

SUMMARY

National Machinery for the Advancement of Women, Legislation on discrimination against Women & Equality in Marriage and Family Relations

ECUADOR



Grupo de Trabajo por los Derechos Humanos
de las Mujeres, Niñas, Niños y Adolescentes



With the support of:



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NATIONAL MECHANISM FOR THE ADVANCE OF THE WOMAN
Paragraph 6 of the LOIPR

➤ **Authority and rank of the CNIG**

1. The operation of the National Council for Gender Equality (CNIG) is framed in the Constitution (2008), as well as in the Law of Equality Councils (2014). Concerns arise from the fact that CNIG is not part of the political spaces for high-level decision-making in the Executive. In practice, both its Organic Law and, more significantly, its Regulations, the Equality Councils were reduced in their hierarchy, functions and roles.
2. The consideration of women as a "priority care group" and their classification as victims of violence or pregnant women, for the purposes of public policy design and not as full subjects of all rights, constitutes a regression to the risk approach.

➤ **Role of the national mechanism**

3. The expansion of subjects of rights as beneficiaries of the themes of gender equality (men, LGBTIQ+ people) as established in article 8 of the Law, has generated a loss in the specificity in the guarantee of women's rights with an intersectional perspective (sexual dissidences, disabilities, age, peoples and nationalities, among others).
4. The mechanism for gender equality has a double mandate: equality for women and equality for LGBTIQ+ people. However, it works without public policy steering functions, without political technical autonomy, without political support and therefore, without budget or technical capacities enough. In practice, this has meant that the CNIG has not been able to fully comply with its mandate towards women nor LGBTIQ+ population. Moreover, its weak political position has made it difficult to mainstream it so that the governing bodies assume their specific responsibilities and their work of null observance in binding terms towards other State institutions.

➤ **Human, financial and technical resources of the CNIG**

5. The State itself acknowledges the weakening of the CNIG: "From the average codified budget of \$ 1.17 million for the CNIG in the period 2015-2019, the allocation decreased by \$ 656,341.80 USD [...] The budget cut meant the departure of 9 servants, with respect to fiscal year 2015".
6. Women's civil society point out that the development plans and territorial ordering of the decentralized autonomous governments have deficiencies in the women's agenda, in particular for indigenous and Afro-Ecuadorian women. According to the criteria of Afro-Ecuadorian women's organizations, the CNIG does not work on the issue of women of peoples and nationalities in its Agenda or in its planning. Gender mainstreaming cannot be improved without intercultural diversities and active participation of the sectoral ministries, something that in Ecuador, presents various difficulties.

➤ **Participation of the women in the performance of the CNIG**

7. There is worrying evidence that shows several presumed conflicts of interests in the appointment of counselors at the Council for Citizen Participation and Social Control (CPCCS). Under this logic and scheme, the participation of diverse women's and feminist organizations in the decision-making process of the CNIG has not been effective until now, particularly the one from indigenous, Afro-descendant and montubio women, since they have not been included in the selection of members for the CNIG's Women's Consultative Councils.

- **Critical knots**
- 8. Austerity measures executed from the State in order to reduce its size have prejudiced adjustments on health, education, social inclusion and gender mainstreaming policies, which translate into reduction in personnel and low budget.
- 9. The CNIG is not designed legally to coordinate itself with decentralized systems of protection of rights and it addresses guarantees of at least ten priority groups, saturating its capacity and reach.

Recommendations:

To the President of the Republic:

- Strengthen the institutional framework for the advancement of women: raise the institutional rank; allocate adequate budget and personnel; reformulate the conformation; delimit the subjects of rights to diverse women; recover the role of stewardship and execution of policies, guaranteeing political autonomy.
- Strengthen the decentralized structure of the institutional mechanism, in order to have teams with knowledge and technical capacities in each territory, articulating the specialized systems for the protection of rights with the Cantonal Councils for the Protection of Rights.
- Create a Specialized Council for the LGBTIQ + population.
- Guarantee the independence and autonomy of civil society members in the National Council for Gender Equality, as well as in the Consultative Committees.

To the National Assembly:

- Reform the Organic Law of the Councils for Equality, giving centrality to the subjects of rights and guaranteeing the mandatory implementation of the agenda, plans and resolutions of the Equality Councils.
- Enact a real Equality Law in order to develop the 2008 constitutional provisions.

