

**Alternative Report for the UN Committee
Against Torture**

**Torture and other cruel, inhuman or degrading or
treatment or punishment in Ecuador**

September 2016

**FRONT FOR THE DEFENSE OF SEXUAL AND REPRODUCTIVE RIGHTS
WOMEN COMMUNICATION WORKSHOP
WOMEN'S NATIONAL COALITION OF ECUADOR**

***JOINT CONTRIBUTION FOR THE UNITED NATIONS
COMMITTEE AGAINST TORTURE
A look at the reality of women's rights from the civil society's
perspective***

INSTITUTIONAL PRESENTATION

This report has been prepared as a collaborative effort among the member organizations of the Ecuadorian Front for the Defense of Sexual and Reproductive Rights (FEDDDSR), The Women Communication Workshop Foundation (TCM) and the Women's National Coalition of Ecuador (CNME).

The FEDDDSR is a plural space created to defend women's free and independent exercise of their sexual and reproductive rights; its main activity is policy advocacy in defense of women's human rights when they are being violated or at risk. It is composed by the following non-governmental nonprofit organization: Desafío Foundation, CEPAM-Guayaquil, SENDAS Foundation, the Salud Mujeres collective, the Youth Policy Coordinator for Gender Equality and the Center for Support and Protection of Human Rights - SURKUNA. TCM's main objective is to generate projects that challenge discrimination and inequality affecting women and to transform society and culture; its activities are focused around communication and culture, citizenship, body and sexuality. The Women's National Coalition of Ecuador (CNME) is a space where several women's organizations work jointly to develop working agendas and advocacy actions in defense of women's rights.

The FEDDDSR and its member organizations, as well as the TCM and CNME are actors of civil society interested in the EPU process, they are not recognized as consultative entities by the Economic and Social Council.



With the support of:



Quito, September 2016

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- *Fundación Desafío* (Desafío Foundation)
- *Plataforma Justicia para Vanessa* (Justice Platform for Vanessa)

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1. Introduction

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment is one of the main international treaties on human rights against torture. It was adopted by the United Nations General Assembly on December 10, 1984, and entered into force on June 26, 1987, having achieved the required number of ratifications. Ecuador signed it in February 1985 and ratified it in March 1988. In addition, in October 2009, it approved the "Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment."

According to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, states must submit additional reports every four years on any new measures taken, as well as other reports requested by the Committee.

This Alternative Report for the Committee against Torture elaborated by organizations of civil society, was built on the information made available by the various governing state bodies with regards to the subjects covered and based on the data and information that participating organizations have been systematizing as a result of the committed work being done on the various issues addressed in this report.

As part of the work of the organizations mentioned above, we have identified issues of relevance to the Ecuadorian State which affect specific groups of people such as: women and girls, and people with diverse sexual orientations and gender identities. The topics we have considered in this report are: sexual violence, gender and sexual diversities, criminalization of abortion, forced maternity of girls and femicide. We have evidence of violations to human rights and those rights addressed by the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment in all of these areas.

Convention against Torture and Other Cruel, Inhuman or Degrading Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Those of us involved in the elaboration of this alternative report believe that the situations Ecuadorian women are experiencing in connection to the different issues addressed in this document, fit perfectly into the definition of torture as stated in Article 1 of the Convention. The sexual violence that 25% of Ecuadorian women –particularly the youngest and most defenseless– are subjected to, the illegality of abortion –even in extreme situations such as rape– and the subsequent prosecution and even imprisonment of women who get an abortion, turns their lives into an experience of daily torture that they have assimilated into their lives, while society and the State seem to deem it increasingly natural. The situation of discrimination and structural violence lesbian women are subjected to in so-called de-homosexualization centers, which are actually torture centers, and the experience of horror and extreme suffering generally associated to situations of torture suffered by women who died as a result of femicide, has prompted us to present this report at a juncture in which the development of a legal framework or strategy to address the situations presented here is nowhere in sight for the short term.

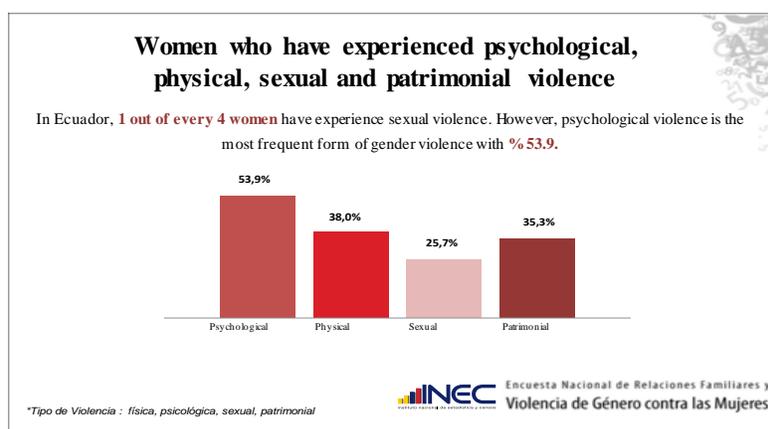
2. Sexual violence

2.1 Legal framework and current state of the art

1. Both the Political Constitution of 1998, as well as the current Constitution of 2008, recognize the right to a life that is free of violence in both the public and private sectors. This includes the various types of violence recognized by the Integral Criminal Code (henceforth referred to as COIP, for its Spanish acronym), namely: physical, psychological and sexual violence. The COIP typifies sexual violence as follows:

"Sexual violence against women or members of immediate family.- a person who, as a manifestation of violence against women or a member of immediate family, imposes or forces another to have sex or similar practices, shall be punished with the penalties stipulated for crimes against sexual and reproductive integrity" (Article 158).

2. According to the National Survey of Family Affairs and Gender-based Violence (INEC, 2012) 25% of women who have survived violence, that is 724,728, have been victims of sexual violence.

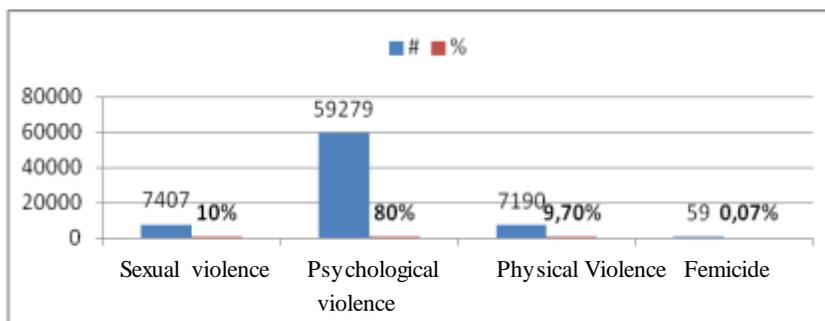


3. The Integral Criminal Code defines and establishes penalties for the crimes of rape, sexual harassment, sexual abuse and sexual exploitation of individuals. In the case of sexual violence, there is a greater incidence among Afrodescendant women (31.2%), followed by both indigenous and mestizo women with rates that are 7 percent points lower; while the lowest incidence corresponds to *montubias*¹ (20%) (INEC, 2012). This data from the National Survey of Family Affairs and Gender-based Violence is an important foundation for analyzing the information provided by the State's Attorney General in 2015, when due to the elaboration of the COIP, the Law for Violence against Women and Family was left without effect and the COIP entered into force:

Crime	Reports	Prosecuting orders	Sentences	Abbreviated procedures
Rape	5,634	515	59	7
Sexual harassment	1,488	22	11	3
Sexual violence	285	4	2	0
Physical violence	7,190	348	132	75
Psychological violence	59,276	523	76	35
Femicide	59	15	15	0
Totals	73,932	1,427	299	120

Nationwide statistics from August 10, 2014 to November 30, 2015. Source: Public Prosecutor Magazine No. 39, 2016, p. 9.

The data in the above table shows that neither physical nor sexual violence reports account for more than 10% of the total complaints. By contrast, psychological violence constitutes 80% of all complaints (INEC, 2012).



4. We believe crimes of sexual violence against women and girls are underreported. This is mainly due to the naturalization of such crimes, whether they occur at home, in schools, on public transport or in the streets and city parks. The naturalization of these events tends to render them invisible and minimize them, in the same way that it minimizes their criminal nature. This can be seen in the fact that if and when they make it to court, women are still frequently blamed for the events.

Sexual violence does not come on its own. In most cases, girls and adolescents who survived rape have also been victims of psychological violence through threats and blackmail. Many of them have been the victims of

¹ The term *montubias* refers to a specific population group with distinguishable cultural characteristics in the rural coastal region of Ecuador.

physical violence due to the viciousness of the rapes, and have suffered permanent damage to their reproductive organs.

