

Translated from Spanish

Permanent Mission of Ecuador to the United Nations

Office for the Coordination of Legal Advisory Services

Ministry of Foreign Affairs and Human Mobility

Information on General Assembly resolution 76/106 of 9 December 2021, entitled “Criminal accountability of United Nations officials and experts on mission” (April 2022)

The following information, which falls within the purview of the Office for the Coordination of Legal Advisory Services, concerns the laws relating to the criminal jurisdiction of Ecuador for crimes committed by nationals outside the country, which are set out in the Comprehensive Organic Criminal Code and are referred to in General Assembly resolution 76/106:

“Article 14 – **Spatial scope of application** - The rules of this Code shall apply to: 1. Any offence committed within the national territory. **2. Offences committed outside Ecuadorian territory, in the following cases:** (a) When the offence produces effects in Ecuador or in places subject to its jurisdiction. (b) When the criminal offence is committed abroad, against one or more Ecuadorian persons and has not been prosecuted in the country where it was committed. (c) When the offence is committed by public servants in the performance of their functions or official duties. (d) When the offence affects legal assets protected by international law, through international instruments ratified by Ecuador, provided that no prosecution has been initiated in another jurisdiction. (e) When the offence constitutes a serious violation of human rights, in accordance with the procedural rules established in the Code. 3. Offences committed on board Ecuadorian-flagged or Ecuadorian-registered military or merchant vessels or aircraft. **4. Offences committed by members of the Armed Forces abroad, based on the principle of reciprocity**” (emphasis not in the text).

Article 47. – “Aggravating circumstances of the offence. - Aggravating circumstances of the criminal offence are: 1. Committing the offence with malice aforethought or fraud. 2. Committing the offence for a promise, price or reward. 3. Committing the offence as a means of committing another offence. 4. Taking advantage of mass gatherings, riots, popular commotion, sporting events, public disaster or a natural phenomenon to commit the offence. 5. Committing the offence with the participation of two or more people. 6. Increasing or seeking to increase the harmful consequences

of the offence for the victim or any other person. 7. Committing the offence with cruelty against the victim. 8. Taking advantage of a position as a work-related, teaching, religious or similar superior to commit the offence. 9. Taking advantage of the victim's personal or working conditions that imply defenselessness or discrimination. 10. Using children, adolescents, adults or senior citizens, pregnant women or persons with disabilities to commit the offence. 11. Committing the offence against children, adolescents, senior citizens, pregnant women or persons with disabilities. 12. Committing the offence with violence or using any substance that alters the victim's mind or will. 13. Unduly using military, police or religious insignia, uniforms, denominations or badges to facilitate the commission of the offence. 14. Affecting several victims through the offence. 15. Committing the offence with the help of armed men or women. 16. Using fake credentials, uniforms or badges of public institutions or companies, to pretend to be a public official, employee, worker or servant, in order to facilitate the commission of the offence. 17. Committing the offence in whole or in part from a detention centre while being held there. 18. Committing the offence while being prosecuted or while being a fugitive for a crime with a firm sentence. 19. Using the status of a public servant to commit the offence. 20. The perpetrator has one or more previous arrests in flagrante delicto, when it involves the same offence or an attack against the same protected legal interest. 21. Having been previously sentenced for the same offence in the case of legal persons or using other national or foreign legal persons to commit the offence, or using the laws in force to avoid responsibility for the commission of the offences. 22. Committing the offence against one or more women, provided that it is determined that the willful conduct or omission is one of the types of violence defined in article 10 of the Prevention and Eradication of Violence against Women Act.”

Article 48. – “Aggravating circumstances for offences against sexual and reproductive integrity, and personal freedom and integrity. - For offences against sexual and reproductive integrity, and personal freedom and integrity, in addition to those set out in the preceding article, the following are specific aggravating circumstances: 1. Being the victim at the time of commission of the offence, or being under the care or attention of a public or private establishment, such as a health, education or other similar establishment. 2. Being the victim at the time of commission of the offence, or being in a detention centre or a police, military or other similar facility, a tourism or sports, entertainment or recreation establishment, a place where public programmes or shows are performed, a means of transportation, a place for programmes or activities of worship, research, assistance or shelter, a gymnasium of any kind, an educational centre, a vacation centre, a day-care or child-care centre, and, in general, a space for care, study, sports or recreational activities for children or adolescents.