LEGISLATION ON DISCRIMINATION AGAINST WOMAN

Paragraph 3 of the LOIPR

- **Lack of disaggregated information**
- 10. Repeated concerns arise from the fact that the State has failed to establish mechanisms for the collection of disaggregated information and continuous evaluation of the situation of women belonging to disadvantaged and marginalized groups.
- **Lack of development of a National System of Inclusion and Social Equity and of an Equality Law**
- 11. Since the approval of the Constitution of the Republic (2008), the National System of Inclusion and Social Equity (arts. 340-341) has not been developed, nor is there an Equality Law.
- **Institutional weakness of the Legislative Branch and regressive laws and regulations with poor focus on women's rights**
- 12. The Parliamentary Group for Women's Rights does not have the resources or the necessary expertise to address the needs of Ecuadorian women. In addition, the Legislative Technique Unit does not have experts on gender.
- 13. There is a clear flaw in the approval of laws and reforms with a focus on women's rights. As an example, serious cases of gynecological-obstetric violence are reported in Ecuador. INEC figures say that 48 out of 100 women felt offended, uncomfortable or humiliated by a comment or question from the doctor. Abuse increases in rural areas, where 55 out of 100 women have suffered this type of violence. The INEC

indicates that 60.4% of indigenous women, 45% of Afro-descendant women, 40.5% of Montubio women and 40% of mestizo women have suffered some type of obstetric abuse.

14. In addition, the Free Maternity Law and the Violence Against Women Law were affected or dismantled during present and past governments. Due to obscurity, ignorance or prejudice, the issues of lesbian, trans, and intersex women are not taken into account in the current discussions of the Code on Children and Adolescents nor the Health Code.

Recommendations:

To the National Assembly:

- Issue the Equality Law that includes all areas of discrimination and violence against women and girls, the institutional mechanisms and public policy (Equality Plans), as well as the corresponding financing, to be developed by the National System of Inclusion and Social equity and an Equality Law that covers as many issues as possible, including the political and cultural participation of women, as well as matters relating to economic autonomy and labor rights, among others. Carry out a codification of the current regulations and advance in urgent reforms.
- There must be an independent body that evaluates and analyzes obstacles / traps for real and effective implementation (including the approval of decrees and regulations with less guaranteeing law standards).
- Create a Permanent Specialized Legislative Commission for the rights of women and girls in charge of the new legislation and reforms on equality and non-discrimination, establishing a Legislative Agenda that prioritizes formal and substantive equality.
- Create the Gender Department at the NA to accompany the legislative process aligned with international standards.
- Strengthen the Legislative Technique Unit, with sufficient specialized advisers.
- Strengthen the Parliamentary Group for Women's Rights through resources and professionals in women's rights. Provide sufficient resources for the development of the legislative initiatives proposed in the Legislative Agenda.
- Approve the Organic Health Code in the terms that make sexual and reproductive rights effective and that takes into account the populations in the territories and the LGBTIQ + population (where the provision of contraceptive methods is required without discrimination and reproduction is regulated assisted).
- Reform the Constitution to grant the Councils for Equality the role of governing the Equality policies for the subjects of rights and repeal the constitutional prohibition of the adoption of same sex couples.
- Prioritize in the 2021-2025 Legislative Agenda the development and enactment of the National Care System Law, which includes care services for children from 0 to 3 years of age in all its modalities, older adults, people with disabilities.
- Propose legislative reforms that recover the postulates favorable to the rights of girls and women.
- Introduce the classification of obstetric violence in the COIP and the accompaniment of it with public policies that allow reducing this type of situations envisaged by CEDAW.
- Introduce the registry of obstetric violence in the information systems of the Ministry of Health and in the National Statistics, in accordance with international standards on women's human rights.
- Establish an independent specialized entity to accompany the normative construction process.

- Evaluate the gender impact of laws and public policies to verify their effectiveness.
- That the new Childhood Code take into account the best interests of the child; the recommendations on LGBTIQ childhood of the Inter-American and Universal System and the standards of the Constitutional Court of Ecuador on diverse families, homoparentality, lesbian-maternity and gender identity.

To the National Council for Gender Equality and the Parliamentary Group for the Women's Rights:

- Work together with the Academy and initiate an independent evaluation of the laws and their gender impact.
- To be a link with the Academy so that, together, the normative construction is followed up and inputs are given so that the gender perspective is taken into account in all bills.
- Incorporate civil society organizations in the drafting of laws and reforms and alert the public when regressive legislative proposals enter the National Assembly.

To the Decentralized Autonomous Governments:

- Approve regulations at the local level based on the principles of equality and non-discrimination.