He has demanded to have sex forcefully.	469,723 cases	9,2%
When having sex, he forced you to do something you do not like.	231,498 cases	4,5%
He has used force to compel you to have sex.	332,940 cases	6,5%

Source: INEC, National Survey of Family Affairs and Gender-based Violence, 2011.
Elaborated by: Gloria Camacho and Cynthia Mendoza.

* Values have been inferred in the survey through factors of expansion and are approximate. The margin of error for calculating the average is of 0.75%, with a significance level of 95%.

5. The charts below show us that rape is a problem that occurs in the immediate surroundings of the abused woman, as well as an issue happening among Ecuador's poorest population. It is clear that stereotypes linked to ethnicity put Afro-Ecuadorian women at risk, as the most likely to be raped. The highlands and Amazon regions have higher rates of sexual violence.

We share these data belonging to the most important survey on violence carried out in Ecuador because we have learned that President Rafael Correa has expressed his disagreement with regard to updating said study, since he does not agree with concepts such as 'psychological violence'. This opinion was shared during the weekly National Address to the Nation No. 451, <https://www.youtube.com/watch?v=INCnoRvd2D8>

Chart 32



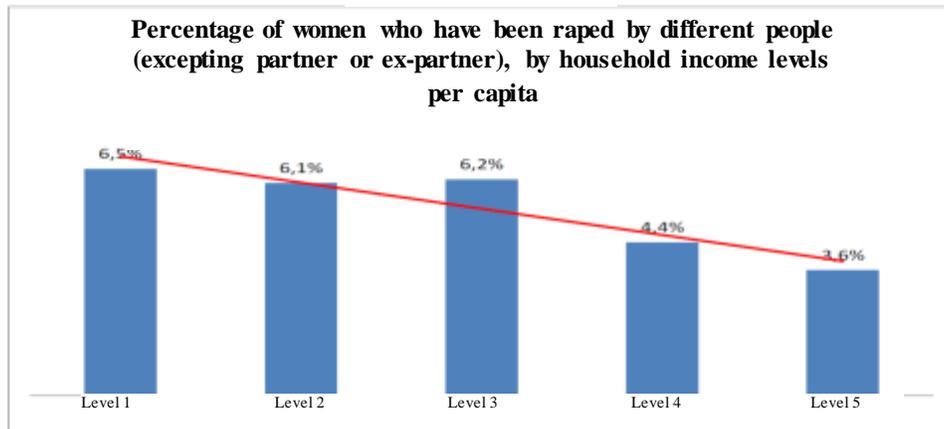
Fuente: INEC, Encuesta de relaciones familiares y violencia de género contra las mujeres, 2011
Elaboración: Gloria Camacho y Cynthia Mendoza

Chart 38



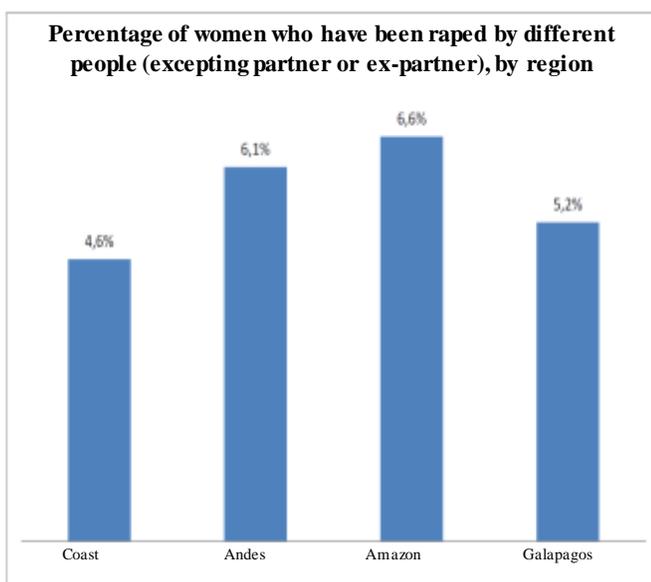
Fuente: INEC, Encuesta de relaciones familiares y violencia de género contra las mujeres, 2011
Elaboración: Gloria Camacho y Cynthia Mendoza

Chart 40



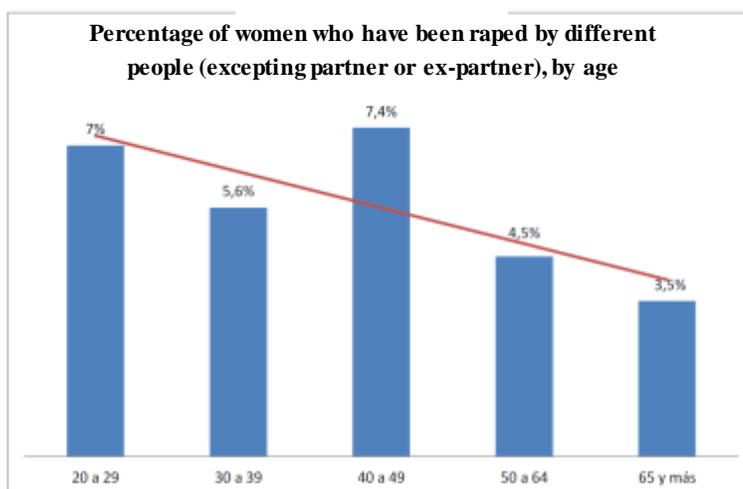
Fuente: INEC, Encuesta de relaciones familiares y violencia de género contra las mujeres, 2011
Elaboración: Gloria Camacho y Cynthia Mendoza

Chart 35



Fuente: INEC, Encuesta de relaciones familiares y violencia de género contra las mujeres, 2011
Elaboración: Gloria Camacho y Cynthia Mendoza

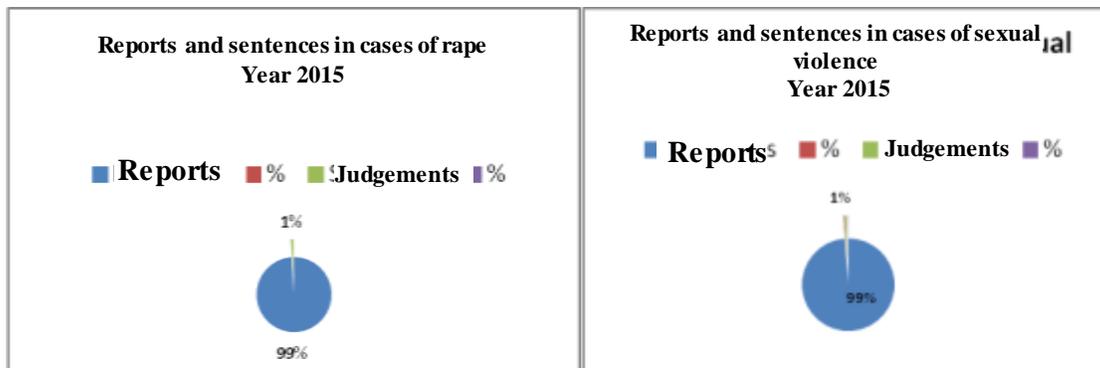
Chart 37



Fuente: INEC, Encuesta de relaciones familiares y violencia de género contra las mujeres, 2011
Elaboración: Gloria Camacho y Cynthia Mendoza

2.2 Impunity for sexual violence

6. According to the data from the State's Attorney General, only 1 percent of the reports of sexual violence and rape obtain a court sentence. According to the same source, only 0.2% of psychological violence reports obtain a court sentence.



Source: *Fiscalía Ciudadana Magazine* No. 39, 2016, p. 9. Elaborated by authors.

6. Impunity is the result of several issues, some of which were identified in the 2015 Shadow Report to CEDAW, which noted the absence of a special and expeditious procedure for crimes of violence, the absence of specialized judges in medium and small cantons, the absence of instances where reporting could be done, the lack of clarity about routes of access to justice and the delay in proceedings. (*Coalición de Mujeres*, 2015).

7. Moreover, there are testimonies stating that prosecution staff discourages victims from filing a report claiming that, by reporting, they may be committing a reckless and malicious action that might turn against them. Finally, the instability of shelters and care centers funded by the Ministry of Justice has resulted at times in a lack of sponsorships to support victims of sexual violence.

All these aspects generate a profound distrust and fear of filing a report, which makes many women and girls desist from filing it. This exposes them to the consequences of not doing so, not only because of the fact that there is no reparation and restitution of rights to the victims, but also because impunity perpetuates the occurrence of such crimes, reaffirming patriarchal conceptions that reinforce the stereotype that women are the property of men, that they are sexual objects and there are no laws to prevent men from continuing to exercise sexual violence against women and girls.

