



# **CIVIL SOCIETY'S LIST OF ISSUES ON THE INTERNATIONAL CONVENANT ON CIVIL AND POLITICAL RIGHTS**

**SUGGESTED LIST OF ISSUES SUBMITTED TO THE COUNTRY REPORT TASK FORCE ON  
ECUADOR**

**FOR THE 110TH SESSION OF THE HUMAN RIGHTS COMMITTEE,  
NEW YORK, 10-28 MARCH 2014**

REPORT PRESENTED BY:

- TALLER DE COMUNICACIÓN MUJER
- LA COORDINADORA POLÍTICA JUVENIL POR LA EQUIDAD DE GÉNERO
- HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS –GLOBAL INITIATIVE ON SEXUALITY AND HUMAN RIGHTS

JANUARY 2014

This document has been produced by *Taller de Comunicación Mujer* ("Systematic Violence Against Lesbian Women") and by *Coordinadora Política Juvenil por la Equidad de Género* ("Abortion in the New Comprehensive Organic Penal Code - Código Orgánico Integral Penal or COIP<sup>1</sup>, in Spanish).

<sup>1</sup> The new Comprehensive Penal Code (COIP) approved by the National Assembly on January 28, 2014, will enter into force 180 days after it is published in the Official Registry. <http://www.asambleanacional.gob.ec/documentos/asamblea2013-2017/sala-prensa/coip-registro-oficial.pdf>

**Corporación Promoción de la Mujer/Taller de Comunicación Mujer** is a non-for profit organization working since 1989 to transform social discourses, practices and representations enforcing women's subordination and oppression in the country and the Latin American region, from a critical feminist perspective. Through the years, *Taller de Comunicación Mujer* has joined efforts to expand the understanding of violence against women, to produce knowledge and demand adequate responses from the State; with allied organizations, it has driven exigibility actions at the national and international levels; and, it has engaged in communication and cultural initiatives to sensitize public opinion and transform how domestic and sexual violence against women, lesbians and girls are understood. In the 2000s, *Taller* has carried out different initiatives to make violence against women visible and demand State responses, particularly in relation to violence against women and sexual violence (Regional Tribunal on Women's ESCR 2003-2005; Latin American women's social, political and legal advocacy to strengthen the International Criminal Court and gender justice, 2005; political and communication actions against impunity and sexual crimes, 2007; thematic hearing on LGBTTI rights at the OAS, 2008; shadow report to CEDAW, 2008; shadow report on the Covenant on Civil and Political Rights, 2009).

**Coordinadora Política Juvenil por la Equidad de Género** has worked since 1998 advocating for sexual and reproductive rights, and particularly for the right of women - specially younger ones - to make their own decisions on these issues; to stop re-victimization of young women, and achieve genuine social justice. *Coordinadora* has supported youth and women's organizing across the country, focusing on three strategies: alternative communication, political training and strengthening autonomous youth organizing. The main topics addressed by *Coordinadora* are sexual and reproductive rights, abortion and teenage pregnancy. They are members of the Latin American and Caribbean Youth Network for Sexual and Reproductive Rights (RED-LAC) and of the Ecuadorean Front to Defend Sexual and Reproductive Rights, besides cooperating with and complementing the work of other social sectors in the country. *Coordinadora* has become a driver of organizing processes at the national level, resulting in direct advocacy on national youth policies.

*Taller de Comunicación Mujer* and *Coordinadora Política Juvenil por la Equidad de Género* have produced this report on the occasion of the review of Ecuador's progress and compliance with the International Covenant on Civil and Political Rights. Our objective is to express our concern about the challenges to exercising the right to a life free from violence, particularly faced by women because of their sexual orientation, and the challenges to sexual and reproductive rights.

The issues we wish to see raised in the review of Ecuador are the following:

- 1. Systematic violence against lesbian women.**
- 2. Abortion in the new Ecuadorean Comprehensive Organic Penal Code.**

**Ecuador. January, 2014**

## 1. SYSTEMATIC VIOLENCE AGAINST LESBIAN WOMEN

### 1.1 Context

The Ecuadorean Constitution (2008) recognizes and guarantees the right to *a life free from violence in the public and private spheres* for all persons (Art.66.3.b), as well as *guaranteeing and making it explicit that nobody can be discriminated against because of their sexual orientation or gender identity* (Art.11.2), and homosexuality was decriminalized in 1997. However, the existence in the country of addiction rehabilitation clinics<sup>2</sup> that clandestinely offer to "cure homosexuality" continues to be covered-up. This is just one of several control and regulation mechanisms perpetuating practices that violate LGBTI human rights and particularly affect lesbian women.

