

Looking beyond the Laws: Disjuncture between LGBTQ+ Laws and Conditions in Ecuador



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Abstract

Despite Ecuador's progressive laws, there continues to be violence against LGBTQ+ communities. This article analyzes current conditions through the lens of three main areas of life: LGBTQ+ stability and mobility, basic necessities, and safety. It demonstrates that a lack of government enforcement of laws creates constant barriers for LGBTQ+ community members. The work of activists, NGO, NPO, media publications, and intergovernmental organizations is crucial in analyzing the reality of these conditions. Along with the continued progress legislatively and judicially, there needs to be enforcement of these protections, and work put in to drive a social and cultural shift for the protection and progression of LGBTQ+ communities. Furthermore, this article seeks to provide supporting evidence for asylum applicants from countries such as Ecuador by highlighting to United States Citizenship and Immigration Services (USCIS) and immigration judges that Ecuadorian laws may not be an accurate reflection of conditions within Ecuador.

Keywords

LGBTQ+; Immigration; Hispanic; Spanish-Speaking; Discrimination; Asylum; Laws; South America; Ecuador

Introduction

I began thinking about this topic when I worked for the New York Legal Assistance Group's LGBTQ+ Law Project team. My cases were primarily LGBTQ+ asylum, supporting Spanish-speaking clients with their asylum application process. There was a specific client from Ecuador who had survived many horrible circumstances including familial abuse, discrimination, sexual assault, police discrimination, gang violence, and more. The client had lost everything and came to the United States to escape these circumstances and to lead a safe, productive life. While we wanted to help her and thought she had a very strong case, the most difficult aspect of her case, which was almost a reason we could not represent her, was her country of origin. Ecuador has progressive laws that offer protection and rights to LGBTQ+ individuals. As a result, we needed to bring in an expert for her case who specialized in the current LGBTQ+ conditions in Ecuador and how they are worse off than the laws suggest.

As there are typically no comprehensive country surveys of LGBTQ+ conditions, legal teams compile publications from NGOs, intergovernmental, governmental, and media publications taking months to prove that conditions within a specific country are unsafe. In this article I argue that conditions in countries with protective and/or progressive LGBTQ+ laws are not always reflective of these laws. I hope (1) to provide key context to LGBTQ+ asylum and LGBTQ+ history; (2) to prove these disparities and injustices *do in fact* exist, despite being overlooked; and (3) by exposing these disparities and injustices, I can further provide supporting evidence for asylum applicants from Ecuador and highlight to United States Citizenship and Immigration Services (USCIS) and immigration judges that laws may not be an accurate reflection of conditions within Ecuador.

History of Asylum for Spanish-Speaking and LGBTQ+ Communities

Immigration is a key aspect of United States history. During its beginnings, millions of migrants flooded the country, fleeing persecution and violence. These immigrants, some of whom we would now call refugees, entered the U.S. through standard immigration processes with greater

leniency than modern-day.¹ The U.S. has a complex history of asylum with themes of identity, American nationality, and the national mission of being a refuge for the oppressed.² However, while striving to achieve this “cosmopolitan self-definition and national identity as a country of asylum,” the U.S. also faced nativism.³ In the late nineteenth and early twentieth centuries, racism merged with American nativism. This drove a deep national disdain for anyone of dissimilar cultures and heightened nationalism, creating the belief that foreign influences were the reason for any threats to U.S. survival and integrity. A new restrictive immigration tradition was born out of a new “science that claimed intelligence and other personal traits were inherited, not just individually but as racial characteristics.”⁴

In 1924, federal legislation such as the Johnson-Reed Act heightened restrictions through country-specific quotas for immigration. “Asian, Latin American, and Eastern and Southern European countries’ quotas were severely restricted compared to those of Western European countries.”⁵ However, following the Vietnam War, waves of immigrants from Vietnam and Cambodia sought refuge. As a result, Congress became fearful of the influx and wanted to establish a better system of immigration and resettlement for refugees. With the passage of the Refugee Act of 1980, the U.S. definition of “refugee” conformed to the United Nations definition, being a person with a “well-founded fear of persecution.”⁶

In the 1990s, concern grew with more unauthorized immigrants flowing into the U.S. following an economic recession. As a result, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was born, it “increased the categories of crimes that were grounds for deportation” and gave state and local authorities power to enforce immigration policy. While movements in 2000 strove to reform immigration policy, violence against unauthorized—specifically

1 The Week Staff, “The Complicated History of Asylum in America – Explained,” *The Week*, April 28, 2019.

2 Deborah Anker, “U.S. Immigration and Asylum Policy: A Brief Historical Perspective,” *In Defense of the Alien* (New York: The Center for Migration Studies, 1990), 13:74–85.

3 *Ibid.*, 75.

4 *Ibid.*, 76.

5 Niobe Way et al., eds., *The Crisis of Connection: Roots, Consequences, and Solutions* (New York University, New York, 2018), 430-431.

6 “Refugee Act of 1980.” *National Archives Foundation*, 19 Jan. 2016, <https://www.archivesfoundation.org/documents/refugee-act-1980/>.

Spanish-speaking communities—grew. Workplace raids were publicized and discrimination against those perceived to be Hispanic increased. Hostility towards Spanish-speaking immigrants, “authorized” or not, increased during the Trump Administration. President Trump frequently said he would “build a wall” between Mexico and the U.S. and alluded to Mexicans being rapists and criminals.⁷ Understanding this historical and modern-day context, it becomes clear that the U.S. asylum practice is embedded in dehumanization and discrimination against asylum seekers from specifically Spanish-speaking countries.

Along with discrimination against immigrants from Spanish-speaking countries, the U.S. has a history of excluding LGBTQ+ immigrants as well through dehumanization tactics. These early federal immigration restrictions were rooted in a false morality, paving a way for exclusion of communities they deemed unsuitable for entry. The first federal immigration restrictions were introduced as the Page Act of 1875 and the Chinese Exclusion Act of 1882. The Page Act of 1875 prohibited the transportation or recruitment of any person from “China, Japan, or any Oriental country, without their free and voluntary consent.”⁸ Though seemingly protective, the Page Act was also used to exclude Chinese women from migrating to the United States and permitted the detention and invasive inspections of Chinese women by U.S. immigration officials.⁹ The later Chinese Exclusion Act of 1882 deemed Chinese laborers as “[endangering] the good order.”¹⁰ For ten years, Chinese immigrants were ineligible to be naturalized.¹¹ These first federal acts on immigration set a foundation for federal immigration laws and policies to restrict certain groups’ opportunities as a result of their origins or identities on the basis of U.S. collective morality.