"Considering the specific situation of dependency of schoolgirls, the Committee is deeply concerned at the passive reaction towards such violence on the part of law enforcement authorities and the public at large, which leads to perpetrators enjoying de facto impunity and further increases the risk of girls and women becoming victims of sexual violence." (CEDAW, 2015) 2

2.3 Sexual violence in the educational system: Paola's Case

The Case of Paola Guzmán Albarracín vs. Ecuador. Inter-American Commission on Human Rights

8. Paola del Rosario Guzmán Albarracín, a sixteen-old girl, was victim of sexual harassment and rape committed by Bolívar Eduardo Espín Zurita, Viceprincipal of the Public Technical College of Commerce and

2 http://media.wix.com/ugd/273e4d_8a1528bb63bf45bbba0d1a109c2772d8.pdf

Administration "*Dr. Miguel Martínez Serrano*" where the girl studied since she was twelve. Mr. Espín, in his capacity as a public servant in a school, used his position of authority to continually harass the girl and ultimately compel Paola Guzman to a sexual relation which resulted in pregnancy. Paola Guzmán Albarracín committed suicide in December 2002.

9. The educational institution that was supposed to protect and guarantee her rights also failed to provide adequate counseling services and respond to the violence to which she was subjected. It did not respond adequately to the medical emergency either, thus violating her right to life. The rape was reported by Paola's parents. However, due to the ineffectiveness of the judicial and administrative system, the crime remains unpunished. This is an example of violations of human rights to the detriment of Paola Guzmán Albarracín, perpetrated by an agent of the State acting in his capacity as such and taking advantage of the perks of his hierarchical position and the presumption of trust that those involved in educational activities often enjoy. This crime remains unpunished and completely invisible amid the negligence of the authorities responsible for the administration of justice and the open discrimination of the administrative authorities, although it has been thirteen years and five months since Paola's unfair death.

10. To the detriment of Paola, the attitude of the Ecuadorian state violates both, the obligation to respect rights and abstain from committing acts that illegitimately infringe them, as well as the obligation to guarantee human rights, providing timely assistance, investigating and punishing human rights violations perpetrated against individuals within their jurisdiction with due diligence (Paola del Rosario Guzmán Albarracín and family against Ecuador). Consequently, Ecuador has violated Paola Guzmán's rights to life, personal integrity, personal safety, freedom from violence; the right to be free from discrimination; the right to special protection because of being a minor; and the right to a fair trial and judicial protection as set forth by the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.³

11. During the proceedings of the case of "Paola del Rosario Guzmán Albarracín and family against Ecuador, Case 12,678", the State has provided information on public policies, developments in the "National Plan for the Eradication of Violence" the "Roadmap and action protocol for situations of violence and/or sexual violence committed or detected within the National Education System" and "Intersectional Strategy of Family Planning - ENIPLA". Nevertheless, these interventions have not been carried out within the Ministry of Education since 2014. This caused the Committee of CEDAW in 2015 to express its views on the ineffectiveness of public policies for the protection against sexual violence in the education sector.

12. "The case of Paola is framed within a context of impunity, sexual harassment and abuse in Ecuador (*Coalición de Mujeres*, 2015). In Ecuador, during 2014, 271 allegations of sexual offenses in educational institutions were reported. In 2013, 85% of the 634 reported complaints were related to rape of girls and

³ Official letter presented by the petitioners to the Inter-American Commission on Human Rights on March 4, 2016.

adolescents (Public News Agency for Ecuador and South America, ANDES, 2014). In 2013, less than 6% of such complaints were processed (United Nations, 2015). Underreporting on sexual violence suffered by children and adolescents is one of the structural problems in the region that make it difficult to know the true dimension of sexual harassment and sexual abuse (Inter-American Commission on Human Rights, 2011). In Ecuador, and in reference to the time during which the aforementioned events occurred, up until 2002 only 15 cases had been reported to the Public Prosecutor –although sexual harassment has been considered a crime since 1998– and only one of those cases resulted in a court ruling (CLADEM, 2004). These figures, as well as the statements of Petita Albarracín and Forensic Psychologist Ximena Cortés Castillo, show that in Ecuador these events are not the exception, but rather a frequent occurrence and that despite any progress in legislation and the theoretical existence of public policy programs, the phenomenon of sexual harassment and abuse persists in schools."4

13. Nearly 14 years after the facts of the case, it has become evident that the judicial system has failed to investigate seriously and impartially what happened and, therefore, there is neither punishment for those who are responsible nor comprehensive reparation for the victims. The long delay of internal processes constitutes a violation of judicial guarantees. Harassment and sexual abuse against children and adolescents in educational establishments are a form of violence and they legitimize unequal relations of power based on gender. Both the lack of protection against the occurrence of sexual violence that Paola was subjected to, as well as the lack of due diligence in a case of violence against women –especially sexual abuse and harassment suffered by an adolescent schoolgirl– constitutes a form of discrimination and a failure of the State in fulfilling their obligation not to discriminate against Paola. The actions described in the section above indicate that authorities failed to investigate the death of the victim as a case of gender-based violence and that despite having ratified the Belém do Pará Convention, Ecuador did not put measures, protocols or directives in place to investigate such violence properly.⁵

Processing of the case at the Inter-American Commission on Human Rights 6

14. On October 2, 2006, a petition was filed with regard to the case under study. On October 17, 2008, the Commission admitted the case under Admissibility Report No. 76/08. In March 2009, the proceedings were initiated to reach a friendly settlement between the petitioners and the Ecuadorian State. However, the negotiations to reach such an agreement did not progress. On December 23, 2013, after almost 5 years of negotiations, as petitioners we made public our decision to terminate the friendly settlement process irrevocably and continue processing the case, since the good faith and political will of the Ecuadorian

4 Official letter presented by the petitioners to the Inter-American Commission on Human Rights on March 4, 2016.

5 Official letter presented by the petitioners to the Inter-American Commission on Human Rights on March 4, 2016.

6 Official letter presented by the petitioners to the Inter-American Commission on Human Rights to request the elaboration of an in depth report. Bogotá-Guayaquil, February 19, 2016.

authorities did not materialize in a real commitment to respect the human rights of Paola del Rosario Guzmán Albarracín (Paola) and her family.

On January 7, 2014, the Commission announced the end of the friendly settlement process and the continuation of the proceedings. On March 5, 2014, the IACHR forwarded to the petitioners a communication from the Ecuadorian State dated February 25, 2014, where it expressed its willingness to resume the friendly settlement process. On March 13, 2014, after a meeting with the State, the petitioning organizations reiterated and confirmed their decision to withdraw from the friendly settlement process and ensure fair compensation for victims.⁷

15. On October 19, 2015, a hearing of the case was held in the Inter-American Commission on Human Rights, which the Ecuadorian State failed to attend. The case is currently in a hiatus, awaiting the in-depth report prior to its official submission to the Inter-American Court of Human Rights.

3. Sexual and gender diversity: violence against lesbian women in rehabilitation centers for people with addictions

3.1 Legal framework

16. Article 11.2 of the Constitution of Ecuador (2008) recognizes non-discrimination based on sexual orientation and gender identity. Articles 151⁸ and 177⁹ of the Integral Criminal Code (2014) mention torture and acts of hatred respectively. The Regulation for the Control of Rehabilitation Centers for People with Addictions (Ministerial Agreement 767) prohibits the practice of "de-homosexualization therapy" in such centers.

In view of the discriminatory practices which violate the rights of LGBTI people in the so-called "rehabilitation" or therapeutic centers, it is concerning that national regulations still allow impunity in cases of rape and violation of rights of LGBTI people in particular, as well as people with addiction problems in general.

It is worth pointing out that the Organic Health Law that is in effect (Law 67, Official Gazette Supplement 423, December 22, 2006) does not indicate the need to update neither the medical techniques nor the health standards on the basis of international advances on non-pathologizing and non-psychiatrization of sexual orientation and gender identity. It is concerning that, on the basis of the principle of hierarchy of standards and regulations, the progress made in the Regulations of Control Recovery Centers for People with Addiction

⁷ See Article 40.4 of the IAHRC Regulations.

⁸ Article 151.- *"A person who inflicts or orders another person to inflict torture". Paragraph 3 mentions explicitly: "committed with the intention of modified gender identity or sexual orientation."*

⁹ Article 177.- *"Acts of hatred. The person who commits acts of physical or psychological violence and hate against one or more people due to (...) gender identity or sexual orientation."*

(Ministerial Agreement 767) which prohibits dehomosexualization treatments, is reversed due to the deficiencies of the Organic Health Law that were mentioned in the previous paragraph.

