







**Violation of the Economic, Social and Cultural Rights of Women and LGBTI Persons in Ecuador**

**Report submitted to the**

**Committee on Economic, Social and Cultural Rights**

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**Submitted by:**

* **TCM - Taller de Comunicación Mujer**
* **Centro de Apoyo y Protección Surkuna**
* **Akahatá – Equipo de trabajo en sexualidades y géneros**
* **Synergia - Initiatives for Human Rigths**
* **SRI – Sexual Rights Initiative**

TCM/Taller de Comunicación Mujer; Centro de Apoyo y Protección Surkuna; Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia – Initiatives for Human Rights; and the SRI – Sexual Rights Initiative; are honored to submit this report to the Committee on Economic, Social and Cultural Rights with the aim of assisting the Committee in reviewing the implementation of the International Covenant on Economic, Social and Cultural Rights by the State of Ecuador regarding women and LGBTI persons.

**Suggested issues**

**Economic, social and cultural rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons**

**Regulations, institutions and budged for equality and non-discrimination on the grounds of sexual orientation and gender identity**

**Article 2.2**

1. The existence and persistence of hate acts, discrimination, exclusion and violence against women and LGBTI persons in Ecuador is of concern, because they affect the enjoyment of their economic, social and cultural rights both in a direct and an indirect way. The State has failed to adapt its internal legal framework as a whole to put it in accordance with the principle of equality and non-discrimination on the grounds of sexual orientation, gender identity or expression as mandated in the Constitution and in international standards. It has not carried out direct actions to properly sanction concrete violations, nor has it promoted intersectionality in its own institutions. The State has failed to establish a budget adequate to close the social gap. It has been far from activating compensation mechanisms for severe violations of rights.
2. In February 2018, the National Assembly passed the Comprehensive Organic Law to Prevent and Eradicate Violence Against Women (LOIPEVM, by its Spanish acronym). Among other things, this law creates an Early Alert System to detect risks of femicide and a protection system that includes protective measures in cases of gender violence which add to the ones already established by the Comprehensive Organic Penal Code (COIP, by its Spanish acronym). However, none of those mechanisms, nor the law, take into account sexual orientation, gender identity or expression as factors increasing the risk for femicide and other kinds of violence.
3. While in the COIP the statutory crime of femicide is against a woman for the mere fact of being one or for her gender condition, the LOIPEVM address the issue in a very general approach, using expressions such as *“women in their diversity”* but failing to adjust to international standards to address gender violence. The reason for that is the political influence gained by conservative, fundamentalist and anti-rights groups in the National Assembly and other political arenas, who have been able to set back the legal framework of human rights in the country using the rhetoric of “gender ideology” and relying on a monolithic idea of gender[[1]](#footnote-1).
4. The institutions supposed to protect and guarantee economic, social and cultural rights in the country are facing severe lacking of funding[[2]](#footnote-2) and structural difficulties. The Ministry of Justice, Human Rights and Religious Affairs was recently dissolved and a Secretary of Human Rights was created, cutting down its executive capacity. The same applies to the Nacional Council for Gender Equality, which should create public policies for the LGBTI population. In no case do the regulations, the institutional policies nor the budget include any specific approach to sexual and gender diversity in the country, allowing for equal access to health, education and the job market.

**Recommendations**

**The State of Ecuador should:**

1. Make any necessary efforts to include the principle of equality and non-discrimination on the grounds of sexual orientation, gender identity and expression in a harmonic way in all regulations aimed at preventing, sanctioning and eradicating gender violence.
2. To explicitly include the LGBTI population in equality public polices in an intersectional way, widening institutional outreach and training civil servants so they can address the needs of this population and are capable of guaranteeing the protection of their economic, social and cultural rights, with a budget sufficient to fight discrimination, exclusion and violence hampering LGTBI persons access to work, education and health.

