurídica para justificar su violación o desconocimiento, para desechar la acción por esos hechos ni para negar su reconocimiento”, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

¹⁵ Ecuadorian Constitution, article 424: “La Constitución es la norma suprema y prevalece sobre cualquier otra del ordenamiento jurídico. Las normas y los actos del poder público deberán mantener conformidad con las disposiciones constitucionales; en caso contrario carecerán de eficacia jurídica. La Constitución y los tratados internacionales de derechos humanos ratificados por el Estado que reconozcan derechos más favorables a los contenidos en la Constitución, prevalecerán sobre cualquier otra norma jurídica o acto del poder público”, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

¹⁶ Código Orgánico Integral Penal (author’s translation)

¹⁷ Supra, note 1, page 2

¹⁸ Código Orgánico Integral Penal, article 91

4) the promise of marriage or servitude, including the early and arranged unions between two persons without any other marriage ties; 5) the illegal adoption of children and adolescents; 6) the begging; 7) the forced recruitment for armed conflicts or for illegal acts; and 8) any other form of exploitation¹⁹.

Second, Ecuador “has maintained efforts to convict traffickers and continued to provide funding for food and emergency services for trafficking victims and shelter for girl trafficking victims”.²⁰ Since 2004, with the Decree No. 1981, the state has recognized that fighting human trafficking is a national priority. As consequence, through the Decree No. 1823, Ecuador has adopted the *National Plan to Combat Human Trafficking, Illegal Smuggling of Migrants, Sexual and Labour Exploitation and Other Forms of Exploitation and Prostitution of Women, Children and Adolescents, Child Pornography and Corruption of Minors*²¹ (hereinafter National Plan to Combat the Trafficking in Persons). This plan was created in 2006, and was updated in 2010²². Since then it has not been changed or replaced. The plan is divided in three main axes. The first axis called *Prevention* is designed to aware the general public and the authorities about the dimension and gravity of the trafficking in persons. The second axis named *Investigation, sanction and protection* is focused on the prosecution and punish of the human trafficking as a crime. Finally, the third axis called *Reparation* addresses the victims` rights to compensation, rehabilitation, satisfaction and guarantees of non-repetition. Even thought the generalities of the plan are in line with the

¹⁹ Id

²⁰ Supra, note 1, page 1

²¹ Plan nacional para combatir la trata de personas, el tráfico ilegal de migrantes, explotación sexual laboral y otros modos de explotación y prostitución de mujeres, niños, niñas y adolescentes, pornografía infantil y corrupción de menores (author`s translation)

²² Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ecuador, paragraph 87, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/117/28/PDF/G1211728.pdf?OpenElement>

international standards, the “authorities’ failure to finalize a new anti-trafficking plan meant government agencies do not have adequate resources to implement anti-trafficking efforts”.²³

Third, the Ecuadorian State has supported the national authorities to implement programs to prevent the trafficking in persons. For instance, in 2014 the National Police Unit for Crimes Against Children and Adolescents (DINAPEN) signed an agreement with the Ministry of Tourism to “coordinate the prevention of commercial sexual exploitation of children”.²⁴ In addition, the National Government has assigned the Ministry of Interior as the main responsible to address the trafficking in persons in Ecuador. Within this entity the *Unit Against Human Trafficking and Illegal Smuggling*²⁵ has implemented a national awareness campaign to create conscious about this topic. As part of this national campaign, they recommend people to report any case of human trafficking by using a hot line that has been created to report any kind of criminal offense (1800-DELITO)²⁶.

This research identifies whether the forms of the right to remedy described in the “Basic Principles to an effective remedy for victims of trafficking in persons” (hereinafter OHCHR principles) that were created by the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR) have been implemented or not in the Ecuadorian law and public policy. Even though these principles are not legally binding, they are important to strengthen the commitment with victims’ human rights and to “establish a legal foundation for subsequent treaties”.²⁷ This research considers how the Constitution, the

²³ Supra, note 1, page 1

²⁴ United States Department of Labor, 2014 Findings on the Worst Forms of Child Labor: Ecuador – Significant Advancement, available at: <http://www.dol.gov/ilab/reports/child-labor/ecuador.htm>

²⁵ Unidad Contra la Trata de Personas y Tráfico de Migrantes (author’s translation)

²⁶ For further information visit: <http://www.ministeriointerior.gob.ec/trata-y-traffic-de-personas/>

²⁷ Dinah Shelton, Compliance: What Role for International Soft Law?, available at: <http://carnegieendowment.org/1999/11/22/commitment-and-compliance-what-role-for-international-soft-law/k18>

Civil Code²⁸, the Organic Integral Penal Code²⁹, the Childhood and Adolescence Code³⁰, the Organic Code of the Judicial Branch³¹, the Organic Code of General Processes³², the Organic Law of Judicial Guarantees and Constitutional Control³³ and the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings³⁴, incorporate the OHCHR principles. Additionally, this research analyses the National Plan for Good Living 2013-2017³⁵ and the National Plan to Combat the Trafficking in Persons to understand better the measures that the state has adopted to remedy the victims. For this purpose, the research is divided in two main sections. First, it describes how the national law and plans have regulated the access to the right to a remedy (Section II of the OHCHR principles). Second, it analyzes how the Ecuadorian law and public policy have incorporated or not the different forms of the right to remedy (Section III of the OHCHR principles): 1) restitution, 2) compensation, 3) rehabilitation and recovery, 4) satisfaction and 5) guarantees of non-repetition. Additionally, the Annex includes a chart that compares in detail the Ecuadorian Law and National Plans with the Sections I and IV of the OHCHR principles.

II. Access to the right to a remedy

According to the International Human Right Law, all victims of human rights violations have the right to remedy and to reparation. As consequence, a human rights based approach to human trafficking enables the trafficked victims to get an effective remedy. In

²⁸ Código Civil (author`s translation)

²⁹ Código Orgánico Integral Penal (author`s translation)

³⁰ Código de la Niñez y Adolescencia (author`s translation)

³¹ Código Orgánico de la Función Judicial (author`s translation)

³² Código Orgánico General de Procesos (author`s translation)

³³ Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional (author`s translation)

³⁴ Reglamento para el Sistema de Protección y Asistencia a Víctimas, Testigos y otros Participantes en el Proceso Penal (author`s translation)

³⁵ Plan Nacional del Buen Vivir 2013-2017 (author`s translation)

line with this, the Special Rapporteur on trafficking in persons, especially women and children explained:

Trafficking represents the denial of virtually all human rights: the right to liberty and integrity and security of the person; the right to freedom from torture and other cruel, inhuman or degrading treatment; the right to freedom of movement; the right to home and family; the right to the highest attainable standard of health; the right to education. Under the Rome Statute of the International Criminal Court, trafficking in some circumstances can be a crime against humanity or a war crime³⁶.