3. Having infected the victim with a serious, incurable or fatal disease. 4. If the victim is or becomes pregnant, is in the puerperium phase or has an abortion as a consequence of the offence. 5. Sharing or being part of the victim's household. 6. Taking advantage of the fact that the victim is in a position of vulnerability, extreme economic need or abandonment. 7. If the sexual offence was committed as a form of torture, or for purposes of intimidation, exploitation, degradation, humiliation, discrimination, revenge or punishment. 8. The offender has any type of relationship of power or authority over the victim, such as being a public official, teacher, religious minister, health official or person responsible for the patient's care, or any other type of professional or person who has used his or her position, function or task to commit the offence. 9. Knowing the victim prior to the commission of the offence.”

Article 89.- “Crimes against humanity.- Crimes against humanity are crimes committed as part of a widespread or systematic attack directed against the civilian population by the State or a political organization or with its authorization, support or acquiescence. The following acts shall be punishable by a custodial sentence of twenty-six to thirty years: extrajudicial killing, enslavement, forcible transfer of population that is not meant to protect their rights, illegal or arbitrary deprivation of liberty, torture, rape and enforced prostitution, non-consensual insemination, enforced sterilization, and enforced disappearance”.

Article 91. – “Trafficking in persons. – Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons in the country from or to other countries for the purpose of exploitation, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits in order to obtain the consent of a person having control over another person, for the purpose of exploitation. Exploitation is any activity that results in material or economic gain, immaterial advantage or any other benefit, for oneself or for a third party, through the subjugation of a person or the imposition of living or working conditions, obtained from: 1. Illegal removal or trading of organs, tissues, fluids or genetic material of living persons, including tourism for organ donation or transplantation. 2. Sexual exploitation of persons, including enforced prostitution, sex tourism and child pornography. 3. Work-related exploitation, including forced labour, debt bondage and child labour. 4. Promise of marriage or servile domestic partnership, including early domestic partnership, arranged as compensation or as part of a transaction, on a temporary basis or for the purpose of procreation. 5. Illegal adoption of children and adolescents. 6.

Begging. 7. Forced recruitment for armed conflict or for the commission of acts punishable by law.
8. Any other form of exploitation.”

Article 92.- “Penalty for the crime of trafficking in persons. - Trafficking in persons shall be punishable: 1. By a custodial sentence of thirteen to sixteen years. 2. By a custodial sentence of sixteen to nineteen years, if the offence is committed against a person belonging to one of the priority designated groups or in a situation of double vulnerability or if the victim and the aggressor have been in an affective, consensual-couple, conjugal, cohabitation, family or economic dependence relationship or if there is a civil, military, educational, religious or work-related link of authority. 3. By a custodial sentence of nineteen to twenty-two years, if during the trafficking in persons, the victim endures serious or irreversible psychological or physical illness or damage. 4. By a custodial sentence of twenty-two to twenty-six years, if the victim dies as a result of the trafficking in persons. Trafficking is prosecuted and punished independently of other crimes committed during its execution or as a consequence thereof.”