**Violation of women’s right to health due to criminalization of voluntary pregnancy termination.**

**Article 12**

1. The Ecuadorian law considers abortion a criminal offense[[3]](#footnote-3), and therefore women who decide to terminate a pregnancy are punished with 6 months to 2 years in prison.
2. Abortion criminalization exposes women to unnecessary risks, because it leaves clandestine abortion as the only alternative. It also violates State commitments to guarantee decent life conditions, including women’s right to the highest possible level of physical, mental and social wellbeing. In addition to that, in turning a right into an obligation, it makes reproduction a disproportionate burden and creates inequality between men and women, which becomes worse in unfavorable social contexts and socio-economic situations.
3. Bearing to term an unwanted pregnancy is a heavy burden, made worse in the case of impoverished women, young women, poorly educated women, women from indigenous nations and peoples and women with few material, social and cultural resources, because they are the ones with the highest chances of turning to a clandestine abortion[[4]](#footnote-4).
4. Raped women who are not mentally disabled cannot access to the legal termination of pregnancy in Ecuador, and they are forced to become mothers as a result of rape. It should also be taken into account that the sexual violence suffered by those women, adolescents and girls has an ongoing effect on their health and life project, stemming from the emotional impact of violence, guilt, lack of support, hiding and stigma[[5]](#footnote-5). Several research reports found that about 10-15% of raped women end up pregnant[[6]](#footnote-6).
5. Women arriving at health services seeking attention for incomplete, ongoing or delayed abortions or for home childbirths are treated like criminals and denied access to post-abortion integral health care and to care for obstetric emergencies. In most cases, there is no way to know whether those obstetric emergencies were spontaneous or provoked, but in spite of this many health professionals violate their duty to professional secret and report these women, violating their right to be assumed innocent, to health and to confidentiality during health care.
6. Even in cases when their life is at risk, it has been reported that many times women are forced to declare in hospital as a requisite to access health care. In a similar way, they are subjected to waiting for a long time before they receive care, because the medical services wait until prosecutors and forensic doctors give authorization for the procedure, in spite of the risk to the woman’s health or even to her life that such delay may pose[[7]](#footnote-7).
7. Although the Comprehensive Organic Penal Code (COIP) establishes abortion is not a crime when the pregnancy is the result of rape of a mentally disabled woman, the State does not guarantee the rights of mentally disabled women who get pregnant as a result of rape. Regarding this issue, first of all, there is a lack of proper public policies to know the economic and social contexts faced by women with disabilities[[8]](#footnote-8). Second, there is a systematic denial of women’s right to access a legal abortion: no information is provided to them regarding this possibility, so they are prevented from making informed choices. When women request this service, either it is denied to them or it is not provided in a timely way[[9]](#footnote-9). Third, the affected person’s capacity to consent to an abortion is eroded because in the Guideline for the clinical procedure of therapeutic abortion it is established that consent must be signed with a family member[[10]](#footnote-10). This rule is against international standards and constitutes a vulnerability factor, because it often allows decisions over women’s reproductive lives to be taken by their sexual attackers.
8. Although the law (COIP) does not establish disability grades to grant access to abortion, its regulation does, violating the rights of mentally disabled women who have less than a 40% of disability and who want to access to abortion.

**Recommendations**

**The State of Ecuador should:**

1. Adopt any necessary measures and implement the relevant laws to decriminalize voluntary termination of pregnancy for women, girls and adolescents, in any situation when they request it, without the procedure meaning taking the cases to court.
2. Implement any needed law and public polices to guarantee the right to comprehensive health care, including confidentiality for women in obstetric emergencies as well as due observance of professional secret by health providers.
3. Adopt proper measures to sanction health providers who violate their duty regarding observance of professional secret and their duty to perform the voluntary termination of pregnancy in the cases provided by the Comprehensive Penal Code.
4. Take urgent measures to prevent the violence entailed in taking to court cases of obstetric emergencies, where there is an attempt to get declarations from women who are in a clear state of vulnerability.
5. Modify the regulation of the Comprehensive Organic Penal Code, as well as the Guideline for Therapeutic Abortion (2015), to remove restrictions preventing women with disabilities to make choices about the voluntary termination of pregnancy, and with the aim of preventing the intervention of perpetrators when a rape was committed.