In addition, even in cases where human trafficking is considered fundamentally a matter of criminal law, it does not deny the victims’ right to remedy. For instance, the Ecuadorian Constitution recognizes that all victims of criminal offenses shall benefit from special protection and shall have access to an integral reparation which includes mechanisms of restitution, compensation, rehabilitation, guarantee of non-repetition, and satisfaction.³⁷

The following chart which follows the structure (numbers) of the annex incorporated in the resolution A/HRC/26/18 explains how the Ecuadorian Law and Public Policy have incorporated or not the OHCHR principles regarding the access to the right to a remedy:

OHCHR Principles	Ecuadorian Law and Public Policy
II. Access to the right to a remedy	<p>7. Access to remedies:</p> <p>a) The victims of trafficking in persons have the access to criminal, civil and labour remedies. Since the human trafficking is considered a crime under the Ecuadorian law, it can be punished under the Organic Integral Penal Code (Articles 91 and 92). In addition, under this law the victims have the right to get integral reparation for the damages they suffered, it includes: truth, restitution of their rights, compensation, guarantees of non repetition, measures of satisfaction and any other form of reparation that would be applicable to the case (Organic Integral Penal Code, article 11 number 2). According to the civil law, the victims can award damages for the criminal offense and also</p>

³⁶ Sigma Huda, Integration of the Human Rights of Women and the Gender Perspective, Report of the Special Rapporteur on trafficking in persons, especially women and children, E/CN.4/2005/71, 22 December 2004, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/2005/71

³⁷ Ecuadorian Constitution, article 78, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

moral damages (Civil Code, articles 2214 and 2232). In addition, the labour law allows all people to sue their employers when there is any violation of the labor law. Nevertheless, the Labor Code does not provide specific remedies for the victims of the trafficking in persons. Finally, the article 41 of the Ecuadorian Constitution recognizes the right to asylum in accordance with the law and international human rights instruments.

- b)** The article 75 of the Constitution establishes that all people have the right to “access to justice and the effective, impartial and expeditious protection of their rights and interests, subject to the principles of immediate and swift enforcement”, it includes the victims of trafficking in persons that are protected under the article 66 number 29 letter b of the Constitution. Additionally, the National Plan for Good Living 2013-2017 in the policy 6.5.g requires the cooperation between national and local governments in order to prevent and eradicate the trafficking in persons in both dimensions, national and transnational.
- c)** The article 76 number 7 letter f of the Constitution establishes that as part of the right to defense people have the right “to be helped free of charge by a translator or interpreter if the person does not understand or speak the language in which the proceedings are being conducted”. In addition, the Organic Integral Penal Code provides that all victims have the right to get free assistance of translators or interpreters if they do not understand or speak the language that is being used in the proceedings. Along the same lines, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings establishes that victims have the right to receive any information in their native language.
- d)** There is nothing in the Ecuadorian law that talks about a reflection and recovery period for the victims. Neither is there a law that provides residence status to victims of human trafficking.
- e)** The Constitution (articles 78 and 76 number 7 letters f and g) recognizes that victims have the right to defense. It implies that they have the right to have a translator or interpreter during the process and to have free legal aid which is in charge of the Ombudsman. At the same time, the Organic Code of the Judicial Branch establishes that the Ombudsman is in charge to provide free and effective legal assistance to people who can not pay for it (Article 286). As part of this duties, the Ombudsman regulates the operation of the universities’ free legal aid clinics. Moreover, the the Organic Integral Penal Code recognizes that all victims have the right “to be assisted by a public or private defender before and during the investigations, in all parts of the

proceedings and in everything that is related to their integral reparation” (Article 11 number 6).

- f) The Organic Integral Penal Code recognizes that the victims of trafficking in persons are exempted from punishments for activities that are a direct result of their situation as victims of human trafficking (Article 93).
- g) If the victim is not Ecuadorian, the Organic Integral Penal Code allows him or her to remain lawfully in the country for a temporary or permanent period time (Article 11 last paragraph). This law has to be understood in line with the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings which provides that foreign victims and witnesses are allowed to stay lawfully in the Ecuadorian territory while they are part of this protection system (Article 7 letter h).
- h) According to the Ecuadorian Constitution the States has the duty to guarantee all right without discrimination (Articles 3 number 1 and 11 number 2). Thus, the State has the obligation to “draw up and implement policies to achieve equality between women and men, through the specialized mechanism set up by law” (Constitution, article 70). As part of this duty it “shall mainstream the gender approach in plans and programs and shall provide technical assistance for its mandatory enforcement in the public sector” (Constitution, article 70). In addition, the Organic Integral Penal Code considers that victims have the right to be treated with equality. The authorities can apply affirmative actions to assure it during the investigations, proceedings and reparations (Article 11 number 12).
In relation to the re-victimization and stigmatization, the Constitution determines that “victims of criminal offenses shall benefit from special protection; guarantees shall be provided to them for preventing their re-victimization, especially in obtaining and assessing the evidence; and they shall be protected against any threat or other forms of intimidation” (Article 78). Furthermore, the Organic Integral Penal Code (Article 11 number 5) and the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings (Article 7 letter f) provide that the State has the duty to avoid re-victimization specially in the gathering of evidence.
- i) This principle is not contemplated in the Ecuadorian law. Contrary, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings requires the cooperation of the victims with the legal proceeding in order to be part of the system of protection and assistance to victims, witnesses and other

	<p><u>participants of the criminal proceedings (Article 8 number 1 letter a).</u></p> <p>j) The victims, their families and the witnesses can be included in the system of protection and assistance to victims, witnesses and other participants of the criminal proceedings which is in charge of the Ecuador's National Office of the Public Prosecutor (Constitution, article 195; Organic Code of the Judicial Branch, article 295; and Organic Integral Penal Code, article 11 numbers 4 and 8). In addition, according to the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings the victims of trafficking in persons are defined as victims who need priority attention (Article 6 number 1.1).</p>
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III. Forms of the right to remedy

1. Restitution

Full restitution is essential to remedy the trafficking victims and to restore their rights. In this sense, the Organized Crime Convention that is “central to the modern international legal framework around trafficking”³⁸ obliges the States to “establish appropriate procedures to provide access to [...] restitution for victims”.³⁹ Consequently, as a State Party Ecuador is responsible for taking all necessary measures to facilitate the restitution for the victims of trafficking in persons. At the same time, the Constitution which is the main legal document in the country establishes that all victims of criminal offenses such as the trafficking in persons shall benefit from an integral reparation that shall include the restitution.⁴⁰

In line with the Constitution the Organic Integral Penal Code recognizes that the victims have the right to an integral reparation that shall include without delay the restitution

³⁸ Anne T. Gallagher, The right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy, 2010, page 7

³⁹ United Nations Convention against Transnational Organized Crime, article 25 number 2, available at: https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf

⁴⁰ Ecuadorian Constitution, article 78, available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

of the violated rights.⁴¹ To do so, the judges are allowed to determine the necessary measures in their judgments which will vary case by case.⁴²

The OHCHR principles talk about specific forms of restitution and most of them have been incorporated in the Ecuadorian law as it is described in the following chart:

OHCHR Principles	Ecuadorian Law and Public Policy
<p>III. Forms of the right to remedy</p>	<p>A. Restitution</p> <p>8. Since the trafficking in persons is considered a criminal offence the article 78 of the Constitution is applicable for the victims. This article talks about an integral reparation for victims of criminal offenses. Likewise, the Organic Integral Penal Code explains that all victims have the right to an integral reparation which includes their restitution. <u>However, none of these laws talk explicitly about the restoration of the victims to their original situation.</u></p> <p>9. Restitution includes:</p> <p>a) The Ecuadorian Constitution provides that the right to freedom includes the “prohibition of slavery, exploitation, bondage and smuggling and trafficking in human beings in all their forms”. Consequently, the State is obliged 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” (Article 66 number 29 letter b). Additionally, the Organic Integral Penal Code explains that the victims shall not be charged or prosecuted for activities that are direct consequence of their situation as victims of human trafficking (Article 93).</p> <p>b) According to the Constitution all people have the right to enjoy their human rights and family life (Articles 11 number 3; and 67). In addition, for the Ecuadorians who are abroad the State has the duty to “promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return” (Article 40 number 4).</p> <p>c) <u>The repatriation for victims of human trafficking is not considered within the Ecuadorian law.</u> Even though article 66 number 14 of the Constitution provides that “foreigners cannot be returned or expelled to a country where their lives, liberty, safety or well-being or those of their families are in danger”, the trafficking in persons is not a cause to apply this norm. In addition, the National Plan to Combat the Trafficking in Persons</p>

⁴¹ Código Orgánico Integral Penal, article 11 number 2

⁴² Código Orgánico Integral Penal, article 628

	<p>in the action line two of the axis three considers that consular assistance to the victims including mechanisms of repatriation are important measures to repair the victims of trafficking in persons.</p> <p>d) The Ecuadorian Constitution recognizes the rights to asylum and sanctuary in accordance with the law and international human rights instruments (Article 41). In addition, it recognizes that “foreigners cannot be returned or expelled to a country where their lives, liberty, safety or well-being or those of their families are in danger because of their ethnic belonging, religion, nationality, ideology, belonging to a given social group or political opinions” (Article 66 number 14). <u>Nevertheless, it does not include the trafficking in persons as a cause that support the application of these norms.</u></p> <p>e) The Ecuadorian Constitution recognizes the right to personal and collective identity, which includes “tangible and intangible characteristics of said identity, such as nationality, family origins, and spiritual, cultural, religious, linguistic, political and social manifestations” (Article 66 number 28).</p> <p>f) <u>The Ecuadorian law does not talk about the restoration of the victim’s employment.</u> When talking about the right to work it states that “any person who has recovered from a work accident or sickness shall be entitled to return to work and continue the labor relationship, pursuant to the law” (Constitution, article 326 number 6). <u>However, this article is not applicable to the victims of human trafficking since they are not recovering from a work accident or sickness.</u></p> <p>g) For the Ecuadorians who are abroad the State has the duty to “promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return” (Constitution, article 40 number 4). In addition, in relation to the victims of trafficking in persons the State is obliged to adopt all the necessary measures “to protect and socially reinsert victims of trafficking” (Constitution, article 66 number 29 letter b).</p> <p>h) <u>The Constitution protects the right to property in a broad sense, but it does not talk about the return of travel documents or other personal belongings to the victims (Article 66 number 26).</u></p>
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2. Compensation

In accordance with the Organized Crime Convention⁴³ and the Palermo Protocol⁴⁴ the Ecuadorian State is obliged to compensate the victims for the damages suffered as consequence of the trafficking in persons. By recognizing in the Constitution⁴⁵ and in the Organic Integral Penal Code⁴⁶ the right of victims to get compensation, the State “discharges its obligation” under the Palermo Protocol which only requires the “legal possibility of compensation”.⁴⁷ However, the broadness of the Ecuadorian law makes it difficult for the victims to access to all forms of compensation in accordance with the OHCHR principles. In addition, the absence of a law that clarifies this issue generates confusion in the victims and in the authorities who are in charge to compensate the trafficked victims.

The compensation in Ecuador is “offender-funded” and the judges are responsible to calculate the damages in a case by case analysis⁴⁸. According to a report of the *Unit Against Human Trafficking and Illegal Smuggling* during the 2014 there were 15 cases of conviction for human trafficking⁴⁹. However, to get access to these cases in the database of the judicial system a person needs to know the ID number and personal information of each party involved in the case. As consequence, it is not possible to include in this research a detailed analysis about the methods employed for the judges to calculate the compensations for trafficked victims.

Nevertheless, the following chart shows how the Ecuadorian law and public policy have implemented or not the principles of compensation given by the OHCHR:

⁴³ Article 25

⁴⁴ Article 6 number 6

⁴⁵ Article 78

⁴⁶ Article 11 number 2

⁴⁷ *Supra*, note 8

⁴⁸ *Código Orgánico Integral Penal*, article 628 and *Código Civil*, article 2232.

⁴⁹ Unidad Contra la Trata de Personas y Tráfico de Migrantes, *Informe de Actividades: Año 2014*, available at: <http://www.ministeriointerior.gob.ec/wp-content/uploads/2012/10/INFORME-ACTIVIDADES-UNIDAD-2014.pdf>

OHCHR Principles	Ecuadorian Law and Public Policy
<p>III. Forms of the right to remedy</p>	<p>B. Compensation</p> <p>10. The Ecuadorian Constitution recognizes that the victims of criminal offenses such as the victims of trafficking in persons have the right to an integral reparation which shall include the compensation (Article 78). Additionally, the Civil Code recognizes that victims can ask compensation for the damages caused by a crime and also for the moral damages (Articles 2214 and 2232).</p> <p>11. Forms of compensation:</p> <ul style="list-style-type: none"> a) The Civil Code recognizes that victims can ask for moral damages resulting from physical or mental harm (Article 2232). b) <u>The Ecuadorian law does not talk about damages for lost opportunities for victims. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which damages shall be covered.</u> c) <u>The Ecuadorian law does not consider reimbursement of costs for victims of trafficking in persons. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered.</u> d) <u>The Ecuadorian law does not provide payment of material damages and loss of earnings for victims of trafficking in persons. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which damages shall be covered.</u> e) The Civil Code recognizes that victims can ask for moral damages resulting from physical or physiological injury, emotional distress, pain or suffering (Article 2232). f) As part of the integral reparation within the criminal proceedings the victims are allowed to ask for reimbursement of legal fees and other expenses incurred during the process (Organic Integral Penal Code, articles 628 and 629). g) <u>The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered (legal, medical, physical, social, etc).</u> h) <u>The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered (any costs or losses incurred by the victim)</u>

	<p>12. Access to compensation:</p> <p>a) According to the Ecuadorian Constitution “every person has the right to free access to justice and the effective, impartial and expeditious protection of their rights and interests, subject to the principles of immediate and swift enforcement; in no case shall there be lack of proper defense. Failure to abide by legal rulings shall be punishable by law” (Article 75).</p> <p>b) In cases of criminal offenses, the victims have the right to be compensated for the damages they have suffered. The criminal judge is in charge to set the amount on a case by case analysis (Constitution, article 78; Organic Integral Penal Code, articles 11 number 2 and 628).</p> <p>c) <u>The Ecuadorian law does not provide access to established national funds or schemes for victims of crimes.</u></p> <p>d) According to the Organic Integral Penal Code the instruments and proceeds of any crime could be confiscated (Article 69 number 2).</p> <p>e) The Organic Code of General Processes provides a special procedure to enforce any judgment that complies with the national requirements (Article 363). In addition, this same law allows the foreign judgments to be enforced (Articles 1-2 and 103).</p>
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3. Rehabilitation and recovery