Members of LGBTQ+ communities have long faced discrimination, restriction, and

7 Wolf, Z. Byron. “Trump Basically Called Mexicans Rapists Again | CNN Politics.” *CNN*, Cable News Network, 6 Apr. 2018, <https://www.cnn.com/2018/04/06/politics/trump-mexico-rapists/index.html>.

8 United States. Congress, “1875 Page Act,” *Asian American Digital History Archive*, 1875, <https://aadha.binghamton.edu/items/show/212>.

9 Rotondi, Jessica Pearce. “Before the Chinese Exclusion Act, This Anti-Immigrant Law Targeted Asian Women.” *History.com*, A&E Television Networks, 19 Mar. 2021, <https://www.history.com/news/chinese-immigration-page-act-women>.

10 United States Congress, “An Act to Execute Certain Treaty Stipulations Relating to the Chinese,” *Our Documents*, 1882, <https://www.ourdocuments.gov/doc.php?flash=false&doc=47>.

11 History.Com Staff, “Chinese Exclusion Act.” *History.Com*, A&E Television Networks, August 24, 2018, <https://www.history.com/topics/immigration/chinese-exclusion-act-1882>.

exclusion. However, in an immigration context, exclusion of LGBTQ+ individuals has been complex and layered. It was only in December of 1973 that the American Psychiatric Association (APA) removed “homosexuality per se” from its list of psychiatric disorders.¹² Even with the removal of that label, the APA still did not conclude that homosexuality was “normal.”¹³ As a result, immigration policies *indirectly* excluded LGBTQ+ individuals, by using certain language to bar their entry. The Immigration Act of 1917, for example, targeted “undesirables” from immigrating to the United States.¹⁴ Though this Act primarily targeted Asian, Mexican, and Mediterranean migrants, it also excluded “insane persons” and any person “certified by the examining surgeon as being mentally or physically defective.”¹⁵ Given that homosexuality was labeled as a psychiatric disorder at the time, the Immigration Act also barred LGBTQ+ individuals.

The Immigration and Nationality Act of 1952 also barred the entry of persons with “any mental disease, defect, or disability.”¹⁶ The U.S. Public Health Service confirmed that this language included LGBTQ+ immigrants. In 1965, an amendment to the Immigration Act used more *explicit* language, specifically excluding “sexually deviant” persons from entering the United States. This clearly targeted LGBTQ+ individuals because any Queer and Transgender identities were socially unacceptable and, thus, any acts committed by them were deemed “sexually deviant.” Language finally began to change in 1990 when Congress passed the Immigration Act of 1990 which overturned the ban of “sexually deviant” individuals.¹⁷

However, in 1990 the *Matter of Toboso-Alfonso* was finally heard by the Board of Immigration Appeals. The case was about Fidel Armando Toboso-Alfonso, a 40-year-old native

12 Allison Turner, “Today in 1973, APA Removed Homosexuality from List of Mental Illnesses.” Human Rights Campaign, December 15, 2017, <https://www.hrc.org/news/flashbackfriday-today-in-1973-the-apa-removed-homosexuality-from-list-of-me>.

13 “The A.P.A. Ruling on Homosexuality,” *The New York Times* (December 23, 1973).

14 “Immigration Act of 1917 Bans Asians, Other Non-White People from Entering U.S.,” Equal Justice Initiative, February 5, 1917, <https://calendar.eji.org/racial-injustice/feb/5>.

15 United States Department of Labor, *Immigration Laws: Act of February 5, 1917, Rules of May 1, 1917* (Washington, D.C.: Government Printing Office, 1922), <https://www.loc.gov/item/22019016/>.

16 United States Congress, “Immigration and Nationality Act,” (Washington, D.C.: U.S. Government Publishing Office, June 27, 1952), <https://www.govinfo.gov/content/pkg/COMPS-1376/pdf/COMPS-1376.pdf>.

17 Swetha Sridharan, “The Difficulties of U.S. Asylum Claims Based on Sexual Orientation,” Migration Policy Institute, October 29, 2008, <https://www.migrationpolicy.org/article/difficulties-us-asylum-claims-based-sexual-orientation>.

and citizen of Cuba, who was paroled in 1980 as part of the Mariel boatlift. Toboso-Alfonso had faced violent and humiliating treatment within Cuba. The Cuban government forced him to either spend four years in prison for being homosexual, or leave Cuba on the Mariel boatlift, so he fled.¹⁸ The judge concluded that sexual orientation is a “membership in a particular social group” which then subsequently allowed for future asylum cases to be granted on the basis of sexual orientation.¹⁹ Finally, in 1994, the case was designated as precedent, meaning that it could be used in court decisions as authority to decide future cases paving the way for future LGBTQ+ asylum seekers.²⁰ While the decision finally assured LGBTQ+ individuals could claim asylum based on persecution of their identity, the *probability* of them being granted asylum is still highly unlikely.

Process of Seeking Asylum

To understand the obstacles that LGBTQ+ Spanish-speaking asylum seekers may face and how immigration judges make their asylum decisions, it is important to have a basic understanding of the modern-day asylum process. Under U.S. and international law, as soon as a person sets foot on U.S. soil they have the right to apply for asylum. There are two different processes for asylum labeled as “affirmative” or “defensive”, with affirmative asylum being for individuals who are not already in removal or deportation proceedings.²¹

The United States Citizenship and Immigration Services (USCIS) says there are seven steps within the affirmative asylum process.²² Step one is that the asylum seeker must physically be in the United States. There are countless, often underestimated, struggles and barriers that a person is likely to face while attempting to get to the United States including passing through various countries and their borders, saving enough money for the travel, and avoiding violence

18 United States Department of Justice, *Matter of Toboso-Alfonso* (March 12, 1990), <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3222.pdf>.

19 “Case Law,” Immigration Equality, June 3, 2020, <https://immigrationequality.org/legal/legal-help/asylum/case-law/>.

20 “Precedent,” Legal Information Institute, Cornell Law School, May 2020, <https://www.law.cornell.edu/wex/precedent>.

21 United Nations High Commissioner for Refugees, “Types of Asylum,” <https://help.unhcr.org/usa/applying-for-asylum/types-of-asylum/#:~:text=Forms%20of%20asylum,who%20are%20in%20removal%20proceedings>.