After more than a decade of initiatives and demands by different women's organizations and lesbian collectives, the main oppressive elements that continue violating and infringing the rights of lesbians in particular and LGBTI persons in general, will be described in the following sections.

#### **In the State and its public institutions**

In 1997, the Constitutional Court ordered that Art. 516 of the Penal Code that criminalized homosexuality with up to 3 years of imprisonment be repealed. Unfortunately, the argument invoked has allowed and reinforced the belief in homosexuality as a disorder, because the Court considered it an "endocrinal malfunction problem" that rather than punishment, deserved medical treatment (TC, 1997).

Also, justice mechanisms and public institutions (in the areas of health, education, safety, social development) addressing issues of violence in the country are steeped in *machismo* and homophobia that define patriarchal heteronormativity. Thus, their practices and regulations pose obstacles for reporting attacks, obtaining compensation and restitution when rights have been violated.

The case study on "Condiciones de Vida, Inclusión Social y Cumplimiento de Derechos Humanos de la población LGBTI en el Ecuador", produced by the National Institute for Statistics and Census (Instituto Nacional de Estadísticas y Censos del Ecuador; INEC, 2013)<sup>3</sup>, shows that 27.3% of the sample are said to have experienced some kind of attack against their integrity of which only 8.3% had been reported. Among those who had reported attacks, 55.6% said they had gone unpunished; 7.9% did not know if any punishment had been given; 9.5% reported that their cases were still being processed by the Court, and only 27% indicated that those responsible had been punished.

The current situation is at an impasse, as public mechanisms - because of their homophobic and misogynist bias - will not be fully able to stop these attacks unless they transform their own practices of what they allow and what they do not. Obstacles to bring these cases individually to Court start with parental involvement - particularly fathers - that often makes victims feel ambivalent about accusing them. Then, the difficulty of identifying the aggressors is a gap invoked by the staff of these

---

<sup>2</sup> This establishments "curing" homosexuality practice torture, cruel and degrading treatment, and "corrective" rapes that stand for and reproduce homophobic and discriminatory practices, often in collusion with relatives, spouses or former spouses of the victims.

<sup>3</sup> [http://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas\\_Sociales/LGBTI/Analisis\\_situacion\\_LGBTI.pdf](http://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/LGBTI/Analisis_situacion_LGBTI.pdf)

health facilities - many times in collusion with justice and health authorities, and the protection of local authorities - to avoid sanctioning those responsible<sup>4</sup>.

## Health and medicine

Scarcely has anything been done to reflect international advancements like the depathologization of homosexuality (WHO, 1990) and the depsychiatrization of transsexuality (DSM V, 2013) in the training of health professionals and in medical practices across the country. Similarly, laws, control and regulatory mechanisms for public and private health services have failed to make explicit the vulnerability faced by LGBTI people and to update their care protocols in such a way to avoid punishment and mistreatment of this population.

The existence and functioning of rehabilitation centres for addictions that offer the so-called "dehomosexualization" or "heterosexuality restitution" therapies in a clandestine way, continues to be a latent threat particularly for lesbian women. The following crimes are being committed by these establishments:

- Aggravated kidnapping
- Arbitrary deprivation of liberty
  - Unjustified and illegal interdiction
  - Pathologization - forced psychiatrization
- Forced medication
- Torture, cruel and degrading treatment
- "Corrective" rape
- In some cases, even murder

*Taller de Comunicación Mujer* has been exposing the existence of "rehabilitation" clinics before national and international fora for more than 12 years. In May 2013, the latest data compiled was shared with the media during a press conference<sup>5</sup>. A summary of the most relevant information follows:

- Data received by CONSEP<sup>6</sup> in 2010, by the Ministry of Health in 2010, 2011 and 2012, complaints received by the Ombudsman Office (until March 2013) and the media results in a total of 314 rehabilitation centres.
- The Ministry of Health (MSP) gives information about less than half of the 314 centres monitored by *Taller* (46%).
- According to *Taller*, the total number of clinics closed down since they began to record this is 35. However, in 2012 the MSP only registered 4 clinics as closed down, when official reports from September and November referred to 22<sup>7</sup>. And according to information provided by the

---

<sup>4</sup> Doumet Vera case (Penal Lawsuit No. 0052-2012), Zulema Constante case (Penal Lawsuit No 15251-2013-0076), among others.

<sup>5</sup> Aler- May 2013, press conference together with ArtiKulaci3n Esporadika and CEDHU – Ecumenical Human Rights Commission.

