

LIST OF ISSUES AND QUESTIONS IN RELATION TO THE EIGHTH AND NINTH PERIODIC REPORT OF ECUADOR (2008-2012) TO BE PRESENTED TO THE CEDAW COMMITTEE AT THE 60TH SESSION¹

Article 1, Nondiscrimination

Secular State - Secular Ethics

The implementation of the constitutional guarantee of a secular state and secular ethics has many weaknesses in the everyday life of Ecuadorians; on the one hand, the increasing incidence of anti-rights groups in presidential decisions and the disciplining imposed by the Executive on legislators, policy makers and operators in relation to different regulations and public policies; at the same time, public servants, especially in the areas of health, education and justice have become conscientious objectors on issues of justice and equality (abortion, sex education, teen pregnancy, contraception, sexual violence).

It is increasingly evident that religious moralism prevails over the mandate of protection of the people's human rights within the political behavior of legislators, policy makers and operators. This moralism and religious interference cause discrimination against women in the enjoyment of fundamental rights.

De-homosexualization clinics

The State's Political Constitution, in Article 11, paragraph 2, establishes the equality and non-discrimination of persons on any grounds, including sexual identity. Although the Ministry of Health recognizes that there is no exact information, it is estimated that there are 314 de-homosexualization clinics in the country. The Ministry of Health, together with the State Prosecutor, has made progress in this area by intervening in four centers in 2013 and carrying out three control operations in 2014, nevertheless, the majority of centers continue to operate with impunity and others reopen with the same objectives but with a different legal status. There is no tracking which allows for the complete disappearance of these centers that violate the rights of people with different sexual identity and orientation, thereby becoming crimes of hate and torture. The rights violations are involuntary confinement through the use of force, manipulation or deception, denial of communication, evidence of physical, psychological and sexual abuse, the subjugation of the will through manipulation and deceit in order to obtain obedience or submission, and denial of access to health services.

Questions:

¹ This list of issues has been prepared by a coalition coordinated by the Plataforma Nacional por los Derechos de

What sanctions did the Ecuadorian State impose on the owners and managers of de-homosexualization clinics, since this is a hate crime and a crime of torture?

What permanent monitoring and follow-up mechanisms have been developed by the Ecuadorian State so that these centers cease to exist and are not reopened?

What steps has the Ecuadorian State taken for the victims of the de-homosexualization clinics once they have been released and are rejected by their families?

Article 2, Obligations of States

Mechanisms for the Advancement of Women

The long institutional transition process from 2009 to date, has weakened public institutions related to gender equality at the central and local level; in this period, the Equality Council's Transition Commission has seen its technical, policy making and budgetary capabilities reduced. This has affected not only the non-issuance of the Law on Equality Councils and the emerging application of the Código Orgánico de Ordenamiento Territorial (law on local governments planning and budgeting), but the consequent lack of institutional arrangements and budgets that would allow for compliance with the constitutional mandate of creating and implementing protection systems to those subject to specific rights: women, children, adolescents, youth, seniors, people with disabilities (Articles 70 and 341).

The strategy of "mainstreaming the gender perspective into all public institution policies, programs and projects" mentioned as an achievement of the Ecuadorian State by the Universal Periodic Review is faced with a lack of political commitment to gender equality by public policy decision-makers and operators and the lack of capacity in state institutions. Since there is no specialized agency, as provided for in Article 70 of the Constitution, the implementation of systematic public gender equality policies is difficult and the mainstreaming strategy has not been widely implemented, which has meant that the benefits in the lives of women are not conclusive and instead setbacks occur.

The weakening of gender specialized institutions in sectoral ministries and the mainstreaming strategy are based on the conceptualization of universal rights, which exempts the state from the need to implement affirmative action policies, contrary to Article 11.2 of the Constitution. For example, "health and assurance is for everyone" so a program of Free Maternity and Child care is not required.