To the Ecuadorian Institute of Statistics and Censuses (INEC):

- together with the respective public institutions and the Academy, they must develop disaggregated and easily accessible information.

To the Ministries of Economic and Social Inclusion, Health, Education, Human Rights Secretariat and the Ministry of Finance:

- Declare all the services of the Strategy for the Prevention of Pregnancy in Girls and Adolescents as essential services that maintain their regular operation, have the appropriate personnel and the necessary budget, even in times of pandemic.
- Prioritize the allocation of annual resources from the General State Budget for the execution of the Intersectoral Strategy for the Prevention of Pregnancy in Girls and Adolescents
- Include civil society organizations in the implementation of the mentioned policy.

To the Ministry of Public Health and the IESS:

- Carry out the public presentation and application of a comprehensive guide to care of pregnant women and prevention of obstetric violence in due time, as required by the Constitutional Court of Ecuador.

➤ ***Women with disabilities***

15. An important sector of women with disabilities are not aware of their applicable legislation and reforms in their favor. They still encounter economic or political limitations to participate in the UN Treaty Bodies. With concern has to be mentioned that women with disabilities and their families are still not involved in activities of training, participation, empowerment and protection from violence.

➤ **Girls and LBTIQ+ women**

16. The State has failed to comply with Constitutional Court mandates to reform laws that would guarantee gender identity (three years of non-compliance), same sex marriage

- (one year of default) and the regulation of a special and expedited process to investigate and punish hate crimes (three years of non-compliance).
17. As there is no Gender Identity Law, it not only complicates the exercise of the right to gender self-identification of Trans people, but there are no legal mechanisms or public policies that guarantee access to medical processes for the transition. In addition, the Organic Law on Identity Management and Civil Data does not include children who wish to access the change of gender self-identification. Eight out of every ten LGBT murders are directed at trans people. Trans women who practice prostitution still suffer the exclusion, insecurity and attacks
 18. The Ministry of Justice (eliminated by the current government), failed to comply with its 2017 commitment to develop a bill on the prevention and eradication of violence against LGBTIQ people.

➤ ***National System of Care***

19. An outstanding debt of the Ecuadorian State is the lack of a legislative framework for the implementation of the National Care System. Two specific efforts made on this issue in recent years failed to crystallize the bill.

➤ ***Inaccuracies in the July 2020 State Report***

20. The State presents as a milestone the COIP (2014), however, this one has several shortcomings in relation to abortion, femicide and violence. As well, the State presents as achievements from the government, goals that were advocated and initiated by the civil society organizations (Organic Law to Prevent and Eradicate Violence against Women).
21. The "Mandate of Amazonian Women Defenders of the Jungle Against Extractivism" (2008) has not been fulfilled and indigenous peoples continue to suffer the consequences of oil and mining exploitation.

Recommendations:

- **To the Presidency of the Republic and its state portfolios and the National Assembly:** Propose and approve regulations and public policies, the equalization of opportunities, affirmative actions and the needs related to the problems that women with disabilities must face, guaranteeing their active participation, independence and full consultation.
- Approve the LGBTI Public Policy, with emphasis on the prevention, investigation and punishment of the violent deaths of trans women. These reform projects must be presented urgently.
- **To the National Assembly:** To comply with the national and international judgments of the Constitutional Court and not to approve discriminatory procedures in the processes that try to comply with the mandates. Regarding the Satya Case, the failure of not taking into account the voluntary nature of the mother or father must be remedied and the legislation passed.
- Formulate the law of the National System of Care, based on the economic, social and legal recognition of care, unpaid domestic work and joint responsibility between men and women, as a regulatory framework for free care services for child development, the elderly and people with disabilities.
- **To the Ministries of Economic and Social Inclusion, Labor and the National Assembly:** Encourage, encourage and enact draft legislation that prevails equality between men and women in the task of care, foreseeing that this responsibility does not only fall on women.

EQUALITY IN MARRIAGE AND IN FAMILY RELATIONS

Paragraphs 21, 23 and 23 of the LOIPR

> Child marriage

22. Elevated concerns arise from the fact that, even though, marriage is only permitted after the 18 years of age, de facto unions or civil unions (recognized by Constitution and the Civil Code) represent problems in the guaranty of protection from child marriage. Although the law is clear, reality shows that in Ecuador there are many de facto marital unions with girls and this is due to sociocultural and structural patterns of violence against girls and adolescents. In addition, this issue becomes difficult to monitor and has become a problem for public organisms and NGOs.