22 United States Citizenship and Immigration Services, “The Affirmative Asylum Process,” <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process>.

or being taken advantage of. Avoiding violence is especially difficult for LGBTQ+ migrants who are frequently discriminated against and targeted as a result of their sexual orientation, gender expression, and/or gender identity.

Step two from USCIS is to “apply for asylum” by filing Form I-589. This must be done within one year of an individual’s most recent arrival in the United States. Step two may also seem straightforward, however, Form I-589 is lengthy, has many questions, and must be filled out in English. Spanish-speaking migrants will not only need to find housing or shelter, food, safety, and support upon arrival, but will also need to find legal support by English-speaking individuals.²³ This requires calls to various organizations to request free legal assistance with their asylum application. As a previous volunteer translator for I-589 forms, I can confirm that legal nonprofits and organizations tend to be backed up and overwhelmed with work. On top of this, a client will frequently be turned away or referred to other organizations. For every organization that a prospective applicant contacts, they are asked about their experience in their country of origin and their journey to the United States which is a retraumatizing experience—especially when they are repeatedly rejected.

Step three includes fingerprinting and background checks, and step four includes receiving a notice for an interview. The process of getting fingerprints and a background check can be very intimidating as applicants are often confused as to why they need to go through this process, and they sometimes confuse these appointments with dates for a court hearing. Getting to steps three and four will likely take a significant amount of time. The backlog within the court system increased in 2018 when USCIS began prioritizing cases filed most recently, creating exorbitant waiting times for earlier cases.²⁴

Finally, step five is an interview. An attorney will typically prepare an applicant for this interview. Applicants are interrogated about every detail of their asylum application and required

23 Penn State Law, “Self Help Asylum Guide: Seeking Protection in the United States,” January 2020, <https://pennstatelaw.psu.edu/sites/default/files/Self%20Help%20Guide%20English%20Final.pdf>.

24 Ak Kaass, “How Long Should I Wait for My Asylum Interview?” KAASS LAW, February 23, 2017, <https://kaass.com/long-wait-asylum-interview/>.

to describe again past traumatic experiences in detail.²⁵ A clinical research article published in 2015 found that asylum interviews can trigger post-traumatic intrusions and earlier feelings of helplessness.²⁶ From there, the final steps lead up to the determination of the asylum applicant's decision.

The defensive asylum process is almost identical except for the fact that the applicant is already in removal proceedings. They most likely have a court date already scheduled with an immigration judge and are at risk for being deported. Individuals can be placed in removal proceedings because they either “were apprehended in the United States or at U.S. port of entry without proper legal documents or in violation of their immigration status.”²⁷ Alternatively, they could have attempted to enter the United States and were apprehended by Customs and Border Protection (CBP) without proper documentation and placed in “expedited removal process” but were found to have credible fear of persecution or torture in their country of origin. Those put into expedited removal proceedings may tell CBP that they fear persecution, torture, or returning to their country of origin.

Credible Fear and Asylum Judgements

An asylum officer must conduct a “credible fear interview”²⁸ if a person is subject to expedited removal and the individual wishes to apply for asylum fearing persecution, torture, and/or returning to their country of origin. To pass the credible fear interview, a person must clearly show that they have been persecuted against in the past or that they have a “well-founded fear of persecution” on account of race, religion, nationality, membership in a particular social group, or

25 United States Citizenship and Immigration Services, “Preparing for Your Asylum Interview,” September 16, 2021, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/preparing-for-your-asylum-interview>.

26 Katrin Schock, et al., “Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seekers,” *European Journal of Psychotraumatology* 6, no. 1 (September 1, 2015): 6.

27 United States Citizenship and Immigration Services, “Obtaining Asylum in the United States,” September 16, 2021, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states>.

28 “Asylum in the United States,” American Immigration Council, June 11, 2020, <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

political opinion.²⁹

In 2018, a total of 105,742 affirmative cases and 159,473 defensive cases were filed.³⁰ There were a total of 96,761 applicants who moved onto credible fear interviews, of which 77% were found to have credible fear of returning to their country of origin.³¹ It is important to remember here that credible fear interviews are conducted by *asylum officers*, while asylum denials/acceptances are made by *immigration judges*. 73.7% of the 96,761 asylum applicants were denied asylum in the United States by immigration judges, even though their credible fear of returning to their country of origin was confirmed.³² A study conducted in 2008 found that asylum decisions are essentially a “Refugee Roulette” that vary by state or state. For example, the study found that a Chinese immigrant fearing persecution and requesting asylum had a whopping 76% success rate in immigration court in Orlando, Florida versus a 7% success rate in Atlanta, Georgia. It also found that one immigration judge in Miami granted only 3% of asylum cases whereas another immigration judge in the same city granted 75%.³³ These statistics highlight gaps in the asylum process and flaws in the overall decision-making protocol.

The asylum application includes a personal statement (regarding past persecution and what the U.S. government should know about the applicant), personal identification documents (passport, birth certificate, etc.), witness and expert statements (including medical experts, country-condition expert, fact witnesses, etc.), and newspaper articles and human rights reports to strengthen its legal claim.³⁴ It has also been understood that judges consider the established laws of the applicant’s country of origin. As a result, clients who have strong cases but come from countries where there

29 United States Citizenship and Immigration Services, “Questions and Answers: Credible Fear Screening,” July 15, 2015, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>.

30 Mossaad Nadwa, “Refugees and Asylees: 2018,” U.S. Department of Homeland Security, 2018, https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf.

31 “Credible Fear Cases Completed and Referrals for Credible Fear Interview,” Department of Homeland Security, July 30, 2021, <https://www.dhs.gov/immigration-statistics/readingroom/RFA/credible-fear-cases-interview>.

32 “Asylum Denial Rates Continue to Climb,” Transactional Records Access Clearinghouse, Syracuse University, October 28, 2020, <https://trac.syr.edu/immigration/reports/630/>.

33 Jaya Ramji-Nogales, et al., “Refugee Roulette: Disparities in Asylum Adjudication,” *Stanford Law Review* 60, no. 2 (November 2007): 295-412.

34 Dagmar R. Myslinska, “Preparing Persuasive Documents for Your Asylum Application,” Nolo, <https://www.nolo.com/legal-encyclopedia/preparing-persuasive-documents-your-asylum-application.html>.

are seemingly “progressive” LGBTQ+ laws, may unfortunately have a difficult time finding representation.