The Law on Equality Councils passed in June 2014, creates 5 Equality Councils: gender, inter-generational, peoples and nationalities, disabilities and human mobility; it is not based on the recognition of the equality of the subjects of specific rights: children and adolescents, youth, women, indigenous peoples and nationalities, African descendants, seniors, persons with disabilities, but it adds them under common categories and in this regard it contradicts the spirit and constitutional mandate which guarantees the specific rights of all persons without discrimination. For example, the Gender Equality Council includes the equality of women and persons of generic gender diversity.

This overly technocratic conceptualization of institutionality blurs the sense of institutionality for the comprehensive protection of rights and establishes a false dilemma between mainstreaming versus specific policies for the subjects of rights.

The lack of inter-sectoral coordination is evidence of the absence of gender equality policies and mainstreaming strategies; we cite as examples the National Family Planning Strategy – ENIPLA (for its initials in Spanish) which is based on inter-sectoral coordination between the Ministries of Health, Education and Social Inclusion and the National Plan for the Eradication and Gender Violence towards children, adolescents and women, a strategy which is not complied with in either of the two cases.

Questions:

Does the Ecuadorian State have gender mainstreaming policies and strategies in public institutions which effectively guarantee the rights of women, girls and adolescents?

Why have the gender mechanisms in sectoral ministries: Interior, Education, Labor Relations, Finance and Health, seen their powers, functions and hierarchy weakened and their budgets reduced?

Budget for public policies

According to the Official Report of Ecuador to the CEDAW Committee (December 2012), the amounts for projects aligned to gender equality policies "for 2010, were reported to be 8,365,843.60 dollars in the K function, which represents 0.04% of the total amount of the General State Budget (PGE for its initials in Spanish), which for that year amounted to \$ 21,282,062,278.62 dollars. In 2011, the budgetary allocations that were recorded in the K function amounted to \$ 31,441,125.35, which corresponds to 0.13% of the total PGE amount, which for that year was 23,950,249,957.03 dollars. Finally, for 2012 the budget allocated for projects aligned to gender equality policies was 1,363,743,747 dollars, which is equivalent to 5.07% of the total budget, which was \$26,916,000,000 dollars. "

As reported in the Official 2012 Report, more than 50% of this figure corresponds to National Police records in the "Promoting Gender Equity in Accountability" category. When comparing the total amount of such records with the entity's budget for that year, it appears that over 60% of the expenditure would have been executed in projects aligned to gender equality.

According to Article 99 of the Finance Code "the State Budget pro forma should contain income and expenditure justifications as annexes, as well as estimates of: tax expenditures, subsidies, pre-assignments, contingent liabilities, expenses for closing equity gaps, among others. "

In the expenditure classification by function, the categories for the registration of resources aimed at eliminating gender gaps are adequately reflected.

Questions:

Request that the Ecuadorian State explain why the functional classification reports are different from reports derived from the spending guidance catalog? And, what programs, projects or activities aimed at eliminating gender gaps relate to the amount of 1,363,743,747 in 2012?

On the other hand, the figure stated in the report differs from the amount that is found on the Ministry of Finance's website, which is U.S. \$ 2,486,231,081.94. Nevertheless, when analyzing the amounts recorded by category, the assessment is similar to that noted.

Article 1, Nondiscrimination

Article 2 Obligations of States, section c

Right to a life free of violence

The State's Political Constitution recognizes the right to a life free of violence in the public and private sectors. This right arose with the creation of the Commissariats for Women and Families (1994), under the Ministry of Interior. As of the judicial reform (2012), the 38 Commissariats were replaced by violations courts. Between July and September of 2013, 28 Violence Against Women and Family Units (UVMF for its initials in Spanish) began to operate in 24 counties of 18 provinces. The national commissariats and political agencies which formerly heard cases of violence and administered justice have disappeared or no longer have the power to do so. According to information from the National Judicial Council, as of June 2014, there are still 58 counties, out of a total of 221 counties, in which there is no judiciary agency that addresses these cases. Women victims of violence in rural areas and outlying counties have been completely defenseless.