The rehabilitation and recovery is “a victim-centered concept” that recognizes “a need to ensure that the person who has suffered a violation of human rights has his or her status and position restored”.⁵⁰ Ecuador has incorporated this concept within its Constitution and laws however, it is dependent on the capacity or willingness of the victims to cooperate in the legal process. The following chart explains how Ecuador has incorporated the OHCHR principles within its law:

OHCHR Principles	Ecuadorian Law and Public Policy
III. Forms of the right to remedy	<p>C. Rehabilitation and recovery</p> <p>13. As part of the integral reparation for victims of criminal offenses such as the trafficking in persons, the States is obliged to provide rehabilitation. To do so it has created a national system of social inclusion and equity that “ensures the exercise, guarantee, and</p>

⁵⁰ Supra, note 8, page 11

	<p>enforceability of the rights enshrined in the Constitution” (Constitution articles 78 and 340). In addition, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings provides medical, psychological and social services such as shelter for the victims that are part of this system (Articles 29, 30, 31 and 32).</p> <p>14. <u>This principle is not considered in the Ecuadorian law. Contrary, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings requires the cooperation of the victims with the legal proceeding in order to be part of the system of protection and assistance to victims, witnesses and other participants of the criminal proceedings (Article 8 number 1 letter a).</u></p>
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4. Satisfaction

The satisfaction is “a remedy for injuries which are not necessarily financially assessable, but which can be addressed by ensuring that the violations of the victim’s rights are properly acknowledged and dealt with”.⁵¹ For its importance, the OHCHR principles has incorporated these non-financial forms of reparation. In the same direction, the Ecuadorian Constitution has recognized the necessity to provide mechanisms to satisfy the victims of criminal offenses such as the human trafficking.

The following chart shows how the Ecuadorian law has incorporated or not the OHCHR principles related to the measures of satisfaction:

OHCHR Principles	Ecuadorian Law and Public Policy
	<p>D. Satisfaction</p> <p>15. According to the Ecuadorian Constitution the State has the obligation to provide measures of satisfaction for the victims of criminal offenses such as the trafficking in persons (Article 78). The Ecuadorian law does not provide specific actions to compensate the moral damages in a non-financial form. However, it allows the criminal judges to incorporate measures of satisfaction in their judgments after a case by case analysis (Organic Integral Penal Code, articles 11 number 2 and 628).</p> <p>16. Satisfaction includes:</p>

⁵¹ Supra note 8, page 13

III. Forms of the right to remedy	<ul style="list-style-type: none"> a) The Ecuadorian law does not specify effective measures to cease a continuing violation related to the trafficking in persons. However, there is a constitutional action called “protection proceedings” that allows people to ensure the “direct and efficient safeguard of the rights enshrined in the Constitution” when there is a violation of a constitutional right that causes severe damages (Constitution, article 88). b) The victims of trafficking in persons have the right to full and public disclosure of the truth (Constitution, article 78 and Organic Integral Penal Code, article 11 number 2). c) The right to an integral reparation includes the existence of a judicial decision that restore the dignity of the victim (Organic Integral Penal Code). The criminal judges have a wide margin of discretion when solving human trafficking cases. d) <u>The Ecuadorian law talks about public apologies as part of the integral reparation in cases of constitutional actions. However, it is not directly related to the victims of the trafficking in persons</u> (Organic Law of Judicial Guarantees and Constitutional Control, article 18). e) The trafficking in persons is considered a crime under the Ecuadorian law. As consequence, it punishes those behaviors with 13 to 40 years in prison (Organic Integral Penal Code, article 92).
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5. Guarantees of non-repetition

Another form of remedy for the victims of trafficking in persons are the guarantees of non-repetition. They are essential in cases of human trafficking “due to the danger of and harm caused by re-trafficking”.⁵² In Ecuador the victims can afford these guarantees as part of the integral reparation that the Ecuadorian Constitution⁵³ and the Organic Criminal Penal Code⁵⁴ provide.

The following chart describes in detail how the Ecuadorian law and public policy is related to the OHCHR principles in this subject:

⁵² Supra note 8, page 13

⁵³ Article 78

⁵⁴ Article 11 number 2

OHCHR Principles	Ecuadorian Law and Public Policy
<p>III. Forms of the right to remedy</p>	<p>E. Guarantees of non-repetition</p> <p>17. The State is obliged to adopt mechanisms for an integral reparation, which shall include guarantees of non-repetition (Constitution, article 78 and Organic Integral Penal Code, article 11 number 2).</p> <p>a) The Organic Integral Penal Code recognizes that the trafficking in persons is a crime that has to be investigated, prosecuted and sanctioned (Articles 91 and 92).</p> <p>b) <u>The Ecuadorian law does not provide specific measures to protect victims from being re-trafficked.</u> Nevertheless, according to the Constitution the State is obliged adopt all the necessary measures “to protect and socially reinsert victims of trafficking” (Article 66 number 29 letter b). In line with this, if the victims are not Ecuadorians, the Ecuadorian law allows them to remain lawfully in the country for a temporary or permanent period time (Organic Integral Penal Code, article 11 last paragraph and Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings, article 7 letter h).</p> <p>c) The Ecuadorian Constitution recognizes that human rights should be observed by all state officials. For instance, it provides that “employees and officers of the Armed Forces and the National Police Force shall be trained in the basic principles of democracy and human rights and shall respect the dignity and human rights of persons without any discrimination and with full observance of the legal regulatory framework” (Article 158). In addition, the axes one, two and three of the National Plan to Combat the Trafficking in Persons establishes the necessity to train the state agents in order to prevent and combat the trafficking in persons in Ecuador.</p> <p>d) The Ecuadorian law recognizes that the “bodies of the Judicial Branch shall benefit from both internal and external independence” (Constitution, article 168 number 1). Certainly, the independence is a core principle of the judiciary (Organic Code of the Judicial Branch, articles 8 and 9).</p> <p>e) The Constitution establishes that all rights should be respected equally. This means that “no one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by</p>

	<p>law” (Article 11 number 2). In line with this, the National Plan for Good Living 2013-2017 explains that one priority for the State is to strengthen the cases of trafficking in persons in order to prevent, attend, protect and retribute the victims’ rights (Policy 2.6.j). Additionally, the first objective of the axis one of the National Plan to Combat the Trafficking in Persons recognizes the necessity to promote sociocultural changes in order to prevent the human trafficking in the country.</p> <p>f) The Constitution establishes that the State has to take all necessary measures to address the poverty (article 3 number 5), gender inequality (article 70) and discrimination (article 11 number 2).</p> <p>g) <u>The Ecuadorian law does not promote public-private partnerships against trafficking in persons.</u></p> <p>h) According to the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings the defenders who assist victims of crimes such as the trafficking in persons can be included under the protection of this program (Article 6).</p>
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IV. Conclusions and recommendations

The absence of a law that addresses the trafficking in persons generates gaps in the understanding of this problem. In addition, the National Plan to Combat the Trafficking in Persons has not been updated since 2010 which makes it difficult to have an efficient and adequate response to the necessities of victims. The lack of a new or updated plan implies that the authorities do not have clearness about their responsibilities in the prevention and combat of the trafficking in persons. Additionally, it means that there is a lack of resources to implement the standards contained in this plan. As consequence, an updated National Plan will facilitate the coordination between all entities that are involved in the effort to prevent and combat the trafficking in persons in Ecuador. Furthermore, it would clarify the responsibilities that each authority has to put into practice the axis established in this plan.