3.2 Impunity and irregularities for the eradication of torture and cruel, inhuman and degrading treatment of lesbian women in "rehabilitation centers"

17. In the DNCS-002 Report¹⁰ of 2015, released by the Ecuadorian Ministry of Public Health at the request of the *Taller de Comunicación Mujer*, a total of 157 rehabilitation centers were reported until December 2014, 79 operating with a permit and 78 being penalized.

According to the SNPSS#9 Report¹¹ of March 2016, released by the Ecuadorian Ministry of Public Health at the request of *Taller de Comunicación Mujer*, a total of 94 rehabilitation centers working with a permit were reported until December 2015, in 14 provinces of the country. This report does not mention any penalized centers.

This means that by comparing the data released by the Ecuadorian Ministry of Public Health, in reports DNCS-002 and SNPSS#9, there is a total of 94 centers with operating permits reported.

18. The following are the most concerning aspects with regard to 6 of these centers:

Two centers appear to have been shut down permanently in 2015 under Articles 2, 20, paragraphs a, b and d (the text of which will be detailed in the following paragraphs), but had operating permits in 2016. The mechanism to authorize the reopening of these centers is unknown.

Four centers appear to have been temporarily shut down in 2015, and then appear as having an operating permit in 2016. No reason was specified for authorizing the reopening and there was no mention of whether or not there was a change in their practices. The reasons for temporary closure, according to Article 185 of the Organic Health Law and according to Articles 2, 20, Paragraphs a, b, d, e and g, will be cited below.

It was also observed in the SNPSS # 9 Report that: Centers "*12 Pasos*" and "*Hogar Renacer*" might have been operating, despite a history of treatment practices of torture to achieve the "sexual reorientation" of women in 2013 and 2014, as denounced in the VII Periodical Report of Ecuador to the Committee Against Torture in July 2014, in paragraph 105. Said report did not provide the information requested: the number and names of the centers intervened, shut down and/or closed, the crimes and infringements these centers have incurred and a report on the people rescued in the operations. These data would allow civil society to verify the due diligence of the authorities to guarantee the rights of the people committed and reparation for the violations of these rights.

19. The Ministry of Public Health is the only governmental institution that has information on rehabilitation centers in the country. However, when asked to provide it by *Taller de Comunicación Mujer*, the ministry has

¹⁰ Analysis of information provided by the Ministry of Public Health of Ecuador in the first quarter of 2015. DNCS-002 Report by the National Directorate of Disease Control, for the *Taller de Comunicación Mujer* prior to the request issued in October 2014.

¹¹ Analysis of information provided by the Ministry of Public Health of Ecuador in March 2016. SNPSS#9 Report of the National Subsecretariat for the Provision of Health Services, for the *Taller de Comunicación Mujer* as per request their request in December 2015.

not released sufficient substantiated information. The Law for Transparency and Access to Public Information¹² only prohibits the release of information in cases dealing with privileged information for reasons of national defense in accordance with Article 17, and in Article 6 it states that:

"Information will not be withheld, when it pertains to investigations conducted by competent public authorities, regarding violations of rights which have been guaranteed by the Political Constitution of the Republic', does not apply in this case since the information that was requested had no such character. Therefore, there is nothing to justify the fact that the Ministry of Public Health failed to provide it."

It is worth noting that this same information may be released by any other health authority. In view of this, we requested said information to the National Sub-secretariat for the Provision of Health Services, but this institution continues to hinder and dilate the release of the information. After three months of repeated requests, the National Sub-secretariat for the Provision of Health Services has referred us once again to the corresponding Area Coordination Office, which in turn passes the request on to the Province Directorate of Health.

20. Upon request of *Taller de Comunicación Mujer*, the Ombudsman's Office released the "Report on LGBTI People and Rehabilitation Centers"¹³, where it is detailed that between 2012 and 2013 there were:

3 cases under investigation by the Ombudsman's Office pertaining to lesbian women under forced commitment, (File case numbers: 57494-2012, 001-2013, 007-2013), and official inquiry in Chimborazo, de-homosexualization therapies, rape, signs of torture, cruel and inhuman treatment. The report does not indicate whether the cases were prosecuted.

Other 5 cases namely: "Case *J-Tungurahua*", "Case *J-Imbabura*", "Case *S-Manabi*", "Case *J-Azogues*", "Case *Z-Napo*", taken to court for forced commitment, kidnapping, rape, and cruel, inhuman and degrading treatment of lesbians and transgender people in "rehabilitation centers" of which only 1 was convicted for sexual assault, 1 investigation was opened, there was 1 court order and 2 cases have not yet come to term.

3.3 Testimonies

21. *Taller de Comunicación Mujer* is collecting testimonies in the form of "life stories" of women between 20 and 30 year old who have been detained in rehabilitation centers in the country, and were interned in several cities between 2001 and 2016. Here are some excerpts of their testimonies which speak of torture, and inhuman and degrading treatment:

"They took me to an alleged rehabilitation clinic. I was told to be calm because if I did anything at the moment of going in, I would get beaten up. (...) They gave me pills at 6 in the morning, then again at 2 pm, and then at 10 pm. A tranquilizer and something

¹² Organic Law for Transparency and Access to Public Information. No. 24, published in Official Gazette Supplement No. 337 of May 18, 2004.

¹³ Official letter DPE-ADHN-2016-0027-O submitted in May 2016.

for sleeping. They kept me like that for the 14 days that I was locked up. They yelled at us, they would tell us that it was a sin and God would punish us, that we would never live happily... the place was called 'Mujer de Valor' (Woman of Courage)." (Lesbian woman, 25 years old)

"I was at home having coffee, and when I woke up I was already there (at the clinic). I now suffer the physical consequences. I received daily discharges of electroshock, which alters your brain cells. (...) Every day I had to pray or recite chapters of the Bible and I didn't want to. (...) I always resisted with a lot of physical strength not to let them rape me again, so I was continually beaten up. They would even starve me. I got beaten and my head was put in a bucket of ice. Then they hung me up in a sort of volleyball net and left me there all night." (Lesbian woman, 28 years old)

"My family put me in a rehabilitation center and then, after several days of abuse, beatings and more, they took me to a rehabilitation center in Pasto. (...) There I was forced to wear ribbons in my hair, long earrings, make-up. When I was admitted in the center, the first thing they did was to starve me. They left me in a room that locked from the outside, not from the inside, and had no windows. They turned off the light and would control it from the outside. (...) I had to deal with a psychologist who said that everything I did was wrong; that I was making my family suffer and I was going to kill my mother; I was going to destroy my home (...) They would call you a tomboy, a butch, abnormal. They would yell at you. They never called you by name. (...) I saw other girls returned to their rooms bathed, with their hair and clothes wet, and they would lock them away like that. They would take away their luggage and towels and they couldn't dry themselves off. Visits were prohibited. I had a fellow intern who had been there longer than me. She told me she had already been raped by the nurses of this institution." (Lesbian woman, 25 years old).

22. Some of the most prominent elements of their stories of internment, such as common and repetitive discriminatory practices, are the following:

Family members of these women justified interning them at the rehabilitation centers arguing that the women had "addiction problems."

In the last 10 years, the practices of these centers have included electro shock (according to the testimony of women admitted in 2001), rape, administration of psychotropic drugs, forced labor, psychological and physical abuse (as expressed by the women committed in 2011 and 2016).

The majority of interviewed women reported they had gone back to live with their families after the end of the "treatment". However, their families imposed certain conditions from then on: their freedom was limited; their relationships with both friends and former partners were annulled.

3.4 Conclusion and recommendations

23. De-homosexualization put into practice through therapy is torture with a clear corrective objective aimed at what society has qualified as a social anomaly and a danger to the common good, awarding in turn a high moral and social value to heterosexuality while granting a low social and political recognition to sex/gender diverse identities.

The recommendations are the following:

24. Establishing a system of statistical information on victims of hate crimes, inhumane treatment and torture, as well as of access to justice for sexually diverse people, which should work in coordination with public health and justice institutions and the National Police.

Submitting annual reports to civil society on official investigations in addiction centers in order to safeguard the rights of people committed in them and avoid internment for the purpose of "dehomosexualization".

25. Ensuring due process in the investigation of allegations related to arbitrary deprivation of freedom, disappearance, rape, torture, violence, and hate crimes, among other crimes related to sexual orientation or gender identity.

26. Developing training programs and disseminating information to health and justice operators as well as civil society, regarding access to justice focused on eradicating the different forms of discrimination, violation of human rights and corrective torture practices aimed at the LGBTI population; and generating mechanisms to prevent impunity and provide redress of violated rights.