Question:

What measures has the Ecuadorian State adopted to guarantee the right to a life free of violence for women in remote rural counties and parishes?

Comprehensive Rights Protection System

The modification of the system of protection of the rights of children and adolescents, the recent approval of the Law on Equality Councils, the changes in jurisdiction, judicial reform, the instability and lack of operation of the National Plan for the Eradication of Gender Violence toward adolescents, children and women, have negatively affected the adoption of prevention, protection and restoration of rights policies for victims of violence and in the institutionality of the protection system. According to the National Survey of Family Relations and Gender Violence against Women, 6 out of 10 Ecuadorian are victims of violence, 87% of them by their spouse. This situation occurs most often in the indigenous and Afro-Ecuadorian population, with 67.8% and 66.7% respectively. Violence is widespread in different quintiles of the population, exceeding 50% in all cases (Quintile One: 59.4%; Quintile 5: 55.6%).

Although the state manifests the development of various activities within the National Plan for the Eradication of Gender Violence, these are scattered, uncoordinated and inadequate, which impedes the achievement of the goal of eliminating gender violence against adolescents, children and women.

Questions:

What measures has the Ecuadorian State adopted to guarantee the functioning of a comprehensive and effective rights protection system which provides care and restores the rights of the victims of physical, psychological and sexual violence?

What policy, institutional and monitoring mechanisms have been adopted by the National Plan for the Eradication of Gender Violence's Coordination Secretariat in order to determine compliance with its goals?

What Ecuadorian state agencies are available for citizens to denounce violations of the right to a life free of violence?

Care Centers and Shelters

Since 2008, the Ecuadorian government has undertaken the "Strengthening Care and Protection Centers for children, adolescents and women who are victims of domestic violence and / or sexual abuse and sexual exploitation" project, which it supports through the payment of technical teams in the women's care centers and shelters as well as support for feeding women. Until 2012, the Ministry in charge of the project was the Ministry of Economic and Social Inclusion (MIES for its Spanish initials). On November 30th, 2012, MIES signed Inter-ministerial Agreement No. 003, through which power over the project and its resources were transferred to the Ministry of Interior. In 2013, through Executive Decree 1522 (Annexes 3, 4 and 5), the powers were transferred this time to the Ministry of Justice. Despite the approval of the Coordinating Ministry of Security and SENPLADES for transfer of resources to said agency, as of June 2014, no agreements have been signed nor have the funds to operate the project been given. Two of the 6 Shelters have closed, as well as various victim care centers.

Questions:

How can the Ecuadorian state explain that power over the "Strengthening Care and Protection Centers for children, adolescents and women who are victims of domestic violence and / or sexual abuse and sexual exploitation" project has been transferred from one institution to another, hampering the operation of shelters and care centers and putting more women in critically violent situation at risk?

What measures has the State taken to enforce the prevention, treatment and eradication of violence against women and girls policies as established in the National Plan for the Eradication of Gender Violence towards children, adolescents and women?

Femicide

Femicide is a growing phenomenon in the country and the world. Ecuador has a rate below 5 per 100,000 women, which places it alongside countries with relatively lower rates, with it being considered moderate. Nevertheless, this fact alone does not guarantee that this situation will continue, even in the short term. According to the report on the issue done by the Transition Commission, the country is still in a position to prevent an escalation of violent deaths of women due to their gender, which is ever growing in more and more countries in the region. According to the study, it is concerning that most female homicides are femicide. 62 deaths have been confirmed as femicide, while in 13 cases it is suspected to be the cause. Of the documented cases, only five went to trial and only three served out their sentence. The Legislature, while developing the new Integral Criminal Code, accepted the inclusion of femicide in its articles, due to a proposal from the women's movement.

Questions:

What measures has the Ecuadorian State adopted to prevent the occurrence of femicide?

What statistical information mechanisms has the Ecuadorian State developed to register and investigate cases of femicide?

What protocols and mechanisms has the Ecuadorian State developed in order to investigate and punish cases of femicide?