<sup>6</sup> CONSEP- National Council on Narcotic and Psychotropic Substances.

<sup>7</sup> Official Notification 014713 SSP-11-SM, September 16, 2011, by Enrique Aguilar, National Public Health Director, addressed to Tatiana Cordero, *Taller Comunicaci3n Mujer*, responding to her request of August 23, 2011.

same body, it had closed down 2 in 2010 while CONSEP closed down another 4. Media reported the closing down of 3 more clinics.

- According to MSP only 19 cases of human rights violations including torture; physical, sexual or psychological abuse; kidnapping(including that of minors); "dehomosexualization" and unconsented hospitalizations were reported (involving 13% of the total number of registered clinics)<sup>8</sup>. Of those clinics about whom the MSP had registered complaints in 2012, 84% (16) are located in the Azuay province.

Amongst the information compiled from different digital media in Ecuador<sup>9</sup> by *Taller de Comunicación Mujer* in 2013, it is worth highlighting a story published by newspaper Hoy<sup>10</sup> on November 9, 2013, in which the Ministry of Health and the General Attorney announced that rescue operations conducted during the year had freed 500 persons subjected to torture and degrading treatments in clandestine clinics offering addiction treatments across the country. The GA confirmed that 30 legal charges had been brought against 30 people arrested in different operations against these so-called rehabilitation centres that were functioning without authorization. They had been accused of crimes that are human rights violations like hatred, kidnapping, trafficking of persons and torture. The Health Minister reported<sup>11</sup> that after closing down a clinic in the Napo province it was revealed that one officer working at the state Ministry of Health was its owner.

Advocacy and pressure on the different political actors responsible to protect the rights of lesbian women have resulted in more attention and activity on the part of public institutions to stop these abuses. Along with other collectives (like Fundación Causana<sup>12</sup>) and human rights organizations (like CEDHU), *Taller de Comunicación Mujer* has worked to see these issues understood as a social phenomenon, as there is evidence pointing to the existence of mafias and corruption networks that - as this document states - have stopped punishment for those responsible for these crimes and managed to leave unsolved the cases in which particularly LGBTIs have been attacked, while also making sure that the clinics become operational again.

### **The family**

Control and regulation exerted by the family implies serious rights violations for LGBTI people, as often it is their parents who hire the services of these clinics. In these cases, the family becomes the first site where oppression happens, as different forms of violence and rights violations are perpetrated against the children - because of their sexual orientation and gender identity.

Of the total number of LGBTIs interviewed by INEC (2013), 70.9% reported to have experienced some form of constraint or violence in their family lives<sup>13</sup>: more than half (72.1%) were unjustifiably

---

<sup>8</sup> Of the total number of clinics MSP reports about for 2012

<sup>9</sup> El Comercio, El Extra, La Hora, El Telégrafo and Hoy.

<sup>10</sup> <http://www.hoy.com.ec/noticias-ecuador/500-personas-sacadas-de-clinicas-de-tortura-594628.html>

<sup>11</sup> El Universo, July 19, 2013. On the involvement of health officers, please see the case on "dehomosexualization" therapies brought to the Napo province Judicial system.

<sup>12</sup> Lesbian women's organization in Ecuador

<sup>13</sup> Case study: Condiciones de Vida, Inclusión Social y Cumplimiento de Derechos Humanos de la población LGBTI en el Ecuador, conducted by Instituto Nacional de Estadísticas y Censos del Ecuador (INEC, 2013)

controlled; 74.1% experienced some kind of imposition; 65.9% were rejected by their families in some way and 61.4% suffered violence.

## 1.2 Cases

**Clara's case**<sup>14</sup> makes evident the system's impunity in the area of justice and reparation for victims whose rights have been violated. Even though the case was widely covered by the media, it has not yet been solved and Clara's situation is still highly risky. The following narrative is taken from the interview she granted to *Taller de Comunicación Mujer* on January 22, 2014.