27. Establishing special protocols and procedures for the system of administration of justice and adapting treatment for victims to suit the particular needs of lesbian women and LGBTI population who have been victims of human rights violations in rehabilitation centers that perform "dehomosexualization" treatments.

28. Reforming the Organic Health Law so that it explicitly states that human rights are a necessary condition of health and, therefore, the attacks and violations against them constitute a public health issue, taking into account the needs and particularities of LGBTI people. Also, it is of vital importance that in the recommendations of the Human Rights Committee to the Ecuadorian State it be made explicit that sexual and gender diversity are not pathologies.

4. Criminalization of abortion

4.1. Preventing access to abortion is physical, psychological, and structural torture

29. According to Article 150 of the Integral Criminal Code of Ecuador, the termination of pregnancy is permitted only in the following cases: to protect the health and life of a woman when danger cannot be avoided by other means; and in the case of a woman with mental disabilities who was raped. Article 149 of the same legal body stipulates a prison term of two to six years for women who do something to abort or who consent to having an abortion.

30. The criminalization of abortion constitutes a form of violation of the rights of women. Especially their right to life, health, freedom from violence, personal safety, autonomy and privacy; their right to make decisions about their reproductive life and to sexual self-determination, dignity, integrity, liberty, private and family life, sexual health, reproductive health and non-discrimination; their right to enjoy the benefits of scientific progress and not to be subjected to cruel, inhuman and degrading treatment, among others. This legal limitation is inappropriate as it conditions the decisions of women and their ability to plan their lives, and it transforms reproduction into a burden with a disproportionate impact on the lives of women by transforming it into a factor of discrimination and inequality, which reproduces the effects of a "deep-rooted discrimination of one of its patriarchal, heteronormative and discriminatory power structures" (Méndez, 2013).

31. According to the Rapporteur against Torture, Juan Méndez, women are vulnerable to being subjected to torture and ill-treatment when they seek medical care, being particularly vulnerable when they seek to receive treatments such as abortions or care for complications derived from them. According to international human rights law, ill-treatment and abuse against women who seek to access reproductive health services cause immense and lasting physical and emotional suffering based on gender¹⁴ (Méndez, 2013) (Lale, 2014).

32. Between May and July 2013, Human Rights Watch¹⁵ conducted research related to this topic in eight provinces of Ecuador. It was found that the abortion ban currently in effect in the country hinders the possibility that medical professionals might detect sexual violence or other forms of gender violence; it contributes to high rates of maternal mortality and morbidity in Ecuador; and it generates delays and obstacles for women and young people who need possibly vital medical attention (Human Rights Watch, 2013). It generates criminalization and stigmatization against women, which in turn causes them deep anxiety and depression, forcing them to seek abortions in inadequate conditions, in isolation, anonymously and endangering their health and lives (Human Rights Watch, 2013).

33. The anxiety, anger, and depression that may come from an unwanted pregnancy and the inability to have a choice about it can cause adjustment disorders and predispose women to suicide (Lale, 2014). In the case of Ecuador, suicide is the second leading cause of death of young adolescent girls between the ages of 12 and 19¹⁶, and the three main causes of suicide in this group are: violence, unwanted pregnancies and relationship problems. This shows that the lack of options when dealing with an unwanted pregnancy profoundly affects

¹⁴ According to research, women who carried pregnancies to term unwillingly had significantly higher rates of mental health problems after birth than before, being that adverse outcomes related to the mental health of women who have abortions are associated with having an unintended pregnancy carried to term.

¹⁵ <https://www.hrw.org/es/report/2013/08/23/criminalizacion-de-las-victimas-de-violacion-sexual/el-aborto-ilegal-luego-de-una>

¹⁶ "According to statistics of deaths from the INEC, between 1997 and 2009 over 1,400 teenagers took their lives intentionally in the country. It is estimated that every 3 days an adolescent between the ages of 12 and 17 took his or her life (...). Today, one in three preventable deaths among teenagers is due to this cause. (Observatory for the Rights Children and Adolescents, 2012)

the health of women, and subjects them to cruel, inhuman and degrading treatment which may be considered torture (Observatory for the Rights of Children and Adolescents, 2012).

Similarly, the criminalization of abortion causes women to be unable to access information¹⁷ to reduce risk and harm from unsafe abortions, which puts their right to life and health at risk. In Ecuador this places abortion as the third leading cause of morbidity in women, and one of the leading causes of maternal death (INEC, 2014).

34. The fourth paragraph of General Comment No. 2 of the Committee Against Torture –which refers to the application of Article 2 of the convention establishing the obligations of States to prevent torture and the principles on which its absolute prohibition is based– states that “Participating States are obliged to remove all legal obstacles and all other impediments hindering the eradication of torture and abuse, and to adopt effective measures to prevent such behavior and its reiteration (...)”. Therefore, we think it is essential to decriminalize abortion as a measure to eradicate torture and cruel, inhumane, degrading treatment against women in this country, with regard to health care and abortion.

4.2 Access to abortion and health

35. In 2014, the Ministry of Public Health issued a Guide for the Clinical Practice of Therapeutic Abortion through Ministerial Agreement No. 00005195, registered in Official Gazette Supplement 395 of December 12, 2014, which is currently in force. It states that when we talk about health we must use the term as a broad concept and understand it as “a state of complete physical, mental and social wellbeing; not merely the absence of ailments or disease”. It is therefore understood that the legal causes of abortion include accessing it because of the adverse effects pregnancy may have in women’s physical, mental and social health.

36. Despite this fact, the health system and the judicial system create barriers to accessing legal abortion – both for general and health reasons. This happens because healthcare providers either request court orders in order for women to access legal abortions or they submit the cases to highly biased and conservative bioethical committees¹⁸, prosecuting attorneys harass health professionals who perform legal abortions, and judges do not create clear jurisprudence to protect women’s rights. Therefore, in this country only 5% of reported abortions (1,715 abortions out of 35,719) are considered medical, therapeutic or legal.

37. For this report, we are presenting two serious cases of denial of therapeutic abortion. Both exemplify experiences women go through in order to exercise this right.

¹⁷ In response to this need, there is a fund managed by a feminist organization which, through the Aborto Seguro de la Colectiva Salud Mujeres information line, provides information to women about the abortion drug following the guidelines of the World Health Organization service. During the 2014 information line attended about 1,400 women seeking information and from 2015 to March 2016 has given information to 3 Zika-infected women with pregnancies of less than 12 weeks. Similarly, the line gets between 6 and 11 calls a day care every day during its five-hour service.

¹⁸ See judicial case 170101816063873

The first case is that of “Narcisa”¹⁹, a 33-year-old woman, five months pregnant, who was hospitalized with constant bleeding leading to severe anemia and such a strong pain she could not even speak. She was denied access to therapeutic abortion at the hospital, where it was argued that “the baby was doing fine” and that “she must be strong and resist”. Narcisa’s case was discussed at several bioethics committees with no favorable outcome for her rights. An attempt was made to transfer her to either a private clinic or another hospital and get the procedure done, which was prevented by the health service. Finally, about a month and a half after the day she was admitted, she had a spontaneous abortion. She was stigmatized and mistreated by healthcare professionals. Such episodes caused “Narcisa” severe pain and suffering stemming from gender stereotypes. Her rights were severely violated.

38. The second case is that of “Manuela”, an indigenous 22-year-old woman with severe cerebral palsy, which resulted in a physical and mental disability rate of 70%. She was a rape victim and as a result, she got pregnant. A therapeutic abortion was requested in her 7th week of pregnancy, but it was carried out at week 19, thanks to the intervention of social organizations. This case was significant because it was the prosecutor in charge of Manuela’s rape case who opened a preliminary investigation against the hospital in order to look into an absolutely legal abortion procedure. This caused suffering and grief to Manuela’s mother and to the health staff who cared for her.

39. This has become an alarming situation in Ecuador –a country with high rates of sexual violence, where 1 out of every 4 women has been a victim (INEC, 2012) and diseases such as Zika have increased women’s need for legal abortions for health reasons. On June 1, 2016 the Ministry of Health stated that a total of 206 people –16 of whom were pregnant– had been infected by the Zika virus and that there were 436 suspected cases so far.²⁰ Forcing women infected with Zika to carry their pregnancies to term is a violation of their right to health, since they have the right to access legal abortions when their health is at risk. It is urgent that this right be fully granted and that mechanisms facilitating women’s access to legal abortions be properly implemented.

40. According to the Rapporteur on Torture (Méndez, 2013), both denying or hindering women’s access to legal abortion services and displaying demeaning and judgmental attitudes against them in such circumstances constitute torture and cruel, inhuman and degrading treatment (Méndez, 2013) (P and S v. Poland, 2012). Therefore, being obliged to comply with Article 2 of the Convention, it is essential that the State take measures to ensure women can access these services with dignity.