What measures has the Ecuadorian State taken to eliminate impunity in cases of femicide?

Access of indigenous and afro-descendant women to justice

The Constitution establishes in Article 57, paragraph 10, "Create, develop, implement and practice their own or common law, which may not violate constitutional rights, particularly of women, children and adolescents", and Article 16 guarantees intercultural communication in their own language, in all areas of social interaction. Moreover, Article 171 states that the authorities of indigenous communities, towns and nations will exercise jurisdictional functions based on their ancestral traditions and their own right, within their territory, with women's participation and decision making being guaranteed.

Indigenous and Afro-Ecuadorian women emphasize that violence continues with impunity; sanctions are avoided or are ineffective both in the ordinary justice system as well as the community (original) one. In the latter, indigenous women are the most affected by the lack of compliance with this constitutional provision, since many of them are not bilingual and only speak their ancestral language. Indigenous justice is not working in many parts of the country and has contradictions with the ordinary administration of justice.

Questions:

What measures has the Ecuadorian State adopted to provide access to justice for indigenous and Afro-descendant women, and to improve the effectiveness of judicial outcomes?

What mechanisms has the Ecuadorian State adopted to facilitate the access to justice in their own language of women from indigenous peoples and nationalities?

Art.2, paragraph d and f

Violation of the rights of female relatives of Persons Deprived of Liberty (PDL) within the framework of the Prison System's transition

The transfer to new regional prison centers closes the circle of the criminalization of poverty. While new facilities were inaugurated which seek to alleviate prison overcrowding, the new regime involves massive violations of the rights of persons deprived of their liberty, which has led to numerous protests that have been silenced. The impacts affect not only the PDL but also the mothers, daughters, spouses, who watch as their rights retreat in the following aspects: the reduction of the hours, frequency and number of visits per prisoner; the widespread ill treatment visitors receive by prison personnel and police who push, shout, threaten, insult, make innuendos or jokes; anal and vaginal cavity searches of relatives, including children; conjugal visits which are required to be undertaken during limited times and at inappropriate sites; women are manhandled in an especially immodest manner, being humiliated and hearing jokes concerning their sexuality, without respect for the intimate bond between couples.

Questions:

Has the Ecuadorian government implemented measures to eliminate the personal and intimate searches carried out on visitors, so that their physical, psychological and sexual integrity is safeguarded?

What measures has the Ecuadorian State adopted to offset the damage and guarantee the rights of the PDL's family and friends?

Why has the Ecuador State prioritized security measures over the guarantee and promotion of human rights?

Article 7, Political Participation

Regulating the operation of civil society organizations

In the context of a strong and all-encompassing State project which restricts freedoms, weakens social organizations and is marked by the criminalization of social protest, Decree 16 is the legal tool used to limit and establish rigid and discretionary controls on the authority of civil society organizations (CSO) in their operations. Added to this fact is that there are fewer international cooperation resources and that it is state policy to limit the

implementation of cooperation agreements between CSOs and state institutions, ignoring and invalidating the role of civil society, organizations and social movements.

Within the framework of the regulation of the operation of civil society organizations, in June 2013, the Executive issued Decree 16, against which, the Civil Society Confederation, which brings together over 300 CSOs, issued a statement in which it states that the instrument violates fundamental rights guaranteed in the Constitution:

1) The right of association, participation and willfulness to participate in a CSO: the decree determines that CSOs are required to accept members that, due to their residence in a particular jurisdiction or possession of a particular employment, institutional, union, occupational or professional quality, directly related to the nature and / or purpose of the organization, have a legitimate interest in participating in it.

This provision violates the right of individuals to associate with others of their choice, and puts CSOs at risk of being subject to hostile actions by people who claim to have "legitimate interests" in joining the organization.

2) Discretion and disproportionality in the dissolution of CSOs: the grounds for dissolution of CSOs which are included in the Decree are discretionary, to the point that might be used to justify the dissolution of an organization based on the participation of its members in a public act, for example, a temporary interruption of traffic.