History of LGBTQ+ Identity and Treatment in Ecuador

For this article, the term “LGBTQ+-aligning” will be used while discussing pre-Columbian history because lesbian, gay, bisexual, transgender, and Queer+ identities did not have the same meanings as they do in the present day. It is important to acknowledge and analyze these differences of LGBTQ+-aligning identities in early civilizations to further understand early LGBTQ+-aligning individuals and origins of anti-LGBTQ+ laws, policies, and attitudes.

Recorded history of LGBTQ+-aligning identities can date back 4,400 years in Egypt’s oldest texts, with Greek, Roman, and Chinese scholars later noting same-sex experiences.³⁵ Research highlights over 150 pre-Columbian indigenous tribes in North America acknowledging, and even worshipping, various sexualities and individuals identifying with a third gender.³⁶ One of the least researched and published topics relating to pre-Columbian civilizations is the treatment and sentiments surrounding LGBTQ+-aligning identities and practices. Specifically in Ecuador’s pre-Columbian history, research conducted relating to the existence of LGBTQ+-aligning identity included the Mayan, Zapotec, Aztec, and Incan civilizations.

There are fourteen distinct indigenous groups in present-day Ecuador that stem from many groups and sects belonging to its ancient history.³⁷ One group, the Valdivia, practiced sedentary farming and occupied present-day Ecuador in the west and coast from 4400 BC to 1450 BC. While there is very little evidence of homosexual rituals or identity in Valdivia culture, only Spanish sources were found to mention Valdivia ceramics reflecting eroticism and fertility while illustrating the sacredness of homosexuality as a part of ceremonial acts.³⁸ Around 980 CE, The Cara came to

35 James O’Keefe, Evan O’Keefe, and John Hodes, “Evolutionary Origins of Homosexuality,” *The Gay & Lesbian Review Worldwide* 25, no. 1 (January/February 2018): 14-18.

36 HRC Staff, “Two Spirit and LGBTQ Identities: Today and Centuries Ago,” Human Rights Campaign, November 23, 2020, <https://www.hrc.org/news/two-spirit-and-lgbtq-identities-today-and-centuries-ago>.

37 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Ecuador*, May 2018, <https://www.refworld.org/docid/4954ce3223.html>.

38 Mónica Jara, “La Homosexualidad Es Un Tabú En Pueblos Indígenas,” *El Comercio* (November 26, 2014), <https://www.elcomercio.com/actualidad/ecuador/homosexualidad-tabu-pueblos-indigenas-ecuador.html>.

Quito from the coast of Ecuador and founded the Kingdom of Quito. Other ancient cultures, such as the Chorrera and the Bahia, also inhabited Ecuador for thousands of years until the arrival of the Incan civilization from Peru.³⁹

The Incan civilization began expanding into northern Ecuador in the mid-fifteenth century. Although there is seldom research on LGBTQ+-aligning individuals in ancient civilizations, Inca ceramic practices made it much more possible for historians to understand their attitudes towards various sexualities and provide information about their history. Homosexuality within the Incan civilization was frequently practiced, confirmed by records from religious conquistadors who shamed this practice. Specifically, female homosexuality was idealized as sexual behavior in the Inca “noble strata.”⁴⁰

Finally, the Mayan civilization inhabited the land in the East of present-day Ecuador. There were many ways in which the Mayans celebrated same-sex relations and practices, including rituals that displayed evidence of early ideas of transgender bodies and highlighted an early understanding and acceptance of LGBTQ+-aligning identities. As a result, it is clear that Ecuadorian ancient cultures and civilizations did, in many ways, accept and even celebrate diverse sexuality and gender identity. However, these civilizations fell to the Spanish conquest in the late fifteenth century.

Criminalization, Hierarchy, and Spanish Conquest

The Mayan people and the Spanish colonists had different notions of identity. For the Spaniards, identity was rooted in “local ethnic group, lineage, nation, and relationship with the Christian God.”⁴¹ The specific differences from indigenous civilization and Spaniard ideology were the focus on nation and one Christian God. Geoffrey Kimball explains that the Europeans used tactics of categorization “to establish hegemony” as a tool “to assert difference.”⁴² This led the Spaniards to attempt to sculpt each person and community’s identity, and punish those who

39 Laura Pattara, “Ecuador from the Beginning,” Chimu Adventures Blog, May 8, 2017, <https://www.chimuadventures.com/blog/2017/05/ecuador-from-the-beginning/>.

40 Ibid.

41 Geoffrey Kimball, “Aztec Homosexuality,” *Journal of Homosexuality*. 26, no. 1 (1993): 39.

42 Ibid.

differed.

Colonization influenced Mayan identity and sexual desire. As the Catholic Church reigned supreme, its definition of sin could not be questioned during the Spanish reign. Since homosexuality was defined as “sin”, it could be institutionally punished and suppressed. An important distinction was also made between “active” and “passive” partners, placing the “active” in positions of power and “passive” partners in degrading positions.⁴³ As early as 1542, homosexual practices were prosecuted in colonial Mexico. Examples of persecution include the scandal of 1658 when 120 “alleged sodomites” were arrested, interrogated, and 14 were subsequently burned alive.⁴⁴

Another concept brought into the New World by Spanish colonization was “machismo” which connected to patriarchal attitudes and further emphasized laws of Catholicism. Machismo is a strong or aggressive masculine pride that can manifest in toxic behavior. Zeb Tortorici explains how the colonial state prosecuted *certain* sexual crimes while validating predatory masculinity.⁴⁵ For example, Tortorici found that criminal cases of rape in New Spain were deemed a “natural manifestation of male sexual desire” by courts. However, cases of sodomy and non-consensual acts between men were deemed acts “against nature”. Verdicts of the courts relied heavily on whether something was “natural” or “unnatural”. As a result, predatory male behavior against women was seen as a “natural” desire or instinct and legally overlooked. In contrast, homosexual practices, then called sodomy, were seen as “unnatural” and were heavily punished.⁴⁶ This began the legal foundation and framework of criminalizing homosexuality *while also* socially, culturally, and legally accepting toxic machismo behavior of aggression and violence against women.

Tortorici also highlights female sexuality and treatment of LGBTQ+-aligning identity during the late colonial period in the *Journal of the History of Sexuality*, including the case of a cross-dressed female who pursued other women.⁴⁷ Tortorici explains that “while punishments for

43 Martin Nesvig, “The Complicated Terrain of Latin American Homosexuality,” *Hispanic American Historical Review* 81, no. 3-4 (2001): 699.

44 *Ibid.*, 700.

45 Zeb Tortorici, “Sexual Violence, Predatory Masculinity, and Medical Testimony in New Spain,” *Osiris* 30, no. 1 (January 2015): 272–94.