4.3 Abortion for rape and forced motherhood

¹⁹ Name protected for reasons of confidentiality

²⁰ *Gaceta Zika*, Week 21, *SUBSECRETARIA DE VIGILANCIA DE LA SALUD PÚBLICA DIRECCIÓN NACIONAL DE VIGILANCIA EPIDEMIOLÓGICA ENFERMEDADES TRANSMITIDAS POR VECTORES ZIKA VIRUS*. Ecuador, SE52-53, 2015. SE1-21, 2016. URL: <http://www.salud.gob.ec/wp-content/uploads/2015/12/GACETA-ZIKA-SEM21.pdf>

41. According to calculations based on the analysis of the National Survey of Family Affairs and Gender-based Violence (INEC, 2012)²¹, in Ecuador, one out of every four women has suffered sexual violence during her lifetime. According to this survey, 379,098 women aged 15 or older report having been victims of rape (INEC, 2012). Those responsible for the rapes have shown again that this occurs mainly in a “family environment” (Camacho, 2011) and that 25.7% of the women have experienced some sort of sexual assault before the age of 18 (SENPLADES, 2013).²²

In Ecuador, Article 150 of the Integral Criminal Code states that abortion in cases of rape is legal only when the raped woman has a mental disability. Such a pronouncement has led both the Committee on Economic, Social and Cultural Rights of the United Nations (Committee on Economic Rights, 2012) and the United Nations Committee on the Elimination of all Forms of Discrimination against Women (CEDAW, 2015) to recommend that the State decriminalize abortion when pregnancy results from rape, even when the victim is not a woman with disabilities and when the existence of congenital malformations has been established.

42. Imposing forced motherhood on raped women is a form of torture that causes suffering and affects their mental health, even leading them to suicide. According to the Rapporteur on Torture (Méndez, 2013), “*The existence of very restrictive laws prohibiting abortions even in cases of incest, rape, fetal impairment or when the mother’s life or her health are at risk, violates the right of women not to be subjected to torture or mistreatment (A/HRC/22/53 and CEDAW/C/OP.8/PHL/1)*”.

4.4. Recommendations

43. Decriminalizing abortion in all cases, so as to ensure that women are not subjected to torture and cruel, inhuman and degrading treatment, such as: forced motherhood, denial of access to health services, discrimination, and stigmatization because of seeking related services.

44. Proposing Ecuador to understand the urgent need for decriminalizing and ensuring access to abortion. Otherwise, it is established as a form of systemic torture.

45. Securing access to and implementation of therapeutic abortion with dignity, understanding that women’s health must be considered in its entirety as physical, psychological and social health.

46. Eradicating sexual violence against women by ensuring access to abortion in cases of rape as a form of comprehensive reparation for the victims of such crimes.

21 <http://www.ecuadorencifras.gob.ec/>

22 <http://documentos.senplades.gob.ec/Atlas%20de%20las%20Desigualdades.pdf>

5. Judicialization of abortion

5.1 Violation of professional secrecy and infringement of women's rights

47. Through legal cases and testimonies, it is known that more and more service providers reveal the situation women find themselves in when they seek treatment due to incomplete abortions or home births.²³ A baseline survey commissioned by the Ecuadorian Federation of Gynecology and Obstetrics (FESGO, for its acronym in Spanish) found that 14 out of 21 gynecologists representing several provinces in Ecuador said they would denounce their patients if they suspected an abortion had been induced, while only 6 said they would comply with professional secrecy. This happened despite the fact that professional secrecy is a legal obligation under the Constitution –Article 66, subsections 11 and 19– and violating it constitutes a crime, as established by the Ecuadorian Integral Criminal Code (COIP), Article 179.

48. When exposed after attending a health service, these women are stigmatized by health professionals who, in addition to having judgmental practices, denounce and declare against them, thus violating Article 503 of the COIP and committing a crime that is neither investigated nor punished.

49. A very serious issue in such situations is that, in most cases, health professionals have been pressured into turning women to the police. By doing so, they have violated the legal guarantees of their profession, since they have been forced to breach professional secrecy, which Article 25 of the Constitution guarantees. Moreover, women's right to privacy and confidentiality are also violated in this way, as established in articles 66.19 and 66.20 of the Constitution.

50. As shown by statistics, every day more and more Ecuadorian women are discriminated by the judiciary branch, which prosecutes them as soon as they are admitted into a hospital with an abortion in progress or due to a home birth. According to data from the State's Attorney General, 106 cases of women prosecuted for abortion were recorded from August 2014 to February 2015.²⁴

Six case files from the coast and highlands of Ecuador show that women are prosecuted merely on the basis of medical staff testimonies, which contravenes the provisions of the Ecuadorian Constitution and the COIP, where declarations from health professionals are considered inadmissible. This also violates international treaty provisions to which the Government of Ecuador is subjected, as well as international court rulings, which are part of the constitutionality block according to our legislation.

²³ Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919

²⁴ This is official information procured by means of a request for information made by the Center for Support and Protection of Human Rights (SURKUNA) in March, 2015.

51. A reading of the case files²⁵ also demonstrates that the women were questioned by the police without the presence of a lawyer. Moreover, legal custody of these women was procured immediately after the interrogation and still without defense.

52. All this constitutes torture (Méndez, 2013) and a serious violation of women's rights. The greatest concern is the establishment of limits or conditions on women's access to medical assistance in order to get confessions, impose punishments on them and prosecute them without legal and judicial guarantees. This is a violation of Articles 1 and 2 of the Convention against Torture.

5.2 Women are imprisoned and/or prosecuted with evidence lacking legal validity and without respecting due process

53. Presumption of innocence. Women suffering from bleeding who seek assistance at hospitals are denounced and prosecuted for abortion even without evidence of an induced abortion. Several cases of spontaneous abortions have been taken to trial and women have been prosecuted without evidence. This constitutes a violation of due process and causes great physical and mental suffering.²⁶

54. Prosecution of women for false flagrancy when seeking medical assistance for an incomplete or delayed abortion, or one in progress, even when legal requirements are not met. It is illegal to apply the procedure established for flagrant crimes when the person was not arrested when committing the crime or up to 24 hours after an uninterrupted pursuit. Doing so constitutes a violation of women's right to due process and it subjects them to wrongful convictions.²⁷

According to the analysis of the six cases referenced in this report, women seek healthcare long after they have apparently taken action to terminate their pregnancies. None of the case files shows any evidence of any contraption or drug that may have induced the abortions. One of the women even stated that she miscarried after moving heavy furniture at home. Supposing a crime had been committed, flagrancy could be argued only if the police had been there with the suspect on the day and at the time she allegedly used the abortion drug and the abortion had taken place then or up until 24 hours later. The same case file shows that a long period of time elapsed between the presumptive offense and the alleged flagrancy.

55. Violation of professional secrecy and confidentiality in healthcare. Medical records and emergency care forms are used to accuse women. Healthcare professionals notify the police when they provide their services to women having incomplete or delayed abortions, or abortions in progress. They do so illegally, violating the obligation of professional secrecy as they reveal confidential information without following

25 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919

26 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919

27 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919

proper legal procedures. Moreover, despite their illegality, such declarations and documents are used as evidence in trials.²⁸

56. Violation of the prohibition of self-incrimination. The police arrive at the hospital and force the women to incriminate themselves, using confidential information on their health condition as an instrument to pressure them to confess the crime. This is illegal, since, in order to be valid, a statement containing the confession of a crime must be made willingly and freely, before a judge, after learning what the rights and consequences of the statement are, at an authorized venue and with the support of a defense lawyer. In most cases, such illegal “confessions” constitute the only evidence on which women are convicted.²⁹

57. Impunity for violence against women. As women relate their stories on abortion, they mention having been victims of many types of violence. This, however, is omitted and invisibilized as they are criminalized, since the only relevant matter is the “crime” they have committed. This invisibilization is a denial of their stories and results in their revictimization.³⁰

58. Procurement of testimony through torture and cruel, inhuman and degrading treatment. Conducting interrogation procedures in a hospital constitutes in itself cruel, inhuman and degrading treatment, both because it is a public space and due to the fact that people who seek assistance in a healthcare facility are usually in a vulnerable and defenseless condition. We can therefore say that statements are procured under pressure in a healthcare facility. In some of the cases we analyzed, women are pressured to incriminate themselves, and clinical assistance or access to medication is conditioned upon it.