3) Discretion in the State's reporting requirement for CSOs: instead of promoting State transparency and accountability to the citizens, Decree 16 has discretion with respect to access to information by the authority.

In the case of women's organizations that have legal status, as well as for many CSOs, the new operational standard stipulated in Decree 16 involves continuous investment in the development and maintenance of software, accountability and operational systems that are obstacles and impediments to their permanence.

Questions:

How does Decree 16 affect the autonomy and sustainability of women's organizations that promote their rights?

How does Decree 16 facilitate the participation of autonomous organizations in the formulation of public policy for the full exercise of the rights of women?

Parity

The Quota Act (2000) and the right to parity guaranteed in the Constitution (Art.65, 2008) have enabled a significant increase in women's political presence in decision-making, although there is still a significant gap between women candidates and elected officials; parity in appointments is still a challenge to be met. In the case of elections to collegial bodies, the greatest presence of women is in the National Assembly (2013 38.2%) and their

participation is lower at the local level (about 25% as of 2013); several factors related to the political electoral system affect this fact: the parties are generally headed by men, the size of the parties, the electoral strength of political organizations, the method of allocating seats by majority (Hont method) and voting among parties. In the case of single person elections, the situation has not changed since there is no mandatory standard; this shows that cultural change in the political system is untouched and what counts is the enforcement of legal obligation.

In the collegiate bodies of appointments, partial parity has been implemented, prioritizing the representation of men; the exception is the Presidential Cabinet (33.6%), which integrated more women without an express regulation to do so.

Two of the major constraints faced by women in decision-making levels are: 1) the ability and responsibility to act in the interests of women, a group with which they share a situation of discrimination and subordination derived from their position in the gender order; 2) the patriarchal and misogynistic culture in both political parties and movements and institutional structures, the same that is expressed in high levels of political gender harassment and violence.

Questions:

What strategies has the State planned to solve the shortage of women in positions when parity is mandated in the constitution?

What has been the impact of the increased number of women in elected office and appointments in the issuing of legal regulations, public and budgetary policies in the agencies responsible for the full exercise of the rights of women and gender equality in Ecuador?

What steps has the State implemented to prevent, punish and eradicate harassment done by civil servants, political parties and movements against women in decision making positions through elections or by appointment at national and local level?

Art. 12, Health

Art. 16, Marriage and family, paragraph e

Sexual and reproductive rights

Sexual violence and abortion information

Ecuador still has high mortality rates due to unsafe abortions, with this being the second leading cause of maternal mortality and primary cause of maternal morbidity.

Abortion is still illegal in Ecuador. The new Integral Criminal Code continues to criminalize abortion in cases of rape, despite the recommendation of both the CEDAW Committee in 2008, as well as the ICESCR Committee in 2012. INEC's National Survey of Family Relations and Gender Violence against Women (2010) indicates that one in four women has

experienced sexual violence; according to figures from the General Prosecutor's Office, there have been 961 reports of girls under 14 raped in 2013 and according to the 2013 SENPLADES Atlas of Inequalities, it is known that 380,000 women have been raped or have had forced sex, a fact which occurs 80% of the time in the family or with those closest to the victim. In this context, forced pregnancy resulting from rape constitutes a public health and social justice problem, since the interruption of pregnancy is illegal, women are forced to have abortions in unsafe conditions. A greatly concerning indicator is the increase of pregnancy in girls between 10 and 14 years over the past 10 years which has reached 78%.

Ecuador has no information on the situation of women who die from abortions performed in unsafe conditions; however, it is known that the existing sub-record is above 50%, which expresses a serious flaw since corrective action cannot be taken if there isn't a full understanding of reality.

According to the Hippocratic Oath, doctors have the duty to maintain professional secrecy, but, on the other hand, the new Criminal Code establishes in Article 422, paragraph 2, the duty to report "health professionals in public or private institutions who know of the commission of an alleged offense." This contradiction opens the door to the discretion of physicians or medical personnel, and their own religious values also have an influence.