**Pathologization and violation of the right to health of the LGBTI population on the grounds of gender identity or sexual orientation**

**Article 12**

1. The existence and ongoing operation of rehabilitation centers and facilities for the treatment of addictions where LGTBI people are illegally, involuntary committed with the purpose of modifying their sexual orientation or gender identity is very worrying. These practices are called “de-homosexualization therapies” and have been denounced by Taller de Comunicación Mujer both at the national and international level since 2001, when the first cases were known.
2. These practices entail forced involuntary commitment, promoted and funded mainly by family members, especially fathers and mothers who pay for such services in centers for the treatment of addictions, most of them privately owned. Human rights are systematically violated in those institutions, perpetrating crimes such as forced pathologization of LGBTI identities; kidnapping through involuntary commitment; physical, psychological and sexual violence; acts and practices violating the right to health and to personal integrity.
3. The Ecuadorian legal and institutional framework that should regulate and control centers for addiction rehabilitation shows contradictions and gaps that have prevented these practices to be eradicated[[11]](#footnote-11). The Organic Health Law[[12]](#footnote-12) only establishes administrative penalties for those health services failing to abide by the rule[[13]](#footnote-13). When there are acts that amount to criminal offenses, it mandates to act *ex officio* to give notice to the relevant authority[[14]](#footnote-14). However, often this procedure is not followed and when it is, it does not result in concrete and adequate sanctions.
4. There are currently no precise data available about measures to ensure de-homosexualization practices have ceased to be performed in the addictions treatment centers. When LGBTI persons have been or are suspected to have been involuntary committed, their disappearance or kidnapping has been reported by their lovers and friends but those reports where not taken seriously by the authorities. Even when habeas corpus requests were entered, the State has failed to act, in spite of this kind of practices having been qualified as torture in the Comprehensive Organic Penal Code (COIP).
5. A systematic practice on the part of justice officials in the cases of this kind of crimes and rights violations has been not to receive filings and to deny that they were true. Prevailing bias and stereotypes prevent them to be considered crimes, because according to cultural ideas, family is acting for the benefit of the victim in their attempt to normalize the sexual orientation of some family member[[15]](#footnote-15).
6. When presenting several reports and in the sessions carried out in compliance with its international duties, the State has claimed to have specifically prohibited de-homosexualization practices and, consequently, to have closed down the centers where those practices were performed[[16]](#footnote-16).
7. Taller de Comunicación Mujer has sent letters to the Office of the General Prosecutor of the State, to the Ministry of Public Health and to the Judiciary Council to verify what the State has claimed before –among others– the International Committee on Civil and Political Rights; the Committee Against Torture; and in its Universal Periodical Review. Until now, it has not been possible to access to reliable information supporting the State claims. For this reason, the organization (TCM) has entered and Action to Access Information[[17]](#footnote-17), because of the flaws and inconsistencies present in the biased and incomplete answers given by the above mentioned public entities.

**Recommendations**

**The State of Ecuador should:**

1. Adapt and modify the national legal framework regarding right to health with the aim of eradicating gaps and inconsistencies that prevent discriminatory practices to be sanctioned and eradicated, especially so-called “de-homosexualization practices” performed in health centers for the treatment of addictions.
2. Implement the necessary mechanisms to guarantee the eradication of “de-homosexualization practices” from all health facilities across the nation.
3. Carry out awareness campaigns aimed at the whole population to eradicate discrimination and the resulting exclusion based on sexual orientation, gender identity or expression and implement any necessary measures to eradicate pathologization practices and hate against LGBTI people in the field of health care.
4. Publicize documents backing the information reported to several international bodies to make public what had happened to the victims of “de-homosexualization” rescued during the regulation and control inspections as well as the sanctions imposed on the intervened centers and on those responsible for the violations.