When updating the National Plan to Combat the Trafficking in Persons the following factors should be considered:

- There is a gap between the existing services and the new legislation that was adopted to investigate, prosecute and sanction the human trafficking, specifically the Organic Integral Penal Code that was enacted in 2014.
- Specialized services are not available in most parts of the country, as consequence, talking about a complete reparation for victims of trafficking in persons is not a reasonable option yet.
- It is important to clarify the responsibilities that the national and local authorities have within this plan.
- Being aware about the existence of external factors such as the currently migration patterns is essential to provide better remedies to the trafficked victims.
- Anti-trafficking efforts include different sort of actors which requires the recognition of the role that civil society and victims play in the development of public policies.
- Coordination and communication between the national and local authorities is essential to implement adequate services to protect and remedy the victims of the trafficking in persons.

A national strategy to prevent, investigate and punish the human trafficking is important but it should include a legislative reform. Creating a law that addresses the human trafficking as a problem by itself is also necessary to provide an effective remedy for victims of human trafficking. The broadness of the Organic Integral Penal Code makes it difficult to enforce the law and to comply with the international standards to protect the victims of this crime. For these reasons, when creating a new comprehensive law of trafficking the following issues should be considered:

- **Restitution:**

- As the general rule the victims have the right to be restored to the original situation before the trafficking.
- The repatriation should be analyzed within the law, not at the level of a plan or public policy.
- Restitution includes the restoration of victims' employment and the return of their personal belongings.
- **Compensation:**
 - Most damages are not explicitly recognized in the Ecuadorian law. For instance: damages for lost of opportunities, reimbursement of specific costs (legal experts, doctors, psychologists, etc.).
 - There is not established national funds for victims of human trafficking.
- **Rehabilitation and recovery:** the rehabilitation and recovery measures should not depend on the victims' capacity or willingness to cooperate with the criminal process. The Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants on Criminal Proceedings is against this international standard.
- **Satisfaction:** the Ecuadorian law does not have enough mechanisms or measures to satisfy the victims of trafficking in persons. For instance, the public apologies are limited to the constitutional actions.
- **Guarantees of non-repetition:** the Ecuadorian law does not have specific measures to prevent victims from being re-trafficked and there is nothing about public-private partnerships to prevent and combat the trafficking in persons in Ecuador.

V. Annexes

1. **Since Sections II and III of the “Basic Principles to an effective remedy for victims of trafficking in persons” have been described above this annex only**

includes the Sections I and IV of the OHCHR principles. Again, it follows the structure (numbers) of the annex incorporated in the resolution A/HRC/26/18:

OHCHR Principles	Ecuadorian Law and Public Policy
<p>I. Rights and Obligations</p>	<ol style="list-style-type: none"> 1. The Ecuadorian Constitution prohibits the human trafficking and creates the obligation to protect and socially reinsert victims of trafficking (Article 66 number 29 letter b). To do so, the Organic Integral Penal Code considers the trafficking in persons as a crime that allows the victims to ask for integral reparations (Article 11 number 2). Since human trafficking is considered a criminal offense, the victims benefit from special protection which includes “without delay, knowledge about the truth of the facts and restitution, compensation, rehabilitation, guarantee of non repetition, and satisfaction with respect to the infringed right” (Constitution, Article 78). In addition, the axis three of the National Plan to Combat the Trafficking in Persons is designed to provide an integral reparation for the victims of this crime (Decree number 1823). 2. According to the Ecuadorian Constitution the State has the duty to respect and enforce all constitutional rights. As consequence, it has the obligation to prohibit, prevent and eradicate human trafficking, as well as to protect and socially reinsert the victims regardless of whether it is responsible or not. In this sense, the article 11 number 9 of the Constitution explains that “the State, its delegates, concession holders and all persons acting in the exercise of public authority, shall be obligated to redress infringements of the rights of individuals for negligence or inadequacies in the provision of public services or for the deeds or omissions of their public officials and employees in the performance of their duties”. Additionally, the axis three of the National Plan to Combat the Trafficking in Persons incorporates the concepts of compensation, rehabilitation, satisfaction and guarantees of non-repetition, <u>but it does not talk explicitly about restitution.</u> 3. The article 11 number 3 of the Ecuadorian Constitution states that the rights and guarantees that are in the Constitution and in international human rights instruments “shall be directly and immediately enforced by and before any civil, administrative or judicial servant, either by virtue of their office or at the request of the party”. In the same vein, the article 424 of the Constitution establishes that “international human rights treaties ratified by the State that recognize rights that are more favorable than those enshrined in the Constitution shall prevail over any other legal regulatory system or action by public power”. As consequence, the Ecuadorian State is obliged to provide and facilitate the access to remedies that are required by binding international law. 4. One prime duty of the Ecuadorian States is to guarantee all rights without any discrimination (Constitution, article 3 number 1). It

	<p>includes the protection and effective remedy for the victims of human trafficking that is recognized in article 66 number 29 letter b of the Constitution. The absence of any form of discrimination means that nobody “shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights” (Constitution, article 11 number 2). Additionally, the general principles of the National Plan to Combat the Trafficking in Persons explains that the equality non-discrimination are applicable to all measures regarding the prevention and combat of the trafficking in persons (Decree number 1823).</p> <p>5. Considering that the trafficking in persons is a criminal offense, the article 78 of the Constitution is applicable to it. Therefore, the victims have the right to access to mechanisms for integral reparation “which shall include, without delay, knowledge about the truth of the facts and restitution, compensation, rehabilitation, guarantee of non repetition, and satisfaction with respect to the infringed right”. However, there is not a law that encompasses the procedural rights necessary to access to this integral reparation. Some general parameters can be found in the Organic Integral Penal Code, as well as in the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings. In addition, the Annex 4 of the National Plan to Combat the Trafficking in Persons recognizes that the victim-centered and human rights-based approach is part of the Ecuadorian policy to address the trafficking in persons.</p> <p>6. According to the article 416 number 1 of the Constitution one of the principles that govern the Ecuadorian international relations is the cooperation. Consequently, the State is can reach bilateral and multilateral cooperation in different topics which includes the trafficking in persons. In line with it, the National Plan for Good Living 2013-2017 establishes that one goal for the State is to “strengthen the governmental cooperation for the prevention, investigation, rescue, punishment and protection of the victims of trafficking in persons” (policy 12.2.j). For instance, the National Plan to Combat the Trafficking in Persons in the action line number 9 of the axis three suggests that the State shall increase the capacity of the Health Ministry through the international technical cooperation.</p>
	<p>18. Access to remedies for child victims of trafficking:</p>

IV. Right to Remedy for Child Victims of Trafficking	<p>a) The best interest of the child is provided in article 44 of the Constitution as well as in article 11 of the Childhood and Adolescence Code.</p> <p>b) The children’s right to express their views freely and to consider them according to their age and maturity is regulated in article 45 of the Constitution and in article 60 of the Childhood and Adolescence Code.</p> <p>c) The children’s right to access to remedies is in line with articles: 78 of the Constitution; 74 number 2 and 79 numbers 2 and 3 of the Childhood and Adolescence Code; and 11 number 2 of the Organic Integral Penal Code.</p> <p>d) The children who are victims of human trafficking can access to physical, psychological and social services while being part of the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings (Articles 7 letter g and 29, 30, 31 and 32). In addition, special attention should be provided to the children in accordance with article 46 numbers 2 and 4 of the Constitution.</p> <p>e) According to articles 44 and 66 number 3 letter b of the Constitution the State “shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against children and adolescents”. In addition, it “shall give priority to actions for those groups who require special consideration because of their age” such as the children.</p>
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2. Ecuadorian law and national plans (author’s translation)