7 women are known to have been denounced and criminalized by the Ecuadorian health system for seeking help when presenting situations of abortions in progress. This situation is worrying in a country in which the interruption of abortion is illegal. Criminalization may scare women away from emergency health care which is vital for life, and this constitutes a flagrant violation of their right to life and holistic health, rights that Ecuador has enshrined in its Constitutional Charter.

Questions:

Why doesn't the State review its decision on the illegality of abortion in cases of rape, given the dire reality of sexual violence and rates of mortality and morbidity?

Considering that the new Criminal Code ratified legal abortion on two grounds, why hasn't the Ecuadorian State promulgated health system protocols and standards of care in cases of therapeutic abortion and abortion due to the rape of women with mental disabilities, so that women in this situation can make use of this possibility and their rights are not violated?

What measures has the Ecuadorian government adopted to prevent women who need emergency care in abortion situations from being criminalized and imprisoned?

What measures has the Ecuadorian State adopted to improve the National Health System's information system in order to have a true understanding of the deaths of adolescents and adult women due to abortions performed in unsafe conditions?

Article 13 Economic and social benefits

Economy

The Ecuadorian Constitution is based, among other things, on the principle of *sumak kawsay* or good living, which proposes harmonious coexistence with nature, seeks to ensure national sovereignty and promotes and protects cultural diversity (art. 276); these principles also support the National Plan for Good Living 2013-2017, which is the main planning tool for public institutions at central and local level.

Although the Ecuadorian government proposes a development model focused on human beings, measures have been adopted which respond to an extractive economic model, which violates the collective rights of peoples and nationalities living in the areas affected by oil exploitation and mining, harms the community economies that depend on agricultural products and decreases the quality of life of women who are those who work the land, care for animals and children, and in short, sustain life.

The phenomenon of the feminization of poverty in Ecuador has slowed in the last five years. However, according to the Inequalities Map of the National Planning Ministry, there are still significant gender gaps. While there is a decline in underemployment, both among the economically active male and female populations, inequality persists. At the end of 2005, the percentage of underemployed women was 9 points higher than that observed among men and in 2011 this rose to 10 points. Regarding the salary issue at national level, women on average earn 14% less than men; however in the rural area this difference is over 27%. Another problem that affects the feminization of poverty is the high rate of teenage pregnancy. According to INEC, "17.2% of adolescents aged 15 to 19 are mothers, this means 172 out of every 1,000 adolescents and poorer, less educated, rural and indigenous groups have higher fertility rates."

Questions:

What policies has the Ecuadorian State adopted to address the feminization of poverty?

Do the National Strategy for Poverty Eradication, approved by the National Government, and the Productive Matrix Transformation Strategy mainstream the gender focus in their goals? What specific policies and programs for gender equality emerge from these strategies?

What is the exact state of the process of developing satellite accounts for women's unpaid work?

How is the Care economy conceived of in the Productive Matrix Transformation Strategy, considering that it supports the economy as a whole?

Has the Ecuadorian State provided for environmental and social contingency programs within the framework of projects to exploit natural resources such as in the cases of Intag (Imbabura province) and Yasuní (Amazon)? If so, do these programs incorporate specific actions to address the precarious living conditions of women in those territories?

What is the role of peasant farmers and food sovereignty in the productive matrix?

Social benefits

The Human Development Voucher (BDH for its initials in Spanish) is the most important special protection policy of the current government. Direct monetary compensation is given to the poorest families, with the woman being the recipient; the BDH is \$50 a month. In the same vein, the State also gives the Housing Voucher; however, there are important limitations for the poorest women since they must present requirements such as property titles in order to access this benefit.

Questions:

Does this program have a gender component aimed at empowering women? Have there been any recent program evaluations?

What measures have been adopted in order to ensure that the most vulnerable women, such as women who are heads of households, and women who have suffered violence, have access to decent housing?

Have measures been taken to ensure that housing is adequate and decent, considering, among other things, ethnic-cultural and climatic peculiarities and family typology?

Quito, Ecuador
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