Article 166.- “Sexual harassment.- Any person who solicits any act of a sexual nature, for himself or herself or for a third party, taking advantage of a situation of work-related, teaching, religious or similar authority, whether a guardian, curator, religious minister, education or health professional, or personnel responsible for the attention and care of the patient or who maintains family ties or any other form that implies subordination of the victim, with the threat of causing the victim or even a third party harm related to the legitimate expectations he or she may have in the context of such relationship of subordination, shall be punished by a custodial sentence of one to five years. It shall be considered sexual cyberstalking when the conduct described in the preceding paragraph is carried out using any information and communications technology, or technological, electronic or digital means, and shall be punished by a custodial sentence of one to five years. When the victim is under eighteen years of age, or is a disabled person, or when the person is unable to understand the meaning of the act or for whatever reason is unable to resist it, the perpetrator shall be punished by a custodial sentence of three to five years. When the offence is committed by members of the household or persons with whom it is determined that the defendant maintains or has maintained family, intimate, affective, conjugal, courtship, cohabitation or partner relationship, or even without such a relationship, the maximum penalty set out in this article shall be applied, as the case may be. The maximum penalty set out in this article shall also be applied, as the case may be, when the emotional health of the victim is impaired as a result of the offence or when the victim engages or has engaged in self-injurious conduct as a result of the offence, provided it is proven to the judge that the injury suffered by the victim was a determining factor in the harmful self-injurious result.

Penalties shall be increased by one third in the following cases: (a) If the active subject causes personal, work-related, educational, professional or patrimonial damage; or (b) If the perpetrator is a public servant and uses the resources of that position, in addition to removal and disqualification from holding public employment or office, for a period equal to the term of the custodial sentence imposed. At all times the prosecutor and/or the judge hearing these cases shall ensure that no revictimizing proceedings or investigations are carried out that can be dispensed with without affecting the collection of evidence. It must be ensured that proceedings or investigations that have the potential to revictimize and that cannot be dispensed with are carried out in the manner that least affects the rights and physical and psychological well-being of the victim”.

Article 167. – “Sexual intercourse with a minor - Any person over eighteen years of age who, by means of deception, has sexual relations with another person over fourteen years of age but under eighteen years of age shall be punished by a custodial sentence of one to three years.”

Article 168.- “Distribution of pornographic material to children and adolescents. - Any person who disseminates, sells or delivers pornographic material to children or adolescents shall be punished by a custodial sentence of one to three years.”

Article 169.- “Corruption of children and adolescents. 1 Any person who intentionally allows access or exposure of children or adolescents to harmful sexualized or violent content or content that calls for the commission of hateful acts shall be punished by a custodial sentence of one to three years. 2. Any person who incites, leads or allows children or adolescents to enter brothels or places where pornography is exhibited shall be punished by a custodial sentence of three to five years.”

Article 170. “Sexual abuse. - Any person who performs on another person or forces that person to perform on himself or herself or on another person, an act of a sexual nature, without penetration or carnal access, against that person’s will, shall be punished by a custodial sentence of three to five years. If the victim is under fourteen years of age or is disabled; if the victim does not have the capacity to understand the meaning of the act or for any reason is unable to resist it; or if the victim, as a consequence of the offence, suffers a physical injury or permanent psychological damage or contracts a serious or fatal disease, the aggressor shall be punished by a custodial sentence of seven to ten years. If the victim is under six years of age, the penalty shall be a custodial sentence of ten to thirteen years. The maximum penalty set out in the preceding paragraphs shall be imposed when said sexual abuse was intentionally recorded or transmitted live by the aggressor by any digital

means, electronic device or information and communications technology. The maximum penalty set out in the preceding paragraphs shall also be imposed if, in addition to the recording or transmission of the sexual abuse with any digital means, electronic device or information and communications technology, the victim is physically assaulted and the assault is also recorded or transmitted.”

Article 171.- “Rape. - Rape is carnal access, with total or partial introduction of the virile member, orally, anally or vaginally; or the introduction, vaginally or anally, of objects, fingers or organs other than the virile member, into a person of either sex. Whoever commits rape shall be punished by a custodial sentence of nineteen to twenty-two years in any of the following cases: 1. When the victim is deprived of reason or sense, or when, due to illness or disability, he or she is unable to resist. 2. When violence, threat or intimidation is used. 3. When the victim is under fourteen years of age. The maximum penalty set out in the first paragraph shall be imposed when: 1. The victim, as a consequence of the offence, suffers a physical injury or permanent psychological damage. 2. The victim, as a consequence of the offence, contracts a serious or fatal disease. 3. The victim is under ten years of age. 4. The aggressor is a guardian, legal representative, curator or person close to the family or in the victim’s entourage, a religious minister, an education or health-care professional, or any person with a duty to care for the victim. 5. The victim is under the care of the aggressor for any reason, as long as it does not constitute incestuous rape. 6. When the rape is intentionally recorded or transmitted live by the aggressor, by any digital means, electronic device or information and communications technology. 7. When in addition to the recording or transmission of the rape with any digital means, electronic device or information and communications technology, the victim is physically assaulted and the assault is recorded or transmitted. If the victim dies, the penalty shall be a custodial sentence of twenty-two to twenty-six years.”