Name in Spanish	Author’s translation
Constitución	Ecuadorian Constitution
Código Civil	Civil Code
Código Orgánico Integral Penal	Organic Integral Penal Code
Código de la Niñez y Adolescencia	Childhood and Adolescence Code
Código Orgánico de la Función Judicial	Organic Code of the Judicial Branch
Código Orgánico General de Procesos	Organic Code of General Processes
Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional	Organic Law of Judicial Guarantees and Constitutional Control
Reglamento para el Sistema de Protección y Asistencia a Víctimas, Testigos y otros Participantes en el Proceso Penal	Regulations for the System of Protection and Assistance to Victims, Witnesses and

	Other Participants of the Criminal Proceedings
Plan Nacional del Buen Vivir 2013-2017	National Plan for Good Living 2013-2017
Plan nacional para combatir la trata de personas, el tráfico ilegal de migrantes, explotación sexual laboral y otros modos de explotación y prostitución de mujeres, niños, niñas y adolescentes, pornografía infantil y corrupción de menores	National Plan to Combat Human Trafficking, Illegal Smuggling of Migrants, Sexual and Labour Exploitation and Other Forms of Exploitation and Prostitution of Women, Children and Adolescents, Child Pornography and Corruption of Minors

OHCHR Principles	Ecuadorian Law and Public Policy
I. Rights and Obligations	<ol style="list-style-type: none"> 1. The Ecuadorian Constitution prohibits the human trafficking and creates the obligation to protect and socially reinsert victims of trafficking (Article 66 number 29 letter b). To do so, the Organic Integral Penal Code considers the trafficking in persons as a crime that allows the victims to ask for integral reparations (Article 11 number 2). Since human trafficking is considered a criminal offense, the victims benefit from special protection which includes “without delay, knowledge about the truth of the facts and restitution, compensation, rehabilitation, guarantee of non repetition, and satisfaction with respect to the infringed right” (Constitution, Article 78). In addition, the axis three of the National Plan to Combat the Trafficking in Persons is designed to provide an integral reparation for the victims of this crime (Decree number 1823). 2. According to the Ecuadorian Constitution the State has the duty to respect and enforce all constitutional rights. As consequence, it has the obligation to prohibit, prevent and eradicate human trafficking, as well as to protect and socially reinsert the victims regardless of whether it is responsible or not. In this sense, the article 11 number 9 of the Constitution explains that “the State, its delegates, concession holders and all persons acting in the exercise of public authority, shall be obligated to redress infringements of the rights of individuals for negligence or inadequacies in the provision of public services or for the deeds or omissions of their public officials and employees in the performance of their duties”. Additionally, the axis three of the National Plan to Combat the Trafficking in Persons incorporates the concepts of compensation, rehabilitation, satisfaction and guarantees of non-repetition, <u>but it does not talk explicitly about restitution.</u> 3. The article 11 number 3 of the Ecuadorian Constitution states that the rights and guarantees that are in the Constitution and in international human rights instruments “shall be directly and immediately enforced by and before any civil, administrative or judicial servant, either by virtue of their office or at the request of the party”. In the same vein, the article 424 of the Constitution establishes that “international human rights treaties ratified by the State that recognize rights that are more favorable than those enshrined in the Constitution shall prevail over any other legal regulatory system or action by public power”. As consequence, the Ecuadorian State is obliged to provide and facilitate the access to remedies that are required by binding international law. 4. One prime duty of the Ecuadorian States is to guarantee all rights without any discrimination (Constitution, article 3 number 1). It includes the protection and effective remedy for the victims of human trafficking that is recognized in article 66 number 29 letter b of the Constitution. The absence of any form of discrimination means that nobody “shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result

	<p>in the diminishment or annulment of recognition, enjoyment or exercise of rights” (Constitution, article 11 number 2). Additionally, the general principles of the National Plan to Combat the Trafficking in Persons explains that the equality non-discrimination are applicable to all measures regarding the prevention and combat of the trafficking in persons (Decree number 1823).</p> <p>5. Considering that the trafficking in persons is a criminal offense, the article 78 of the Constitution is applicable to it. Therefore, the victims have the right to access to mechanisms for integral reparation “which shall include, without delay, knowledge about the truth of the facts and restitution, compensation, rehabilitation, guarantee of non repetition, and satisfaction with respect to the infringed right”. However, there is not a law that encompasses the procedural rights necessary to access to this integral reparation. Some general parameters can be found in the Organic Integral Penal Code, as well as in the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings. In addition, the Annex 4 of the National Plan to Combat the Trafficking in Persons recognizes that the victim-centered and human rights-based approach is part of the Ecuadorian policy to address the trafficking in persons.</p> <p>6. According to the article 416 number 1 of the Constitution one of the principles that govern the Ecuadorian international relations is the cooperation. Consequently, the State is can reach bilateral and multilateral cooperation in different topics which includes the trafficking in persons. In line with it, the National Plan for Good Living 2013-2017 establishes that one goal for the State is to “strengthen the governmental cooperation for the prevention, investigation, rescue, punishment and protection of the victims of trafficking in persons” (policy 12.2.j). For instance, the National Plan to Combat the Trafficking in Persons in the action line number 9 of the axis three suggests that the State shall increase the capacity of the Health Ministry through the international technical cooperation.</p>
<p>II. Access to the right to a remedy</p>	<p>7. Access to remedies:</p> <p>a) The victims of trafficking in persons have the access to criminal, civil and labour remedies. Since the human trafficking is considered a crime under the Ecuadorian law, it can be punished under the Organic Integral Penal Code (Articles 91 and 92). In addition, under this law the victims have the right to get integral reparation for the damages they suffered, it includes: truth, restitution of their rights, compensation, guarantees of non repetition, measures of satisfaction and any other form of reparation that would be applicable to the case (Organic Integral Penal Code, article 11 number 2). According to the civil law, the victims can award damages for the criminal offense and also moral damages (Civil Code, articles 2214 and 2232). In addition, the labour law allows all people to sue their employers when there is any violation of the labor law. <u>Nevertheless, the Labor Code does not provide specific remedies for the victims of the trafficking in persons.</u> Finally, the article 41 of the Ecuadorian Constitution recognizes the right to asylum in accordance with the law and international human rights instruments.</p>