46 *Ibid.*

47 Zeb Tortorici, “Masturbation, Salvation, and Desire: Connecting Sexuality and Religiosity in Colonial Mexico,” *Journal of the History of Sexuality* 16, no. 3 (September 2007): 358.

women varied widely, ‘criminal magistrates did prosecute women who committed deviant sexual acts.’⁴⁸ These examples boil down to sin and the criminalization of sexuality, most specifically for women and same-sex individuals. It then becomes increasingly clear that during the colonial era in Latin America, religion, machismo, and legal institutions worked together to criminalize sexuality in efforts to permit predatory masculinity and suppress LGBTQ+ identities and behavior.

Post-Independence and Present Day

Colonization did have a significant impact on LGBTQ+ attitude and integration into Ecuadorian society. It left a legacy of a stratified, hierarchical society that permitted violence against women and LGBTQ+ behavior. Many of these legal, cultural, and societal foundations are maintained today. However, when the nation gained independence from Spain in 1822, it made strides to include and protect LGBTQ+ communities. Despite this, there continues to be violence against LGBTQ+ communities, especially by state actors.⁴⁹

Whether this disjuncture exists because of the effects of Spanish colonization or various post-independence revolutions that strengthened nationalism, the fact remains that the country has a deeply rooted conflict relating to the treatment of LGBTQ+ communities. This poses many dangers, especially for those LGBTQ+ community members who continue to face persecution and direct threats socially, culturally, economically, and physically despite progressive pro-LGBTQ+ laws. Though the *why* is very important in understanding how this disjuncture between current laws and conditions came about, this article is focused on making it unequivocally clear that this disconnection *does* exist and that it poses many threats to LGBTQ+ communities, worsening the situations within countries and affecting conditions in contexts of asylum.

Marriage and Familial Stability

48 Ibid.

49 Caroline Beer, Victor D. Cruz Aceves, “Religion, the State, and the States Explain Why Mexico Has Stronger LGBT Rights than the US,” London School of Economics America and Caribbean Blog, April 25, 2018, <https://blogs.lse.ac.uk/latamcaribbean/2018/04/25/religion-the-state-and-the-states-explain-why-mexico-has-stronger-lgbt-rights-than-the-us/>.

Currently, the Constitution of Ecuador defines marriage as the union between a man and a woman. On June 12, 2019, the Constitutional Court of Ecuador recognized same-sex marriage. In their decision they cited the Ecuadorian Constitution's Article 11, Section 2:

All persons are equal and shall enjoy the same rights, duties and opportunities. No one may be discriminated against on grounds of ethnicity, place of birth, age, sex, **gender identity**, cultural entity, civil state, language, religion, ideology, political affiliation, judicial past, socio-economic condition, migratory condition, **sexual orientation**, Health status, carrying HIV, disability, physical difference; or for any other distinction, personal or collective, temporary or permanent that has the object or result of impairing or annulling the recognition, enjoyment or exercise of rights. **The law shall punish all forms of discrimination** [emphasis added by author].⁵⁰

This was a very important decision by the Ecuadorian Court that would, in theory, create many opportunities for same-sex couples to pursue marriage and be granted various liberties through the right of marriage. However, the Constitution also creates specific obstacles for LGBTQ+ communities. While there are non-discrimination laws that explicitly prohibit the discrimination on the basis of gender identity and sexual orientation, the Ecuadorian Constitution also provides avenues for LGBTQ+ discrimination. The Constitution was updated in 2008 and has maintained its language since then. Article 67 addresses families and marriage:

The family is recognized in its various types [...] Marriage is the union between a **man and woman**. It shall be based on the free consent of the contracting persons and on the equality of their rights, obligations and legal capacity [emphasis added].⁵¹

This article in the Constitution explicitly states that marriage is a union between a “man and woman” in the eyes of the state.⁵² As a result, the benefits of marriage only apply to heterosexual couples, including working partner benefits, pension benefits, social security, and more.⁵³ The language is clearly exclusionary and discriminates against LGBTQ+ couples which directly violates Article 11, Section 2 prohibiting discrimination.

Article 68 goes further to restrict the rights of LGBTQ+ families and couples by stating:

50 Constitución de la República del Ecuador, Art 11, Sec 2, República Del Ecuador, 2008, https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf. As translated by the author.

51 Constitución de la República del Ecuador, Art 67. As translated by the author.

52 Sophie Foggin, “How Progressive is LGBTQ Rights Legislation in Latin America?” Latin America Reports, June 28, 2019, <https://latinamericareports.com/lgbtq-rights-in-latin-america/2508/>.

53 Mariela Rosero, “¿Qué Derechos Rigen Para Las Parejas De Un Matrimonio Civil Igualitario?” El Comercio, June 12, 2019, <https://www.elcomercio.com/tendencias/sociedad/matrimonio-igualitario-derechos-lgbti-corte.html>.

“Adoption will only be for couples of a different sex.”⁵⁴ This highlights the dangers that come when laws are passed but not followed through with. An article prohibiting discrimination on the basis of gender identity and sexual orientation can never function if the foundational laws of the country contain contradicting rules and regulations that are inherently discriminatory and exclusionary. Once this discrepancy is fixed and same-sex couples and LGBTQ+ families and individuals are granted equal liberties, their lives will improve.

Access to Social Security

In Ecuador, there is compulsory insurance that includes benefits for retirement, disability, death, unemployment, illness (individual and family), loans, maternity, and work risks.⁵⁵ In theory, this social security system is in place for all Ecuadorians. The National Congress released this Law of Social Security in 2001 with the last version modified in March of 2011. The language in the latest version does not explicitly provide protection from discrimination on the basis of sexual orientation and gender identity which leaves gaps for employers to take advantage of. Some protective language in the social security laws that are mentioned says: “The delivery of reserve funds must be made immediately in accordance with the schedule set forth in the law for the purpose, according to the refund amounts and **without any discrimination** of such deliveries [emphasis added].”⁵⁶ This is a crucial part of the laws that provides a certain level of protection for all individuals and their families accessing social security benefits. Unfortunately, while there is this protection and the non-discrimination article, in practice, there is often discrimination and prevention of same-sex couples or LGBTQ+ families from accessing appropriate benefits.