**Appendix**

**Violation of the economic, social and cultural rights of women and LGTBI persons in Ecuador**

**Report submitted to the**

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**Note 1**

According to statistics, women who suffer the worst complications of abortion in Ecuador are the most impoverished ones, who attend public health services and carry on unwanted pregnancies, reinforcing a “circle of failure and female poverty” (Romero, 2001). This circle of failure and poverty is the consequence of a complex structural scheme of social, economic, cultural and political factors that consolidate inequalities through an ongoing social and ethical devaluation and economic and cultural uncertainty of women and the feminine in the patriarchal system. So, all these factors together contribute to support a system that structurally and systematically makes the lives of women harder, especially regarding the opportunity to build a life project and to achieve goals and objectives.

Maternal mortality is of 15.6% in Ecuador and is the third death cause in the country. The National Plan for Sexual and Reproductive Health 2017-2021 notes that: “the majority of deaths occur among women from rural areas or those who live in the impoverished urban margins, many of which lack basic services and environmental sanitation, proper access routes and educational facilities.”

The figures, showing abortion is a life risk issue in women’s lives, demonstrate the need to decriminalize abortion. In 2015, according to the Yearbook of Beds and Hospital Leavings produced by the National Institute for Statistics and Census of Ecuador, there were 31.302 hospital leavings related to abortion. Ten maternal deaths did also take place during 2015, a result of the risks involved in clandestine abortion or due to the lack of timely assistance when women get to health services with ongoing, incomplete or delayed abortions.

**Note 2**

Regarding the decision about whether or not to continue a pregnancy resulting from rape, a research by Távara et al. showed 50% of women choose to terminate it. In another research conducted in Colombia in a center serving women who have been victims of rape, 63% of a total of 121 women terminated pregnancy. Finally, “research shows 50-60% of pregnant adolescents have a background of having been physically or sexually abused”. In addition to that, it should be noted that many adolescents attempt abortion when pregnancy is well advanced, when the risk for complications is higher.

**Note 3**

Taller de Comunicación Mujer, the Centro de Apoyo y Protección de Derechos Humanos- Surkuna (Center for Support and Protection of Human Rights-Surkuna) and Fundación Pakta, among other organizations, have confidential records of several cases in which attention has been delayed in more than 12 hours.

In case 17282-2017-02055, of María A., who is under arrest since May 2016 under charges of murder because she had a home childbirth, doctors held her deprived of adequate care during 7 hours before the prosecutor authorized a procedure. During that time, she was interrogated by three police corps. Lack of medical care resulted in a huge blood loss, which later make it necessary for her to receive two pints of transfused blood.

**Note 4**

Although the 2010 Census on Population and Housing found that 5,6% of the Ecuadorian population has some kind of disability (women representing 51,6% of them), there is no research on their situation or needs, what produces more invisibility and a lack of access to basic rights. (National Council for the Equality of Disabilities, National Agenda for the Equality in Disabilities 2013-2017,[http://www.planificacion.gob.ec/wp-content/uploads/downloads/2014/09/Agenda-Nacional-para Discapacidades.pdf](http://www.planificacion.gob.ec/wp-content/uploads/downloads/2014/09/Agenda-Nacional-para%20Discapacidades.pdf))

Specifically, according to the final observations on the initial report presented by Ecuador to the Committee on the Rights of Persons with Disabilities, it has been shown a high rate of adolescents with disabilities who have given birth between their 12-19 years of age. This is a very serious situation, because women and girls with disabilities do not have access to safe abortions, especially when they have an intellectual disability. They do not have specific counseling and care services for their reproductive health nor do they have the legal protection necessary to prevent their rights to be violated and them to be victimized again.