According to the testimony of obstetrician Joanna Montaña, a health professional who looked after one of the women that was prosecuted for abortion, “They left with the patient without waiting for her to be medicated or anything”, even though she complained of severe pain after the medical intervention she had been subjected to. This implies that this woman was intentionally put through severe pain and suffering which were totally preventable if the police –which is made up of government officials– had allowed her to get the necessary medication to control the pain and stay in the health facility long enough to make her full recovery possible.

There have been cases of women who were first taken to the State’s Attorney General’s Office to testify after an abortion, still with placental remains in their uterus, and then to the health facility to be looked after. This constitutes a violation of their right to life.

59. Women are forced to plead guilty and are imposed alternative discriminatory sentences. As the only way to get short sentences and even not to be incarcerated is to plead guilty, women are subjected to

28 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919
29 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919
30 Trials 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013, 17460-2015-01919

processes in which they are forced to do so and are subjected to alternative measures that include taking care of children and going through psychological therapies so that they learn how to be “mothers”.

5.3 Recommendations

60. Decriminalize abortion.

61. Ensure professional secrecy and prevent women from being accused at hospitals.

62. Ensure that health professionals are not forced and coerced by state institutions to turn in women for abortion.

6. Status of forced motherhood in girls under 14 years of age³¹

63. Between 1,500 and 2,000 Ecuadorian girls under 14 years of age have become mothers in the last five years, according to data from the National Institute of Statistics and Census (INEC). In over 80% of the cases, they were raped by perpetrators who belong to their closest environment. We denounce and bring to light the damages these girls have to live their daily lives with, in all aspects of their health: physical, mental and social.

6.1 Statistics of the last 10 years

64. According to the figures in the Vital Statistics Yearbook of the INEC (INEC, 2014),³² 1,950 girls became pregnant in 2014. Sexual abuse has been pointed out as one of the main causes of pregnancy in adolescents in Ecuador. According to the figures provided by the Integral Assistance Service of the State’s Attorney General³³, girls and adolescents under the age of 14 are the main victims of sexual abuse, almost always within their family circle or by people known to them. Out of every 10 victims of rape, 6 are children and adolescents. However, the vast majority of cases go unreported. In fact, only 10.8% of all the women who are victims of sexual violence get to report it and “40% of abused girls and adolescents have not disclosed the fact to anybody, since 28% of those who did tell were not believed and 16.3% were asked to say nothing about the matter. The outcome was that only a third of all the abused girls and adolescents were attended to or given any answer” (Camacho 2011).

In 2014 the State’s Attorney General informed that every day three girls under 14 report cases of rape. Furthermore, complications related to the pregnancies of girls under 14 and their deliveries are reflected on

31 Summary based on the *Vidas Robadas* research www.fundaciondesafio-ec.org, presented at the IACHR in November, 2015, as part of the regional research with the same title, where Peru, Ecuador, Guatemala and Nicaragua participated.

32 [http://www.ecuadorencifras.gob.ec/documentos/web-](http://www.ecuadorencifras.gob.ec/documentos/web-inec/Poblacion_y_Demografia/Nacimientos_Defunciones/Publicaciones/Anuario_Nacimientos_y_Defunciones_2014.pdf)

inec/Poblacion_y_Demografia/Nacimientos_Defunciones/Publicaciones/Anuario_Nacimientos_y_Defunciones_2014.pdf

33 www.fiscalia.gob.ec/

the statistics of INEC as severe pathologies, such as placental tumors, ectopic pregnancies, multiple pregnancies and complications during delivery, among others.

6.2. Adverse effects and impacts on their overall health condition: testimonies

65. By way of introduction, two cases of forced motherhood are analyzed here within the framework of the *Vidas Robadas* (Stolen Lives) research in which Ecuador, Guatemala, Peru and Nicaragua took part. Two testimonies from the Ecuadorian case are mentioned, of girls under 14 whose overall health was damaged and whose human rights were violated as a result of rape, pregnancy and forced maternity.

66. Case 1: Having been raped by her stepfather, she became pregnant and miscarried. She then had a partner 7 years older than her, who abused her physically and psychologically. While in that relationship, she had 3 pregnancies and 2 abortions which resulted from the beatings she was subjected to by her partner. This man forced her into prostitution and took her daughter away. She managed to run away and with the help of the police she got her daughter back, but the girl had been severely abused. She hesitates whether to turn this man in, since he is her daughter's father. The girl is now 13 years old.

67. Case 2: The father of her son is a 17-year-old acquaintance. She has had no relations with him since the child was born; she has not even seen him. Her mother mentioned that a week before the interview for this investigation the girl attempted suicide with a knife. She is now 14 years old and is in her first year of highschool.

6.3 Physical health

68. The overall health of these 14-year-old young mothers has been severely affected. Since their bodies are not physically ready to reproduce, there are several risks during pregnancy and childbirth. By checking medical records, it has been determined that in 71% of the cases the patients have pregnancy complications, especially anemia and urinary tract infections. At the time of delivery, the most frequent complication/risk is the cephalopelvic disproportion resulting from fetal growth that is not compatible with the girls' pelvic size, so they end up giving birth by Caesarean section: "Most of them have large babies" (Treating physician, public hospital).

69. One of the things that causes the most impact is the pain these girls are in when they arrive at the hospital in labor:

"It is both touching and tragic to see how they suffer and scream with birth pangs. These girls' pain threshold is infinitely lower than that of an adult woman and they suffer greatly. Generally, teenagers suffer more, and it's even worse when their pregnancy was unwanted and it was the result of rape. They scream a lot and some of them beg that someone 'get it out' of them or to be operated. Sometimes when we realize the pain is too much, we offer epidural anesthesia." (Nurse, public hospital)

Exhaustion seizes these girls' body and mind. We asked one of them when she was able to breastfeed her newborn. She answered, "The next day. I didn't know what I had to do. I was asleep all night. I didn't even have dinner. I was sleepy." (Paola, 14)

6.4 Social health

70. The environment in which these girls experience their pregnancy, childbirth and postpartum leads them to accept these facts and be "good mothers". The health system aims to treat them from a medical perspective and ensure they do not get pregnant again.³⁴

"Before I left, they put the implant in [...] I was told, 'Since you are 13, I'm going to set that implant. Come along!' My mom didn't want it, but I did. They said, 'I don't know, Mrs.'³⁵ You either get it, or you get it!"

71. This solution, though necessary, is incomplete. While health services are not responsible for integral protection, they are responsible for a part of it. Would the solution not be to influence the risky and violent environment in which these girls live, even if health services do their part? Who should provide the guidelines? The solution is not at all focused on preventing sexual violence, which is the cause of almost all pregnancies in adolescents under 14. Moreover, and perhaps more importantly, a contraceptive implant guarantees three years of protection against unwanted pregnancy, not against sexual violence.

72. All these girls come from impoverished environments, not only economically, but also emotionally. These girls have not been protected and they have experienced negligence first hand.

6.5 Mental health

73. These girls find themselves in a complex situation. They want to go on being children and move toward adolescence, but it is not possible because they have become mothers and their environment reinforces that message again and again. The testimonies below reflect the de-subjection and the loss and/or substitution of identity the girls are exposed to:

We asked one of the nurses: "Why do you call them 'Mrs.?'?" She replied: "Out of respect, because they are mommies now." (Nurse, public hospital)

"Miss, could you please watch my son for a while? I'm going to play." (11-year-old girl, mother of an 8-month child, accommodated in a municipal shelter)

74. In most cases, the medical records under study refer to adaptive disorders and depression, which could also lead to suicide attempts. The confusion and ambivalence these girls experience with regard to their condition is evident:

³⁴ 53% of the patients are discharged once the sub-dermal contraceptive implant has been placed, considering that consensual sex was declared only in one case.

³⁵ It is worth noting that these girls are being addressed as "Mrs."

“As they say, I am a mother who doesn’t know how to raise her daughter.”

“I yelled a bunch of things at the girl. My mom had to come and calm me down. I wanted to beat her up; even kill her that time.”

“Many girls begin to lose weight. They don’t eat or sleep properly and are very depressed because they don’t know how to get out of that situation by themselves. They become obfuscated and develop different levels of stress: they want to study, run back home to their babies, breastfeed them, and sometimes go back to work.” (Psychologist)

6.6 Conclusions and recommendations

75. The adverse effects on the overall health of these raped pregnant girls are clearly appalling. The resulting mental and social wounds are mainly reflected in the loss of identity of these girls and early adolescents who become mothers through a process in which their fundamental rights are violated. Their right to life – understanding life as a set of experiences, dreams and projects– is reduced to complying with the obligation of forced motherhood.