Clara - who is of legal age - lived alone in the city of Baños<sup>15</sup> and was about to enter University in Quito. Months earlier she had broken all contact with her family after she came out to them about her sexual orientation and they rejected her. On April 11, 2013, Clara traveled to Santo Domingo de los Colorados city where her parents live<sup>16</sup>, after they had called her to offer to pay for a dental treatment for her to be done in that city. She met her parents there, had the treatment done and instead of going back to the family home to rest and chat, as she was expecting, she was abducted on the way by the staff of a clinic hired by her parents. In her own words:

"I was approached by three men who made a lot of noise and scared me ... they said *we were looking for you...* and my mother stepped back, while they grabbed me, held my hands and said *anything you say can be taken against you*. They were speaking as if they were the police, so I reacted and demanded they produce their IDs ... and a warrant for my arrest ... They forced me into a car and began to handcuff me ... But my mother came and asked them not to do that, and then she got into the car. I was taken to the Julio Endara Psychiatric Hospital in Quito. My father followed us in a taxi. I don't know how they had planned all this, and it was then that I realized I was being arrested by my own family ... I felt quite down ... and very nervous, did not know how to react... During the journey I had the feeling I was going to be killed... I had been forced into a car with three men who were armed and watching me, their hands placed above my knees, one on my left and one on my right, while the other was driving. They were quite big men, speaking like the military... Strange people who could have easily been contract killers, because of their attitude ... I was very nervous, not knowing what to do ... I saw that my father and one of the men talked to the Hospital's guard ... and then took me to a consulting room where a female doctor asked my name and opened a hospital record for me. Then my mother started talking to the man who had driven the car, and the doctor injected me with a tranquilizer... I felt very sleepy, unable to do anything. Never in my life had I felt like that, so alone, so powerless - there was nothing I could do, I was sedated, inside my head I was shouting but there was nothing I could do... At one point I thought of looking for a policeman, of telling somebody, but there was nobody around. I felt very lonely. Then they said it was not possible to leave me there so they took me to El Carmen<sup>17</sup>, to a men's clinic where I had to lie on a mattress and wait for one hour while the men ate. Finally they took me to the clinic in Chone<sup>18</sup> where I was locked up".

---

<sup>14</sup>Name has been changed to protect the victim.

<sup>15</sup>City in Tungurahua province, Ecuador.

<sup>16</sup>City in Santo Domingo de los Tsáchilas province, Ecuador.

<sup>17</sup>City in Santo Domingo de los Tsáchilas province, Ecuador.

<sup>18</sup>City in Manabí province. Ecuador.

Clara's story shows the oppression exerted by her family, starting with the rejection after she revealed her sexual identity and culminating in the attempt to control and regulate her sexuality by hiring a clinic to "treat" her. Besides the mistreatment and crimes committed by the clinic staff, this case also shows public institutions -like public Julio Endara Psychiatric Hospital- and one other clinic - the one in El Carmen (private) - being in collusion with the private clinic in Chone city where Clara was "treated".

When Clara realized she was going to be locked up because of her sexual identity, she asked her father to let her make one phone call and told her friends that she was being locked up against her will. Since then, her friends published her photo in social media, reporting her as a "missing person" and several organizations like Fundación Causana<sup>19</sup> came to know of the situation. From the official Judicial system<sup>20</sup> and media information on this case we wish to highlight the following facts:

- The last time her friends heard of Clara was on April 12, 2013 (when she called one of her friends to let her know that her parents were locking her up in Julio Endara Psychiatric Hospital, located in Conocoto, Quito). Her friends went to Fundación Causana seeking help in finding Clara at the Hospital but, according to the Fundación's Director, "when we went to ask about Clara's whereabouts, she was no longer there" (El Telégrafo, July 27, 2013<sup>21</sup>).
- On May 8, 2013, Fundación Causana and the Manabi Ombudsman Office<sup>22</sup> requested a Habeas Corpus on behalf of Clara. Temporary Associate Judge for the Manabi 19th Civil Court, located in El Carmen, Kena Nina Freile Gilces, denied it. This stands in violation to Article 44.3 of the Organic Law on Jurisdictional Guarantees and Constitutional Oversight.
- On June 27, 2013, lawyer Franklin Adriano Zambrano Llor, Manabi Provincial Delegate from the National Ombudsman Office, appealed. The Court revoked the first level sentence and granted the requested Habeas Corpus, mandating the National Police to assure that Clara be immediately released.
- Before the Court order could be implemented, Clara's brother went to the clinic, cancelled the contract the family had signed, invoking their concern about the publicity the case had obtained in the media, social media and the Courts, and took Clara to his home. She says:

"My brother came to see me. I was seated in the room and the owner's daughter said *Grab your bag* - this is a bag they give you to keep a Bible, a notebook, pens, etc. - *get ready because you have visitors*. I came out and my brother came. He took me in his car to his home and told me about what had been happening outside, and how concerned he was... When he left me alone to see his girlfriend, I managed to call and tell my friend what had happened. Then people from Fundación Causana came to see me and later I joined the Victims and Witnesses Protection Programme."