Article 172.- “Use of persons for public exhibition for sexual purposes. - Any person who uses children or adolescents, persons over sixty-five years of age or persons with disabilities to force them to exhibit their body totally or partially for sexual purposes shall be punished by a custodial sentence of seven to ten years.”.

Article 172.1 - “Sexual extortion. - Any person who, through the use of violence, threats or blackmail induces, incites or forces another person to exhibit his or her body naked, half-naked, or in a sexual position, with the purpose of obtaining a personal benefit or for a third party, whether sexual or of any other kind, shall be punished by a custodial sentence of three to five years.”

Article 173.- “Sexual contact with minors under eighteen years of age by electronic means. - Any person who, by electronic or telematic means, proposes to arrange a meeting with a person under eighteen years of age, provided that such proposal is accompanied by material acts aimed at contacting that person for sexual or erotic purposes, shall be punished by a custodial sentence of one to three years. Any person who makes such contact through coercion or intimidation shall be punished by a custodial sentence of three to five years. Any person who, impersonating a third party or using a false identity by electronic or telematic means, communicates sexual or erotic content with a person under eighteen years of age or with a disability, shall be punished by a custodial sentence of three to five years.”

Article 174.- “Offer of sexual services with a minor under eighteen years of age by electronic means. - Any person who uses or facilitates electronic mail, chat, instant messaging, social networks, blogs, photo blogs, network games or any other electronic or telematic means to offer sexual services with minors under eighteen years of age shall be punished by a custodial sentence of seven to ten years.”

Article 175. – “Provisions common to crimes against sexual and reproductive integrity. - For the offences set out in this section, the following common provisions shall apply: 1. For these crimes, the judge may impose one or more non-custodial sentences in addition to the custodial sentence. 2. In cases where the alleged aggressor is an ascendant or descendant or collateral kin up to the fourth degree of consanguinity or the second degree of affinity, a spouse, ex-spouse, cohabitant, ex-cohabitant, partner or former partner, guardian, legal representative, curator or any person charged with the care or custody of the victim, the judge responsible for upholding criminal rights shall, as a precautionary measure, suspend the parental authority, guardianship, curatorship and any other form of care over the victim in order to protect his or her rights. This measure may also be requested by the prosecutor, on his or her own initiative or at the request of the competent judge. After issuing the precautionary measures, the judge responsible for upholding criminal rights may also order the cantonal and metropolitan boards or to judges overseeing matters concerning the family, women, children and adolescents or judges with multiple jurisdictions to take the necessary protective measures to protection of rights to ensure that a comprehensive approach is adopted for the protection and restitution of the rights of women, children, adolescents and persons with disabilities. 3. For these offences, the mitigating circumstance set out in article 45, paragraph 2, of this Code shall not be applicable. 4. The public or private behavior of the victim prior to the commission of the sexual offence shall not be considered in the proceedings. 5. For sexual crimes, the consent of a

victim under eighteen years of age shall be irrelevant, except in cases of persons who are over fourteen years of age and who are capable of consenting to sexual intercourse. 6. The victims of these crimes can enter the victim and witness programme.” It should also be noted that, under article 80 of the Constitution of the Republic of Ecuador, criminal actions and penalties for the crimes of genocide, crimes against humanity, war crimes, enforced disappearance of persons or crimes of aggression are not subject to any statute of limitations and are not subject to amnesty (in accordance with article 120 (13) of the Constitution).”