**Note 5**

An Inter-Institutional Commission[[18]](#footnote-18), named CTIN for the national level and CTIL for the local level, was created in 2012 through the Regulation for rehabilitation centers for the treatment of persons addicted by a psycho-active dependence[[19]](#footnote-19), to regulate and control centers or facilities providing addictions treatment. It is mandated to research, among other things, cases of rights violations (Art. 39) as well as to let civil society know about the progress of its procedures (Arts. 34, 38 y 40).

These inter-institutional mechanisms[[20]](#footnote-20) have acted in cases of arbitrary commitments of LGBTI persons in centers or facilities for the treatment of addictions, as declared by the State before international bodies. However, up to date, no information nor data have been provided that allow us to know where or how the victims are.

**Note 6**

The State of Ecuador has received recommendations and observations regarding the so-called “de-homosexualization therapies” issued by several international human rights bodies, such as the Committee Against Torture (CAT), the Human Rights Committee (CCPR) and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Regarding this topic, the State of Ecuador has reported:

* Eight and ninth periodical reports to the CEDAW Committee, February 27, 2013. In paragraph 145, the State reports that in August 2011 the Ministry of Public Health undertook actions, closing down about 30 illegal medical centers which allegedly cured homosexuality. The Ministry continues to do follow-ups, monitoring, controls and closing down medical centers that violate the human rights of persons belonging to the LGBTI community.
* Seventh periodical report to the Committee Against Torture, July 2014. In response to reports of involuntary commitment and mistreatment of women in private medical centers for the treatment of drugs addiction, the Ministry of Public Health opened processes and imposed sanctions to the following centers where “sexual reorientation” therapies were applied to women during 2013 and 204: a) Centro Manantial (Quito); b) Life and Family (Quito); c) Volver a vivir (Manta); d) La Esperanza (Tena); e) Volver a nacer (Chone); f) 12 Pasos (Cuenca); and, g) Hogar Renacer (Cuenca).The Ministry of Public Health also took before the FGE the denounces against those responsible for the centers where human rights violations were confirmed, in order to promote the due investigations.
* Sixth periodical report to the Human Rights Committee on the International Covenant on Civil and Political Rights, November 3, 2015. As member of the coordination team for the control procedures carried out in the “de-homosexualization” centers, the Ministry of Public Health intervened 4 centers in 2013, rescuing about 349 persons, 5 centers were temporarily closed down, 19 centers were permanently closed down and 1 case was taken to court. Paragraph 110.- In the health area, since 2009 the DPE takes part in visits and inspections to centers suspected to carry out torture practices, with the aim of guaranteeing the human rights of the inmates; since 2012, as well, when the National Technical Inter-Institutional Committee and the Local Committees were created, led by the Ministry of Health, they have taken part in control and rights protection actions in more than 12 centers across the country. Habeas corpus requests were entered in the name of persons who were illegally and against their will deprived of their liberty.
* Inter-active Dialogue and answers from the State, Universal Periodical Review, July 10, 2017. A/HRC/36/4. Paragraph 114. Ecuador provided universal and free health care both to Ecuadorians and to foreigners. It had removed the obstacles preventing health access to vulnerable or marginalized groups and eradicated all forms of discrimination or degrading treatment. Within that frame, the State had explicitly prohibited “de-homosexualization” practices and closed down 25 centers where they were performed.
1. “Gender ideology” is a recently coined category which tries to put into question concepts and categories backed by the international scientific and academic community, such as the basic aspects of gender identity construction, sexual diversity, gender equality and equity and, therefore, it is against the actions aimed at giving guarantees and against the legal rights advancement regarding these issues. It is a narrative built upon false information, hate and discrimination, aimed at disseminating prejudices and misinformation to stop –or even revert– important achievements in equality, especially those of women, such as access to sexual and reproductive health, the claims for a fair salary, right to divorce, right to vote, access to education and justice, among others. [↑](#footnote-ref-1)
2. According to the Guiding Classifier for Expenditures in Equality Policies, the State claims to have executed a budget of USD 761 017 181,74 in 2014, and of USD 945 352 869,29 in 2016 for the category of equity. According to the Human Rights Secretariat, the budget allocated to prevention and eradication of gender violence and to strengthening of support services for victims for 2019 is USD 6.268.123,48; a figure notably smaller than those of previous years. [↑](#footnote-ref-2)
3. COIP, Art. 150. [↑](#footnote-ref-3)
4. See Appendix, Note 1. [↑](#footnote-ref-4)
5. Cheitier (2018), Abusos sexuales y embarazo forzado en la niñez y adolescencia: lineamientos para su abordaje interinstitucional. National Secretariat for Children, Adolescents and Family. [↑](#footnote-ref-5)
6. See Appendix, Note 2. [↑](#footnote-ref-6)
7. See Appendix, Note 3. [↑](#footnote-ref-7)
8. See Appendix, Note 4. [↑](#footnote-ref-8)
9. This reality is clear in several cases reported to our organizations. The Offices of the Prosecutors do not inform women of their right to a legal abortion when there is a mental disability and after a rape is reported. [↑](#footnote-ref-9)
10. Ministry of Public Health (2015), Guideline for Therapeutic Abortion. This rule is contrary to the Covenant on the Rights of Persons with Disabilities, which establishes that women with disabilities should take part in these decisions. [↑](#footnote-ref-10)
11. See Appendix, Note 5 [↑](#footnote-ref-11)
12. Organic Health Law, Law N° 67, Additional Official Registry N° 423, in force since December 22, 2006. <http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/EC/ley_organica_de_salud.pdf> [↑](#footnote-ref-12)
13. Ibid. Article 240, Infringements to the dispositions of this law shall be punished with a) fine; b) permit or license suspension, c) suspension of professional capacity; d) confiscation; and, e) partial, temporarily or permanent closing down of the facility. [↑](#footnote-ref-13)
14. Ibid. Articles 221 and 225. [↑](#footnote-ref-14)
15. Silvia Buendía, talking about the case of Zulema Constante’s commitment, remembers: the clerk in the Prosecutor’s Office through the paper on my face. He said: “This is no crime, madam. For sure the parents have decided that, effectively, this girl has to be committed because of her misbehavior.2