In addition, The National Institute of Statistics and Censuses (INEC) conducted the first national survey of the LGBTQI community in 2013. The findings revealed that 58% of LGBTQ+ people in Ecuador do not have access to social security or other supplemental programs that cover

54 Constitución de la República del Ecuador, Art 68. As translated by the author.

55 Carlos Galarza Tobar, “Seguro Social Obligatorio - Derecho Ecuador,” *Derecho Ecuador*, August, 8, 2016, <https://derechoecuador.com/seguro-social-obligatorio/>.

56 *Ley De Seguro Social*, República de Ecuador, March, 31, 2011, <https://es.scribd.com/document/361984912/Ley-de-Seguro-Social>. As translated by the author.

healthcare services. This reveals that social security is, in fact, not accessible to all Ecuadorians. The data does not specify why exactly this is happening. However, without social security, more than half of LGBTQ+ communities in Ecuador are left vulnerable.⁵⁷

Job Opportunities

There are a few ways in which Ecuador's legislation strives to protect LGBTQ+ individuals from employment discrimination including the Ecuadorian Constitution and the Ecuadorian Work Code. Article 33 of Ecuador's Constitution states:

Work is a social right and duty, and an economic right, a source of personal realization and the basis of the economy. The State shall guarantee to working persons full respect for their dignity, a decent life, fair remuneration and payment and the performance of a healthy and freely chosen or accepted job.⁵⁸

And Article 79 of The Ecuadorian Work Code states:

Equal work corresponds to equal pay, without discrimination on the basis of birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic position, **sexual orientation**, state of health, disability, **or any other difference**; moreover, specialization and practice in the execution of work shall be considered for the purposes of remuneration [emphasis added by author].⁵⁹

Although the Constitution guarantees all workers the right to “full respect for their dignity, a decent life, and fair remuneration” and the Work Code explicitly prohibits discrimination on the basis of sexual orientation, there are still many cases where LGBTQ+ individuals are excluded, paid less, and discriminated against.⁶⁰ In the 2013 The National Institute of Statistics and Censuses survey, it was found that 27.8% of LGBTQ+ individuals earned \$292 or less per month. This compared to the national average of \$370 per month that year. With such a significant salary gap for the bottom fourth of the LGBTQ+ community, it is difficult to argue that discrimination does not play a major role.

57 Instituto Nacional de Estadística y Censos, “Estudio De Caso Sobre Condiciones De Vida, Inclusión Social y Cumplimiento De Derechos Humanos De La Población LGBTI En El Ecuador,” Instituto Nacional De Estadística y Censos, 2013, <https://www.ecuadorencifras.gob.ec/lgbti/>.

58 Constitución de la República del Ecuador, Art 33. As translated by the author.

59 *Código Del Trabajo*, República de Ecuador, September 26, 2012, <https://trabajo.gob.ec/wp-content/uploads/downloads/2012/11/C%C3%B3digo-de-Tabajo-PDF.pdf>. As translated by the author.

60 Geovanna Alvarado, “Discriminación Laboral: Experiencias y Alternativas De Afrontamiento De La Población LGBTI,” Universidad Del Azuay, 2019, <https://dspace.uazuay.edu.ec/bitstream/datos/9500/1/15135.pdf>.

In addition, the Report of the Inter-American Commission revealed that the LGBTQ+ population continues to experience job discrimination. They explained that this is a result of the laws that continue to penalize people for their sexual orientation and because of public morals in Ecuador.⁶¹ In fact, a result of this discrimination manifests in LGBTQ+ individuals developing strategies to be closeted in their place of work. Many employed individuals explain that they hide their LGBTQ+ identity until their contracts with companies are over.⁶² These habits are necessary for the majority of LGBTQ+ individuals in order to keep their jobs and prevent discrimination. However, this also creates situations in which individuals do not want to stay in the same jobs for long periods of time and must constantly be burdened with the anxiety of hiding and searching for employment. It also creates less opportunity for LGBTQ+ individuals to scale up job positions to receive promotions or higher levels of employment or management because they are not able to maintain the same jobs and settle down comfortably and safely.

The issue goes further because after looking more closely at the Ecuadorian Work Code, there are no apparent protections for discrimination on the basis of gender identity. As a result, there are no legal protections in place for those not hired, paid less, or further discriminated against because of their gender identity or expression. This clearly leaves room for unhealthy and hostile working conditions and can also explain why transgender individuals in Ecuador struggle to attain formal employment.

Housing

Housing obstacles arrive for LGBTQ+ individuals in Ecuador as early as childhood or adolescence with high risks of being thrown into homelessness. The National Institute of Statistics and Censuses (INEC) found that 71% of LGBTQ+ respondents said they suffered discrimination from their family, 35% received yelling, insults, threats, and teasing, and 66% had violent experiences in public spaces. LGBTQ+ activist and clinical psychologist Fernando Orozco explains

61 Ibid., 8.

62 Génesis Salina, "El 70% De La Comunidad GLBTI Sufre Discriminación Laboral," *Diario Correo*, October 19, 2018, <https://www.diariocorreo.com.ec/22077/ciudad/el-70-de-la-comunidad-glbt-i-sufre-discriminacion-laboral>.

that their life expectancy is 30-35 years old when LGBTQ+ individuals are thrown out of their homes. This is likely because their options are limited to sex work which exposes them to gender violence, transphobia, and sexually transmitted diseases.⁶³ This injustice is a frequent occurrence for LGBTQ+ individuals, especially transgender women.

These issues are interconnected—when young LGBTQ+ individuals are thrown into homelessness it becomes difficult to continue their education (especially paired with discrimination in schools). However, they need a way to earn money for food and possible housing for themselves. Considering the fact that certain jobs require standards of education and that there still is discrimination in hiring processes, especially for transgender women, first-hand accounts tell us that there is no other option than prostitution to sustain themselves. These issues are cyclical, and they influence each other. There are no Constitutional protections specifically for those who are homeless or for youth that are thrown out of their homes, allowing organizations and governmental bodies to turn their backs on homeless LGBTQ+ communities.

2018 marked the year of Ecuador's first shelter for trans people in Guayaquil named "La Casa de las Muñecas" or "The House of the Dolls."⁶⁴ This organization provides access to education about health, name changes, and information on hormones and risks. It is important to celebrate this shelter but also recognize it is not enough to provide education and safe spaces for the majority of LGBTQ+ individuals who are homeless in Ecuador. I attribute this progression not to country change or increasing government support but to the movement of organizing LGBTQ+ activists.