76. Violence against them does not cease with motherhood, which is reflected by the fact that some of them become pregnant again, are unable to study, and live in a social limbo that they cannot escape from, since this reality is inherent to the situation of poverty in which they live.

Short-term solutions, such as contraception, legal abortion, and even adoption, must be within a framework of comprehensive strategies enabling these girls’ recovery as citizens and human beings.

77. Based on the above, it is recommended to substantially improve access to justice and develop specific strategies in order for the crime of rape against this age group to be dealt with more speedily and to be more integrated with comprehensive protection systems available for victims who share these girls’ particularities and vulnerabilities.

7. Femicide

78. Due to the Ecuador’s international obligations to the Committee Against Torture (CAT), it is the duty of the State to prevent acts of torture and cruel, inhuman and degrading treatment against women, especially acts of violence that may increase or perpetuate the risk of femicide. According to General Comment No. 2,³⁶ gender is a critical factor that increases the risk of torture and mistreatment. This Comment also points out that among the situations due to which a woman can find herself at risk for gender reasons are acts of violence committed by private individuals in communities and households. It is then the duty of the State to prevent femicide and ensure adequate treatment of the existing cases without revictimization. The following are

36 Committee Against Torture, “General Comment No. 2”. January 24, 2008. CAT/C/GC/2.

situations and circumstances that jeopardize the guarantees of the Convention with regard to femicide in Ecuador.

7.1 Absence of official statistics on femicide and a rather small number of convictions

79. According to a penological report issued by the Prosecuting Authority's Office (FGE) in 2016 ³⁷, between 2014 and 2015, 188 violent deaths of women occurred, out of which 45 were femicides. Only 15 resulted in conviction.³⁸ When the FGE and the Ministry of Interior (MI) were requested for statistics by the Platform accompanying relatives of women killed by femicide in Ecuador –*Justicia para Vanessa* (Justice for Vanessa)– inconsistencies in the data were identified, as well as a tendency to underreport due to a poor characterization of the variables for analysis, which do not enable sizing the phenomenon in its complexity and entirety, based on ethnicity, gender identity, age or nationality of the victims and their relationship with the offenders.³⁹

80. In turn, all condemnatory sentences refer to contexts of couple and ex-couple relationships⁴⁰, which allows us to infer that, although Ecuadorian regulations on this matter handle broad definitions on violence against women, in practice the administration of justice tends to reduce the phenomenon to the private sphere of domestic violence.

7.2 Risk of femicide: the case of Martha Domínguez

81. In Ecuador, the risk of femicide is a latent reality: 6 out of every 10 women claim they have experienced some form of gender-based violence (INEC, 2012). The penological report mentioned in the preceding paragraph states that out of the 15 cases of femicide with condemnatory sentences, 13 of the murdered women suffered gender-based violence beforehand, and 3 of them reported it to the competent authority. The State was therefore unable to guarantee adequate protection measures (INEC, 2012).

The press announced the case of Martha Domínguez as follows:

"Neither the police protection order nor the panic button saved her life! To Marjorie Aguabí, the murder of her daughter was a death foretold. The constant abuse she allegedly suffered, the police protection order that was extended to her in 2013 and the panic button she got installed were the evident proof that death hovered over Martha Bezabeth Domínguez.

What she had sensed for some time and could not avoid, took place on October 27, when she was told that the body of her eldest daughter had appeared in a desolate spot,

³⁷ Ecuador, State's Attorney General's Office. National Directorate for Criminal Policy, *Femicidio. Análisis penológico 2014-2015*, abril 2016. 1st digital edition.

³⁸ *Ibid.* pág. 63.

³⁹ *Plataforma Justicia Para Vanessa* file. Applications submitted in March-June 2016.

⁴⁰ Ecuador, State's Attorney General's Office. National Directorate for Criminal Policy, *Femicidio. Análisis penológico 2014-2015*, abril 2016. 1st digital edition. *Ibid.* pág. 82.

overgrown with weeds, leading to the old municipal slaughterhouse of Balao, in the Guayas Province.”⁴¹

7.3 Negligence in due process and due diligence: the case of Vanessa Landinez

82. Along the accompaniment experience of *Plataforma Justicia para Vanessa*, in cases of femicide and gender-based murder of women –before and after femicide was typified in the COIP in October, 2013–, neglectful situations have been observed in the due processing of cases, as well as a breach of the principle of due diligence.

83. On October 19, 2013, Vanessa Landinez Ortega –a 37-year-old woman, single mother of an underage girl– was found lifeless in the city of Ambato, Ecuador. Her death was caused by obvious signs of gender-based violence. In September 2016 it will be two years since the verdict of nullity issued by the Provincial Court of Tungurahua, following the appeal of a ruling that acquitted the only defendant in this crime, whose sentence reads⁴²:

“The process has reached this stage after the Court of Criminal Guaranties of Tungurahua, located in the same canton, ratified the innocence of Esteban Mauricio Guerrero Ortiz, without having exhausted the investigation based on the initial consideration that was already outlined, and which would have widened the spectrum of the investigation. These events have also violated the rights of the victims of the offense to full reparation, including, without delay, knowledge of the true facts and restitution, compensation, rehabilitation, guarantee of non-repetition and fulfillment of the right that was violated.

It is made evident then that the events described are of relevance to the decision of the cause and constitute a violation of due process and effective judicial protection. [...] With all these considerations, it is estimated that in the case under examination, as can be evidenced, there has been a violation of due process and, consequently, of the processing of the case. The case therefore falls into the grounds of nullity referred to in Article 330 No. 3 of the Code of Criminal Procedure. The first paragraph of Article 331, *ibid.*, forces the judges who find the grounds for nullity to officially declare it.” (TRIAL NO. 2014-0150. CRIMINAL TRIBUNAL, PROVINCIAL COURT OF JUSTICE OF TUNGURAHUA. PROVINCIAL COURT OF JUSTICE OF TUNGURAHUA. CRIMINAL AND TRAFFIC TRIBUNAL. Ambato, Tuesday, September 2, 2014).

84. The case is currently in the hands of the State’s Attorney General, being investigated as homicide in its preliminary inquiry stage. Two prosecuting attorneys are in charge of the process but have not shown any signs of celerity. The femicide of Vanessa Landinez Ortega is still unpunished. Almost three years with neither criminal justice nor full repair to their families.

⁴¹ El Extra Newspaper (March, 2016). Extracted from: <http://www.extra.ec/ediciones/2016/03/16/cronica-nacional/ni-la-boleta-de-auxilio-ni-el-boton-de-panico-le-salvaron-la-vida/>

⁴² General Minutes of the TRIAL No. 2014-0150 from the criminal tribunal of the Provincial Court of Tungurahua is attached.

7.4 Conclusions and recommendations

85. From the experience of relatives gathered by platform *Justicia para Vanessa*, it was deducted there were anomalies and negligence in the criminal due process and due diligence. These could engage objective State liability in cases of femicide and revictimizing treatment, inasmuch as the public official reproduces gender stereotypes that blame women for the violence they are subjected to and cause suffering to their families, lack of access to the truth and discouragement when they follow the processes to obtain justice. Article 16 of the Convention is then contravened. Likewise, the revised condemnatory sentences ⁴³ show that full reparation was either scarce and limited or non-existent.

In the absence of reliable data on femicide, revictimization, negligence in due criminal process, and in view of the lack of full reparation, which is evident in the abovementioned, it is recommended to:

86. Create a National System of Statistics on Gender-based Violence accessible to the public, where femicide is included with suitable variables for analysis, in order to size the seriousness of the phenomenon in Ecuador in a truthful and effective way, so that it may be useful as input for public policy.

87. Implement all relevant tools to assess the risk of femicide within the *violence continuum* phase, so as to prevent femicide.

88. Expand the creation of prosecutor's offices specialized in gender-based violence throughout the country, not only in provincial cities.

89. Take all necessary measures during criminal proceedings to ensure compliance with the principle of due diligence recognized by the *Belém do Pará* Convention.

90. Develop compulsory, continuous, qualified and probative training and capacity building programs for public officials on gender-based violence, femicide, human rights of women and sex/gender diverse people affected by this type of violence.

91. Establish administrative, economic and/or criminal liability when public officials fail to fulfill their due diligence obligation at all stages of the criminal proceedings.

92. Create and implement a National Plan for Full Reparation on Gender-based Violence, including femicide, which recognizes the rights of relatives –especially the sons and daughters of victims and survivors– as direct and/or indirect victims of this type of violence.

⁴³ State's Attorney General's Office. National Directorate for Criminal Policy, *Análisis Penológico del Femicidio en Ecuador, 2014-2015*, April 2016. 1st digital edition. Analyzed sentences, pp. 61, 92.

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