



Ecuadorian National Assembly (Photo credit: Hugo Ortiz / Asamblea Ecuador cc-by-sa-2.0.)

## Ecuadorian Legislature Debates Legalizing Abortion in Cases of Rape and Fetal Disability

Jonathan Abbamonte

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The national legislature in the South American country of Ecuador has opened debate on whether to legalize abortion in cases of rape, fetal disability and three other cases.

The Ecuadorian National Assembly, Ecuador's unicameral legislature, began reviewing a set of recommendations from the "Commission of Justice and Structure of the State" to revise the country's penal code last Thursday. Among the recommendations offered by the Commission was a proposal to legalize "abortion in cases of rape, malformation of the fetus that makes its life unviable, statutory rape, incest, and nonconsensual insemination," according to *ACI Prensa*.

Prior to last week's debate in the National Assembly, the Commission of Justice had approved the abortion proposal on December 19th on a 7-0 vote, with lawmakers from the Ecuadorian President Lenín Moreno's ruling coalition voting in support of the measure. Only two Commission members, both members from minority opposition parties, abstained from voting on the proposal.

"Violence against women can not be tolerated and it is heartbreaking when it happens in the family setting, but at the same time it is inconceivable to take away the right to life of an innocent person," said Henry Cucalón, one of the two lawmakers who had abstained from voting on the abortion proposal when it was being debated in the Commission of Justice last month, according to *El Universo*.

Ecuador has traditionally been among the most staunchly pro-life countries in South America. Currently, Article 150 of Ecuador's Comprehensive Organic Penal Code (COIP) prohibits abortion, except in cases to save the health of the mother or in cases of rape where the victim is mentally handicapped. The Ecuadorian Constitution further guarantees the right to life "from conception."

Under its current language, the abortion proposal presently before the National Assembly would seek to expand the rape exemption to allow abortion for any victim of rape, even when the victim is not mentally handicapped. Additionally, the proposal would allow abortion in cases of incest, statutory rape, and nonconsensual artificial insemination. The proposal would further introduce eugenic abortion in Ecuador, allowing unborn children with life-threatening illnesses or disabilities to be terminated on request.

Both pro-life and pro-abortion advocates gathered at the National Assembly on Thursday morning to watch the proceedings of the legislative session, according to *El Comercio*. Pro-life advocates have been using #Salvemoslas2vidasEcuador, #NoalAborto, and #Somosprovida to express opposition to the initiative.

A majority of Ecuadorian citizens are firmly pro-life. A 2012 survey conducted by the Latin American Public Opinion Project (LAPOP) at Vanderbilt University found that a majority of Ecuadorians held that abortion is not justifiable in cases of health of the mother.<sup>[1]</sup> A 2014 LAPOP survey<sup>[2]</sup> later found that a slight majority of Ecuadorians believed abortion was justifiable when the mother's health is endangered but a significant proportion of the population still maintained that abortion would be illicit under these circumstances.

It remains unclear whether the proposal before the National Assembly to legalize abortion has sufficient political support to pass. In 2013, then-Ecuadorian President Rafael Correa publicly vowed to never sign into law any bill legalizing abortion and even threatened to resign when members of his own party (Alianza PAIS) put forward a proposal to change the country's penal code to legalize abortion in cases of rape. Due to Correa's overwhelming popularity at the time, lawmakers were forced to withdraw the proposal, leaving the country's pro-life laws intact.

Although Ecuador's current President Lenín Moreno is also from the Alianza PAIS party and served as Correa's Vice President until 2013, it is unclear how Moreno would choose to

position himself on the proposal currently before the National Assembly.

In 2017, *El Universo* reported that General Public Defense attorney Ernesto Pazmiño had claimed that Lenín Moreno was in favor of legalizing abortion in cases of rape. According to *La Hora*, Pazmiño claimed that he had known Moreno personally for over 30 years. Pazmiño himself is on record for calling on the National Assembly to legalize abortion in cases of rape. The General Public Defender of Ecuador is an independent governmental entity in the Ecuadorian judicial branch that provides legal defense services for citizens who cannot afford legal representation.

Only a few months after Moreno assumed the office of President in 2017, pro-abortion lawmakers included a controversial clause in a bill combating gender-based violence, guaranteeing “free access to comprehensive, confidential care, without discrimination for women obtaining abortions and legal abortions performed as established in Article 150 of the Comprehensive Organic Penal Code.”