Education

In Ecuador there is still an issue of homophobia, bullying, and maltreatment of LGBTQ+ students posing a threat to their education and social mobility. According to a report on the bullying of children and adolescents in Ecuador in 2017, there is no data about bullying or cyberbullying of LGBTQ+ children and adolescents; however, there is data that reveals 63% of students bother

63 Elena Paucar, "Los Glbti Tienen UN Refugio y Capacitación," *El Comercio*, November 12, 2018, <https://www.elcomercio.com/tendencias/sociedad/glbti-refugio-capacitacion-transexuales-ecuador.html>.

64 "La Casa De Las Muñecas," Facebook, October 2018, https://www.facebook.com/CasaDeMunecasEC/?ref=page_internal.

or bully others for “being different”.⁶⁵ It was also found in a public report by CEPAL that 3 of 5 children had faced some type of violence in school from insults and threats to robbery or hitting from students and even teachers. While there is no clear data about exactly how many of these victims were LGBTQ+, the report estimates the percentage is no less than 15%.⁶⁶

Even more concerning than these statistics is the lack of data and studies about LGBTQ+ youth and education that makes the population effectively invisible in school settings. In terms of legal protection, there are no laws protecting LGBTQ+ youth in schools from bullying or abuse, even from teachers. In theory, non-discrimination laws in the Constitution should provide *some* protections for LGBTQ+ students. However, with the general lack of support and further homophobia from families at home, it is unlikely that children suffering from abuse or discrimination in schools will be protected without explicit regulation.

Health and Healthcare

Discrimination because of medical exams and access to adequate healthcare services is another barrier that LGBTQ+ communities face. In Ecuador, almost 44,000 people live with HIV. In June 2006, the Ministry of Work and Employment released regulations that prohibited the termination of workers with HIV. Article 3 states: Prohibit requesting HIV/AIDS testing as a requirement to obtain or retain employment in private, mixed or public, domestic or foreign companies and institutions.⁶⁷ These regulations finally provided clear, and much needed, laws to prevent discrimination against LGBTQ+ workers in the hiring process and during employment. As there is a strong correlation between those living with HIV and being a part of LGBTQ+ communities, this legislation would, in theory, improve LGBTQ+ employment conditions. However, according to a survey conducted in 2010 by the Ecuadorian Coalition of People Living

65 “Informe Al Comité De Los Derechos Del Niño/A: Bullying a Niñas, Niños y Adolescentes LGBTTIQ En Ecuador,” Pre-Sesión 76, February 6-10, 2017, Office of the United Nations High Commissioner for Human Rights, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FEUCU%2F25914&Lang=en.

66 Ibid., 4.

67 “Prohibido Terminación De Relación Laboral a Personas Con VIH-SIDA,” República de Ecuador, July 27 2006, <https://www.trabajo.gob.ec/wp-content/uploads/2012/10/AM-398.-PROHIBIDO-TERMINACI%C3%93N-DE-RELACI%C3%93N-LABORAL-A-PERSONAS-CON-VIH-SIDA.pdf?x42051>. As translated by the author.

with HIV, 41% of those surveyed said they lost their job because they had HIV and 10% said they were denied a job because they were living with HIV.⁶⁸ Present-day testimonials also support this evidence.

In addition, those who have a formal job should automatically have social security coverage, which includes medication for those living with HIV. There are various protocols and laws in place that require those with social security to have access to this medication and service. However, the reality of the process is very different. Despite these procedures and regulations in place, many Ecuadorians express difficulties with the process and obtaining medication also due to shortages. 24% of those living with HIV in Ecuador are treated in hospitals through social security. The other 75% are a part of the public health network of Ecuador. Since a person living with HIV in Ecuador needs to go to a public hospital to get medication, many times they receive insufficient or no medication each month with a substantial waiting time, putting them at risk for HIV progression. In order to also not suspend therapy, some patients are forced to buy expensive pills. The COVID-19 pandemic has increased these shortages and lack of access.⁶⁹

Connecting these circumstances to the other obstacles facing LGBTQ+ communities relating to social mobility creates a load of specific barriers. For example, in order to get affordable medication, a person must have access to medical coverage which comes with social security. However, this requires a formal job, meaning that more than half of LGBTQ+ individuals do not have social security and many face job discrimination or homelessness that frequently prevent them from sustaining employment. This slippery slope highlights the issues of lack of opportunity for social mobility and basic necessities that is further exacerbated by legal ambiguity and lack of enforcement of laws that do protect LGBTQ+ communities.

Negative Threats and Sentiments

68 Mayuri Castro, “Una Vida Como La Tuya,” GK, December 16, 2019, <https://gk.city/2019/12/16/discriminacion-personas-vih-ecuador/>.

69 Ana Cristina Basantes, “La Odisea De Conseguir Antirretrovirales En Hospitales De La Seguridad Social,” GK, September 21, 2020, <https://gk.city/2020/09/21/conseguir-medicamentos-vih-ecuador/>.

Mirian Belén Arévalo Lozano published an article about a study on homophobic attitudes of Ecuadorian people. In her findings she explains how violence against LGBTQ+ people typically begins in the familial environment when young children or adults are rejected, insulted, and/or punished. She continues to explain how these environments produce greater risks of suicide, depression, low self-esteem, substance abuse, and anxiety.⁷⁰ This poses a grave threat to young LGBTQ+ individuals and stunts opportunities for future success.

In Ecuador, the existence of centers for “dehomosexualization” pose an extreme threat to the rights of LGBTQ+ communities. There are between 200 and 300 centers where families put their children to “cure” them of their sexual orientation. There have been reports that these centers use methods of torture including physical abuse, sexual and psychological abuse, rape, and more that are prohibited under the Convention Against Torture by the Inter-American Convention to Prevent and Sanction Torture. The Ecuadorian government has made promises to eradicate these centers but has not taken strong steps to do so.⁷¹

Hate Crimes, Murders, Police Violence and Lack of Investigation

It has been found that hate crimes and targeted murders have progressively increased with 2019 being the deadliest year for LGBTQ+ people in Ecuador over the last decade. There were sixteen murders reported by LGBTQ+ rights group Silueta X Association. As the government and officials do not report this data, it is necessary to rely on human rights/advocacy organizations for data. Data shows that most of the victims were transgender women. This period of violence coincides with the year that Ecuador legalized same-sex marriage. Various LGBTQ+ activists believe there is a correlation between new protective laws for LGBTQ+ rights and this targeted

70 Lozano Arévalo and Mirian Belén, “Ecuador: ¿Avance O Retroceso LGTBI? Estudio De Actitudes Homóforas En Personas Ecuatorianas,” Universitat Pompeu Fabra Barcelona, June 2017, <https://repositori.upf.edu/handle/10230/35576?show=full>.