- b) The article 75 of the Constitution establishes that all people have the right to “access to justice and the effective, impartial and expeditious protection of their rights and interests, subject to the principles of immediate and swift enforcement”, it includes the victims of trafficking in persons that are protected under the article 66 number 29 letter b of the Constitution. Additionally, the National Plan for Good Living 2013-2017 in the policy 6.5.g requires the cooperation between national and local governments in order to prevent and eradicate the trafficking in persons in both dimensions, national and transnational.
- c) The article 76 number 7 letter f of the Constitution establishes that as part of the right to defense people have the right “to be helped free of charge by a translator or interpreter if the person does not understand or speak the language in which the proceedings are being conducted”. In addition, the Organic Integral Penal Code provides that all victims have the right to get free assistance of translators or interpreters if they do not understand or speak the language that is being used in the proceedings. Along the same lines, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings establishes that victims have the right to receive any information in their native language.
- d) There is nothing in the Ecuadorian law that talks about a reflection and recovery period for the victims. Neither is there a law that provides residence status to victims of human trafficking.
- e) The Constitution (articles 78 and 76 number 7 letters f and g) recognizes that victims have the right to defense. It implies that they have the right to have a translator or interpreter during the process and to have free legal aid which is in charge of the Ombudsman. At the same time, the Organic Code of the Judicial Branch establishes that the Ombudsman is in charge to provide free and effective legal assistance to people who can not pay for it (Article 286). As part of this duties, the Ombudsman regulates the operation of the universities’ free legal aid clinics. Moreover, the the Organic Integral Penal Code recognizes that all victims have the right “to be assisted by a public or private defender before and during the investigations, in all parts of the proceedings and in everything that is related to their integral reparation” (Article 11 number 6).
- f) The Organic Integral Penal Code recognizes that the victims of trafficking in persons are exempted from punishments for activities that are a direct result of their situation as victims of human trafficking (Article 93).
- g) If the victim is not Ecuadorian, the Organic Integral Penal Code allows him or her to remain lawfully in the country for a temporary or permanent period time (Article 11 last paragraph). This law has to be understood in line with the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings which provides that foreign victims and witnesses are allowed to stay lawfully in the Ecuadorian territory while they are part of this protection system (Article 7 letter h).
- h) According to the Ecuadorian Constitution the States has the duty to guarantee all right without discrimination (Articles 3 number 1 and 11 number 2). Thus, the State has the obligation to “draw up and

implement policies to achieve equality between women and men, through the specialized mechanism set up by law” (Constitution, article 70). As part of this duty it “shall mainstream the gender approach in plans and programs and shall provide technical assistance for its mandatory enforcement in the public sector” (Constitution, article 70). In addition, the Organic Integral Penal Code considers that victims have the right to be treated with equality. The authorities can apply affirmative actions to assure it during the investigations, proceedings and reparations (Article 11 number 12).

In relation to the re-victimization and stigmatization, the Constitution determines that “victims of criminal offenses shall benefit from special protection; guarantees shall be provided to them for preventing their re-victimization, especially in obtaining and assessing the evidence; and they shall be protected against any threat or other forms of intimidation” (Article 78). Furthermore, the Organic Integral Penal Code (Article 11 number 5) and the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings (Article 7 letter f) provide that the State has the duty to avoid re-victimization specially in the gathering of evidence.

- i) This principle is not contemplated in the Ecuadorian law. Contrary, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings requires the cooperation of the victims with the legal proceeding in order to be part of the system of protection and assistance to victims, witnesses and other participants of the criminal proceedings (Article 8 number 1 letter a).
- j) The victims, their families and the witnesses can be included in the system of protection and assistance to victims, witnesses and other participants of the criminal proceedings which is in charge of the Ecuador’s National Office of the Public Prosecutor (Constitution, article 195; Organic Code of the Judicial Branch, article 295; and Organic Integral Penal Code, article 11 numbers 4 and 8). In addition, according to the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings the victims of trafficking in persons are defined as victims who need priority attention (Article 6 number 1.1).

**III. Forms
of the right
to remedy**

A. Restitution

8. Since the trafficking in persons is considered a criminal offence the article 78 of the Constitution is applicable for the victims. This article talks about an integral reparation for victims of criminal offenses. Likewise, the Organic Integral Penal Code explains that all victims have the right to an integral reparation which includes their restitution. However, none of these laws talk explicitly about the restoration of the victims to their original situation.

9. Restitution includes:

- a) The Ecuadorian Constitution provides that the right to freedom includes the “prohibition of slavery, exploitation, bondage and smuggling and trafficking in human beings in all their forms”. Consequently, the State is obliged 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” (Article 66 number 29 letter b). Additionally, the Organic Integral Penal Code explains that the victims shall not be charged or prosecuted for activities that are direct consequence of their situation as victims of human trafficking (Article 93).
- b) According to the Constitution all people have the right to enjoy their human rights and family life (Articles 11 number 3; and 67). In addition, for the Ecuadorians who are abroad the State has the duty to “promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return” (Article 40 number 4).
- c) The repatriation for victims of human trafficking is not considered within the Ecuadorian law. Even though article 66 number 14 of the Constitution provides that “foreigners cannot be returned or expelled to a country where their lives, liberty, safety or well-being or those of their families are in danger”, the trafficking in persons is not a cause to apply this norm. In addition, the National Plan to Combat the Trafficking in Persons in the action line two of the axis three considers that consular assistance to the victims including mechanisms of repatriation are important measures to repair the victims of trafficking in persons.
- d) The Ecuadorian Constitution recognizes the rights to asylum and sanctuary in accordance with the law and international human rights instruments (Article 41). In addition, it recognizes that “foreigners cannot be returned or expelled to a country where their lives, liberty, safety or well-being or those of their families are in danger because of their ethnic belonging, religion, nationality, ideology, belonging to a given social group or political opinions” (Article 66 number 14). Nevertheless, it does not include the trafficking in persons as a cause that support the application of these norms.
- e) The Ecuadorian Constitution recognizes the right to personal and collective identity, which includes “tangible and intangible characteristics of said identity, such as nationality, family origins, and spiritual, cultural, religious, linguistic, political and social manifestations” (Article 66 number 28).

- f) The Ecuadorian law does not talk about the restoration of the victim's employment. When talking about the right to work it states that "any person who has recovered from a work accident or sickness shall be entitled to return to work and continue the labor relationship, pursuant to the law" (Constitution, article 326 number 6). However, this article is not applicable to the victims of human trafficking since they are not recovering from a work accident or sickness.
- g) For the Ecuadorians who are abroad the State has the duty to "promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return" (Constitution, article 40 number 4). In addition, in relation to the victims of trafficking in persons the State is obliged to adopt all the necessary measures "to protect and socially reinsert victims of trafficking" (Constitution, article 66 number 29 letter b).
- h) The Constitution protects the right to property in a broad sense, but it does not talk about the return of travel documents or other personal belongings to the victims (Article 66 number 26).

B. Compensation

10. The Ecuadorian Constitution recognizes that the victims of criminal offenses such as the victims of trafficking in persons have the right to an integral reparation which shall include the compensation (Article 78). Additionally, the Civil Code recognizes that victims can ask compensation for the damages caused by a crime and also for the moral damages (Articles 2214 and 2232).

11. Forms of compensation:

- a) The Civil Code recognizes that victims can ask for moral damages resulting from physical or mental harm (Article 2232).
- b) The Ecuadorian law does not talk about damages for lost opportunities for victims. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which damages shall be covered.
- c) The Ecuadorian law does not consider reimbursement of costs for victims of trafficking in persons. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered.
- d) The Ecuadorian law does not provide payment of material damages and loss of earnings for victims of trafficking in persons. The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which damages shall be covered.
- e) The Civil Code recognizes that victims can ask for moral damages resulting from physical or physiological injury, emotional distress, pain or suffering (Article 2232).
- f) As part of the integral reparation within the criminal proceedings the victims are allowed to ask for reimbursement of legal fees and other expenses incurred during the process (Organic Integral Penal Code, articles 628 and 629).