> Property administration (in marriage)

23. In marital partnerships there are no property administrators. The law establishes the obligation to appoint only an administrator of the conjugal partnership in capitulation or at the time of celebrating the marriage. It is crucial to collect disaggregated data on the percentage of women that would be administrators of the conjugal partnership.

> Pension to the ex-spouse

24. There is no right for a pension but for alimony, maintenance or spousal support (Art. 349. 1). In the same manner, ensured should be the right for the poor spouse to receive up to one-fifth of other's assets (Art 112 Civil Code).

> About Physical Punishments

25. Serious concerns arise from the absence of a bill that would establish absolute prohibition of physical punishment and degrading treatment to children and adolescents, being only forbidden in educational institutions.

Recommendations:

To the National Councils for Intergenerational and Gender Equality:

- Include in the Equality Agendas, the National Strategy for the Prevention and Eradication of child marriage and de facto unions that explicitly include public policy goals, with territorial priorities, political commitment of government actors from different functions and state levels, allies of civil society and international cooperation.
- Investigate the phenomenon prioritizing territories with high rates of sexual violence and address the relationship between child marriage and pregnancy in girls and adolescents.
- Formulate and implement a public policy for the prevention of child marriage.
- Promote a National Plan for the prevention and eradication of any type of de facto marriage or marital union with underage girls, as well as the education and transformation of current cultural patterns in the country that promote this type of customs.
- Develop campaigns that allow the socialization of these policies at the national, regional, municipal and territorial levels through state channels, civil and non-governmental organizations.
- Carry out investigations into situations of patrimonial violence after separations.

To the National Assembly, the Presidency and the National Government:

- If a reform is proposed that includes a pension for the ex-spouse, it is essential that it is only an obligation of men with respect to women who have engaged in unpaid work

in the home, otherwise, situations of serious patrimonial violence against divorced women, many of whom have been separated by violence.

- Reform laws so that physical punishment is prohibited as a form of discipline and is punished in all settings.
- Encourage the draft Code for Children and Adolescents to include clear rules to curb and prevent corporal and verbal punishment that children and adolescents receive in the country.
- Consult children about corrections such as corporal and verbal punishment. Knowing their opinion would provide revealing data on how corporal punishment is represented and resignified directly by the victims of it.
- Provide child and adolescent family education and awareness campaigns that address the issue of physical punishment and degrading penalties for minors based on international standards.

To the Decentralized Autonomous Governments:

- Develop policies to protect the rights of girls, boys and adolescents, to prevent harmful practices and situations of gender violence against girls: child marriage, maternity and forced pregnancies, servile and forced marriage (for purposes of sexual exploitation or domestic servitude).
- Establish systematic programs aimed at changing socio-cultural patterns through educational and cultural policies, which include comprehensive sexual education among peers: sexual education among peers – adolescents and among parents – mothers who, many times, do not know how to approach sexuality.
- Strengthen the capacities of officials of the Cantonal Rights Protection Boards and policy makers on the application of international human rights standards on child marriage, so that they are translated into an adequate provision of services. This training should include the segment of the staff who serve girls, boys and adolescents in shelters, especially those who receive child-mothers.
- The programs and services of the institutions of the child, adolescent and women's protection system must incorporate devices that promote their autonomy and empowerment, with emphasis on girl-mothers (as established in the Childhood and Adolescence Code (Art. 233), so that they have the necessary tools to generate sustainable livelihoods that are consistent with their life plans: health, economic and social inclusion, justice and reparation of rights.

To the Judicial Units of Violence against Women and Family Nucleus:

- Establish effective mechanisms for reporting and monitoring cases under its knowledge and accompanying the victims.

To the National Government and the respective state entities in charge of the protection of underage girls:

- Enact a law that establishes the explicit prohibition of marriage and de facto marital union with underage girls, since it violates human and children's rights and puts their health at risk.
- Promote a National Plan and public policies that allow the prevention and eradication of any type of marriage or de facto marital union with underage girls, as well as the education and transformation of current cultural patterns in the country that promote this type of customs.
- Develop campaigns that allow the socialization of these policies at the national, regional, municipal and territorial levels through state channels, civil and non-governmental organizations.
- Offer effective participation mechanisms to women and girls in general, as well as to victims.
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To the INEC and the Civil Registry:

- In relation to socio-cultural patterns, it is vital to have disaggregated information on the percentage of women who are administrators of the conjugal society, which we believe will not be representative.
- Conduct research if the paternal line is applied or followed by default. We think that this rather symbolic subject is at the heart of what the patriarchs are not willing to compromise.