Attempts by pro-abortion lawmakers to loosen restrictions on abortion and to introduce gender ideology and gender indoctrination in school curriculums drew ire and outrage from pro-life and pro-family citizens. In July of 2017, an estimated 200,000 Ecuadorians marched in protest in the city of Guayaquil in opposition to anti-life and anti-family initiatives being pushed by the Moreno government. Thousands more protestors demonstrated in cities across the country, all united under the slogan #ConMisHijosNoTeMetas (“Don’t mess with my kids”). Even larger nationwide demonstrations took place again later that year on October 14, 2017, drawing more than 1 million pro-life and pro-family citizens in cities across the country including Quito, Guayaquil, , Cuenca, Esmeraldas, Loja, Machala, Manta, and Porto Viejo.

International and local pro-abortion organizations have long lobbied hard to legalize abortion in Ecuador. United Nations entities including UNICEF and the Human Rights Council (HRC), and U.N. treaty-based bodies including the Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Committee (CCPR) have called on Ecuador in the past to legalize abortion.

During last Thursday’s debate in the National Assembly, the Ecuadorian delegate from U.N. Women called on lawmakers to loosen restrictions on abortion, falsely claiming that legalizing abortion would reduce the number of “unsafe” abortions.

Pro-abortion lawmakers in Ecuador have also attempted to use statements issued by U.N. entities and treaty-based bodies as justification to promote the abortion initiative, arguing that international human rights standards in some sense require the Ecuadorian Government to legalize abortion. The report approved by the Commission of Justice recommending that the National Assembly legalize abortion in cases of rape and fetal disability justified its position as follows:

“These recommendations reflect the concern of human rights organizations regarding possible noncompliance with the provisions set forth in the international human rights instruments to which Ecuador is a signatory.”

The line of argument adopted by pro-abortion Ecuadorian lawmakers is a prime illustration of how statements issued by the U.N. Human Rights Council and U.N. human rights treaty-based bodies, despite being non-binding in nature, can have real and detrimental impact on pro-life laws in developing countries. In recent years, U.N. treaty-based body statements have similarly been used in other countries to pressure lawmakers into legalizing abortion, including Honduras, Chad, Ireland, Argentina, Bolivia, Luxembourg, and others.<sup>[3]</sup>

However, no international human rights treaty to which Ecuador is a signatory requires the country to legalize abortion. And no statement issued by any U.N. treaty-based body or the Organization of American States creates any legal obligation on Ecuador to legalize abortion under any circumstances. Indeed, statements from U.N. treaty-based bodies (including concluding observations to state party reports and General Comments) do not create international norms in and of themselves. U.N. treaty-based bodies also have no authority to interpret treaties contrary to the ordinary meaning given to the terms of the treaty text, and any interpretation of these treaties contrary to the ordinary meaning of their terms can, and ought to be, ignored by states parties.

Despite this, however, pro-abortion lawmakers are using to great effect statements issued by U.N. entities and treaty-based bodies to argue for legalization nevertheless, likely placing pressure on lawmakers with centrist positions on abortion to support the legalization proposal.

<sup>[1]</sup> The AmericasBarometer by the Latin American Public Opinion Project (LAPOP), [www.LapopSurveys.org](http://www.LapopSurveys.org); System for Online Data Analysis (SODA), Ecuador 2012, question w14a, [http://lapop.ccp.ucr.ac.cr/Lapop\\_English.html](http://lapop.ccp.ucr.ac.cr/Lapop_English.html). We thank the Latin American Public Opinion Project (LAPOP) and its major supporters (the United States Agency for International Development, the Inter-American Development Bank, and Vanderbilt University) for making the data available.

<sup>[2]</sup> The AmericasBarometer by the Latin American Public Opinion Project (LAPOP), [www.LapopSurveys.org](http://www.LapopSurveys.org); System for Online Data Analysis (SODA), Ecuador 2014, question w14a, [http://lapop.ccp.ucr.ac.cr/Lapop\\_English.html](http://lapop.ccp.ucr.ac.cr/Lapop_English.html).

<sup>[3]</sup> Zorzi K. The impact of the United Nations on national abortion laws. *Catholic University Law Review*. 2016;65(2):409.