- g) The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered.
- h) The Organic Integral Penal Code provides that the victims have the right to an integral reparation for the damages they have suffered. It includes an adequate compensation. However, it does not specify which costs shall be covered.

12. Access to compensation:

- a) According to the Ecuadorian Constitution “every person has the right to free access to justice and the effective, impartial and expeditious protection of their rights and interests, subject to the principles of immediate and swift enforcement; in no case shall there be lack of proper defense. Failure to abide by legal rulings shall be punishable by law” (Article 75).
- b) In cases of criminal offenses, the victims have the right to be compensated for the damages they have suffered. The criminal judge is in charge to set the amount on a case by case analysis (Constitution, article 78; Organic Integral Penal Code, articles 11 number 2 and 628).
- c) The Ecuadorian law does not provide access to established national funds or schemes for victims of crimes.
- d) According to the Organic Integral Penal Code the instruments and proceeds of any crime could be confiscated (Article 69 number 2).
- e) The Organic Code of General Processes provides a special procedure to enforce any judgment that complies with the national requirements (Article 363). In addition, this same law allows the foreign judgments to be enforced (Articles 1-2 and 103).

C. Rehabilitation and recovery

- 13. As part of the integral reparation for victims of criminal offenses such as the trafficking in persons, the States is obliged to provide rehabilitation. To do so it has created a national system of social inclusion and equity that “ensures the exercise, guarantee, and enforceability of the rights enshrined in the Constitution” (Constitution articles 78 and 340). In addition, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings provides medical, psychological and social services such as shelter for the victims that are part of this system (Articles 29, 30, 31 and 32).
- 14. This principle is not considered in the Ecuadorian law. Contrary, the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings requires the cooperation of the victims with the legal proceeding in order to be part of the system of protection and assistance to victims, witnesses and other participants of the criminal proceedings (Article 8 number 1 letter a).

D. Satisfaction

- 15. According to the Ecuadorian Constitution the State has the obligation to provide measures of satisfaction for the victims of criminal offenses such as the trafficking in persons (Article 78). The Ecuadorian law does not provide specific actions to compensate the moral damages in a non-financial form. However, it allows the criminal judges to incorporate

measures of satisfaction in their judgments after a case by case analysis (Organic Integral Penal Code, articles 11 number 2 and 628).

16. Satisfaction includes:

- a) The Ecuadorian law does not specify effective measures to cease a continuing violation related to the trafficking in persons. However, there is a constitutional action called “protection proceedings” that allows people to ensure the “direct and efficient safeguard of the rights enshrined in the Constitution” when there is a violation of a constitutional right that causes severe damages (Constitution, article 88).
- b) The victims of trafficking in persons have the right to full and public disclosure of the truth (Constitution, article 78 and Organic Integral Penal Code, article 11 number 2).
- c) The right to an integral reparation includes the existence of a judicial decision that restore the dignity of the victim (Organic Integral Penal Code). The criminal judges have a wide margin of discretion when solving human trafficking cases.
- d) The Ecuadorian law talks about public apologies as part of the integral reparation in cases of constitutional actions. However, it is not directly related to the victims of the trafficking in persons (Organic Law of Judicial Guarantees and Constitutional Control, article 18).
- e) The trafficking in persons is considered a crime under the Ecuadorian law. As consequence, it punishes those behaviors with 13 to 26 years in prison (Organic Integral Penal Code, article 92).

E. Guarantees of non-repetition

17. The State is obliged to adopt mechanisms for an integral reparation, which shall include guarantees of non-repetition (Constitution, article 78 and Organic Integral Penal Code, article 11 number 2).

- a) The Organic Integral Penal Code recognizes that the trafficking in persons is a crime that has to be investigated, prosecuted and sanctioned (Articles 91 and 92).
- b) The Ecuadorian law does not provide specific measures to protect victims from being re-trafficked. Nevertheless, according to the Constitution the State is obliged adopt all the necessary measures “to protect and socially reinsert victims of trafficking” (Article 66 number 29 letter b). In line with this, if the victims are not Ecuadorians, the Ecuadorian law allows them to remain lawfully in the country for a temporary or permanent period time (Organic Integral Penal Code, article 11 last paragraph and Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings, article 7 letter h).
- c) The Ecuadorian Constitution recognizes that human rights should be observed by all state officials. For instance, it provides that “employees and officers of the Armed Forces and the National Police Force shall be trained in the basic principles of democracy and human rights and shall respect the dignity and human rights of persons without any discrimination and with full observance of the legal regulatory framework” (Article 158). In addition, the axes one, two and three of the National Plan to Combat the Trafficking in Persons

	<p>establishes the necessity to train the state agents in order to prevent and combat the trafficking in persons in Ecuador.</p> <ul style="list-style-type: none"> d) The Ecuadorian law recognizes that the “bodies of the Judicial Branch shall benefit from both internal and external independence” (Constitution, article 168 number 1). Certainly, the independence is a core principle of the judiciary (Organic Code of the Judicial Branch, articles 8 and 9). e) The Constitution establishes that all rights should be respected equally. This means that “no one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law” (Article 11 number 2). In line with this, the National Plan for Good Living 2013-2017 explains that one priority for the State is to strengthen the cases of trafficking in persons in order to prevent, attend, protect and restitute the victims’ rights (Policy 2.6.j). Additionally, the first objective of the axis one of the National Plan to Combat the Trafficking in Persons recognizes the necessity to promote sociocultural changes in order to prevent the human trafficking in the country. f) The Constitution establishes that the State has to take all necessary measures to address the poverty (article 3 number 5), gender inequality (article 70) and discrimination (article 11 number 2). g) <u>The Ecuadorian law does not promote public-private partnerships against trafficking in persons.</u> h) According to the Regulations for the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings the defenders who assist victims of crimes such as the trafficking in persons can be included under the protection of this program (Article 6).
<p>IV. Right to Remedy for Child Victims of Trafficking</p>	<p>18. Access to remedies for child victims of trafficking:</p> <ul style="list-style-type: none"> a) The best interest of the child is provided in article 44 of the Constitution as well as in article 11 of the Childhood and Adolescence Code. b) The children’s right to express their views freely and to consider them according to their age and maturity is regulated in article 45 of the Constitution and in article 60 of the Childhood and Adolescence Code. c) The children’s right to access to remedies is in line with articles: 78 of the Constitution; 74 number 2 and 79 numbers 2 and 3 of the Childhood and Adolescence Code; and 11 number 2 of the Organic Integral Penal Code. d) The children who are victims of human trafficking can access to physical, psychological and social services while being part of the System of Protection and Assistance to Victims, Witnesses and Other Participants of the Criminal Proceedings (Articles 7 letter g and 29, 30, 31 and 32). In addition, special attention should be provided to the

	<p>children in accordance with article 46 numbers 2 and 4 of the Constitution.</p> <p>e) According to articles 44 and 66 number 3 letter b of the Constitution the State “shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against children and adolescents”. In addition, it “shall give priority to actions for those groups who require special consideration because of their age” such as the children.</p>
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