<https://www.eluniverso.com/noticias/2013/06/15/nota/1028066/asi-quisieron-curar-lesbianismo-zulema> [↑](#footnote-ref-15)
16. See Appendix, Note 6 [↑](#footnote-ref-16)
17. Process No: 17296201900054 begun on March 8, 2018, First Stance hearing. The Judicial Unit of Calderón parish denied the action on March 21, and it is now in the Provincial Court of Justice, after an appeal was made by the defense attorney of Taller de Comunicación Mujer. Action against: General State Prosecutor, Ministry of Public Health, Judiciary Council and Human Rights Secretary. [↑](#footnote-ref-17)
18. The Inter-Institutional Commissions include national and local level delegations of the Ministry of Public Health, Ministry of Justice, Human Rights and Religious Affairs, Ministry of the Interior, Ministry for Economic and Social Inclusion, Office of the Ombudsperson, Office of the General Prosecutor of the State, National Council for Narcotic and Psychotropic Substances - CONSEP (Articles 25 and 32 of the Regulation, Ministerial Agreement Nº 767). [↑](#footnote-ref-18)
19. Ministry of Public Health, Ministerial Agreement Nº 767, Regulation for recovery centers for the treatment of persons with addiction and psychoactive dependence, May 11, 2012. [↑](#footnote-ref-19)
20. The regulation was repealed and replaced by a Sanitary Rule for the Control and Monitoring of Health Facilities providing Services for the Treatment of Persons with Troublesome Use of Alcohol and other Drugs (Ministerial Agreement 80, August 8, 2016). In this rule, Commissions CTIN and CTIL have been replaced by a Technical Commission (article 29). [↑](#footnote-ref-20)