71 Astraea Fundación Lésbica Para la Justicia., “Ecuador LGBTI: Resumen De Las Condiciones Políticas, Económicas y Sociales” (2015), 6, https://s3.amazonaws.com/astraea.production/app/asset/uploads/2017/01/Astraea-Ecuador-Resumen-2015_Spanish.pdf.

violence.⁷²

One example of what can come of the horrific violence and homophobia in Ecuador is the murder of 22-year-old Javier Viteri. Viteri made plans to meet Willinson Hilmar Corozo Medina, a 19-year-old member of the armed forces. That night, driven by homophobia, Medina murdered Viteri stabbing him 89 times in his own home.⁷³ Friends and activists were able to help police officers apprehend the killer, but oftentimes hate crimes and attacks go unreported or uninvestigated.

The National Institute of Statistics and Censuses (INEC) found that 27.3% of LGBTQ+ respondents reported having experienced violence by law enforcement officials with “94% saying they had been victims of shouting, insults, threats and ridicule; and 45.8% had been arrested arbitrarily.”⁷⁴ As a result, the evidence clearly highlights that lack of LGBTQ+ competent training and education for law enforcement officials creates a threat to LGBTQ+ individuals. This also creates an even greater problem of lack of reporting and investigations. LGBTQ+ individuals are frequently targeted and know they will likely face discrimination or harassment. It is inherently *dangerous* for them to report a crime when it happens as it would put themselves at risk for an interaction with officials. As “exposure is something they want to avoid [...] abuses and violations of the rights of the LGBTI population mostly go unpunished.”⁷⁵

Unparallel Reporting

The Universal Periodic Review (UPR) is an important innovation from the Human Rights Council compiling human rights records from all U.N. members states and creating national reports and compilations of United Nation information, which allows nations to submit data independently

72 Oscar Lopez, “Ecuador’s LGBT+ Community Seen Suffering Deadliest Year in a Decade,” Reuters, January 21, 2020, <https://www.reuters.com/article/us-ecuador-lgbt-murder/ecuadors-lgbt-community-seen-suffering-deadliest-year-in-a-decade-idUSKBN1ZK2I8>.

73 Dani Garcia, “‘Sin Justicia No Hay Orgullo:’ LGBTQI+ Activism in Ecuador,” Latina Republic, August 18, 2020, <https://latinarepublic.com/2020/08/18/sin-justicia-no-hay-orgullo-lgbtqi-activism-in-ecuador/>.

74 Ecuadorian Organization of lesbian women, et al., “Violations in Ecuador in Relations to Non-Discrimination and Equality Laws,” United Nations Human Rights Office of the High Commissioner, May 2016, 4, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CCPR/CSS/ECU/24067&Lang=en.

75 Ibid.

on nonprofits or other organizations.⁷⁶

Ecuador's national report submitted in 2017 states that there has been "significant progress towards guaranteeing the rights of LGBTI persons, including an amendment to the Civil Code in 2015 that legalized de facto unions between persons of the same sex."⁷⁷ It also highlights that Ecuador has adopted guidelines on healthcare for LGBTQI persons, and has introduced sexual and gender diversity into higher education. Their national UPR paints a picture of progressive legislation and cultural shifts that provide safe spaces for LGBTQ+ individuals. However, as proven prior, there are many discrepancies between the laws and the reality within Ecuador that would contradict this report including evidence on noneffective health care policies and discriminatory practices across social mobility and basic necessities.

The United Nations Report of the Special Rapporteur on the Situation of Human Rights Defenders on his Mission to Ecuador conveys a very different illustration of the country's progression. The Human Rights Committee "recommended that Ecuador redouble its efforts to combat stereotypes of and prejudice against" LGBTQ+ persons to "properly investigate, prosecute, and punish the persons responsible for acts of violence against them, and ensure that victims were provided with comprehensive redress."⁷⁸ The UPR compilation report recognizes the gap between "legislative progress" and ongoing violence against LGBTQ+ communities.

Conclusion

Findings show that despite Ecuador's progressive laws, there continues to be violence against LGBTQ+ communities.⁷⁹ It is crucial to note that these laws are often contradictory and create barriers in important areas of life from education, marriage benefits, job opportunity,

76 "Human Rights Council Universal Periodic Review," United Nations Human Rights Office of the High Commissioner, October 30, 2020, <https://www.ohchr.org/en/press-releases/2020/10/human-rights-council-universal-periodic-review-working-group-hold-thirty>.

77 United Nations Human Rights Council, "National Report" on Ecuador, 7 April 2017, https://upr-info.org/sites/default/files/documents/2017-10/a_hrc_wg.6_27_ecu_1_e.pdf.

78 United Nations Human Rights Council, "Compilation on Ecuador," February 27, 2017, https://www.upr-info.org/sites/default/files/documents/2017-04/a_hrc_wg.6_27_ecu_2_e.pdf.

79 Aarushi Pant, and Ethan Jiang, "Igual En Ecuador: Inside Ecuador's LGBT+ Rights Struggle," Spectrum Strong, September 22, 2019, <https://spectrumstrong.org/2019/09/22/igual-en-ecuador-inside-ecuadors-lgbt-rights-struggle/>.

housing, healthcare, and safety. The history of ancient civilizations and Spanish colonization practices transcend into enduring circumstances that make conditions unsurprisingly less safe for LGBTQ+ communities. However, it is important to note that it is very difficult to truly know the living conditions of any large group of people. While this article is not the first to mention the disjuncture between laws and reality within Latin American countries as it relates to Ecuadorian LGBTQ+ communities, it attempts to lay out a foundation for providing evidence of this constantly overlooked reality; outlining key areas of life that are necessary to survival and success. This article does not outline findings in an effort to shine a negative light on specific countries, but to bring to the forefront the honest conversation about where a given country claims to be or even hopes to be, and where its conditions reveal they are. With hope, this will spark discussion about implementing not only progressive laws, but also effective enforcement and policy. As it relates to the United States, this paper hopes to serve as a guidance for immigration judges and attorneys analyzing asylum cases displaying evidence that pro-LGBTQ+ laws and seemingly accepting policy is not a plain indicator of the conditions of LGBTQ+ communities within countries, specifically in Latin America. Only with the additional data and support of nonprofits and organizations is it possible to have accurate and, sometimes, controversial information about the reality of conditions. We must continue to work, question, research, and empower.

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