- Clara is currently enrolled in the Victims and Witnesses Protection System that comes into action once a legal case has been started. In this case, the decision of the Manabi Court was not implemented due to her brother's interference. He is a Manabi Legal Representative at the National Assembly and has successfully managed to lessen the visibility obtained by his

---

<sup>19</sup> Fundación Causana, organization of Ecuadorean lesbians

<sup>20</sup> Public webpage of the Función Judicial: <http://www.funcionjudicial-manabi.gob.ec/>

<sup>21</sup> <http://www.telegrafo.com.ec/sociedad/item/joven-lesbiana-reaparece-luego-de-tres-meses.html>

<sup>22</sup> Ecuadorean province.



sister's case. The protection system has revealed a series of inconsistencies and gaps in this case. Under which legal case was Clara brought into the protection system? How could the system come into play if her brother - who is part of the same family that violated her rights - was the one liberating her? The protection system has not encouraged her to sue her aggressors, a measure that might help put an end to the threats from which she is being protected while also guaranteeing compensation and restitution for her as a victim. Clara says her family still harasses her and she is afraid of the threats uttered by the clinic staff about other persons she cares for. For her, her current situation equals being locked up for the second time. What the protection system has provided her with is therapeutic accompaniment and a place to live.

- Clara states that the clinic where she was locked in is still operating. She also says that during her stay there, the clinic was subjected to several checks as part of the operations mentioned under the section "Health and Medicine". She says that the clinic owner had been alerted before the operations started and this allowed her to avoid being punished. It is evident that none of those control operations helped to release Clara.

**The second case**<sup>23</sup> for which we have data is one of the few where a specific legal complaint against the so-called "*dehomosexualization*" therapies that are considered a hate crime under Ecuadorean law<sup>24</sup>, exists. In spite of the recommendations by the international community that pays attention to human rights<sup>25</sup>, the Justice system is complicit in the corruption linking public and private entities in which criminals are also involved, resulting in a highly complex situation.

Thanks to the victim's legal action started against this hate crime, the Interdisciplinary Commission<sup>26</sup> created by the Ministry of Health, the General Attorney and the Ombudsman Offices in response to social pressure on this issue, took over the running of the clinic in which she had been held. During the closing down of the clinic, it was discovered that an officer at the Ministry of Health was the owner of the clinic. (El Universo, July 19, 2013)

To show the impunity that has prevailed in this case, we will share a few details from its public records (that can be found in the Napo Justice system's legal page)<sup>27</sup> and the media<sup>28</sup>:

- On July 16, 2013, the victim sued the officers from the clinic who had attacked her. As a result, Judge Daniel Narváez, from the Napo Penal Guarantees and Transit Court, imposed *preventive*

---

<sup>23</sup> The victim's name is not revealed as she has not agreed to do so, even though the case has been made public.

<sup>24</sup> <http://www.funcionjudicial-napo.gob.ec/index.php/nombre>

<sup>25</sup> CCPR/C/ECU/CO/5, October 29, 2007. Concluding Observations by the Human Rights Committee on the International Covenant on Civil and Political Rights, para 12: *The State party should take preventive and protective measures to ensure that persons of a different sexual orientation are not detained in private clinics or rehabilitation centres in order to be subjected to so-called sexual reorientation treatments. The Committee recommends that the State party investigate the alleged detentions and torture and adopt the necessary remedial measures in accordance with the Constitution.*

<sup>26</sup> Entity created by the State in 2012 to regulate rehabilitation clinics or centres.

<sup>27</sup> <http://www.funcionjudicial-napo.gob.ec/index.php/nombre>

<sup>28</sup> El Comercio June 20, 2011. El Universo, July 19, 2013. El Comercio, July 19, 2013. El Telégrafo, December 25, 2013

*arrest* on Mentor Iván Ubilluz Chavez, Janine Katherine Olmedo Izurieta, Luis Hipólito Plaza Vásquez, Mayra Lorena Urrutia Illicachi and Maribel Jacqueline Vasconez Pérez, and started to investigate the hate crime allegations.

- Granting a request by Public Prosecutor Fabián Salazar Sánchez, the Judge ordered a search in the clinic to prevent evidence from being removed from the place - that was also home to the main defendant.
- On July 18, 2013 the defence lawyer Angel Tenesaca rejected the preventive arrest of Ubilluz Chavez and Olmedo Izurieta on the basis that at the time of their arrest they were not informed of the accusations against them, rendering the arrest arbitrary. So the Judge ordered that both defendants not be arrested but be forbidden to leave the country and to approach the victim.
- Court records show that Ubilluz Chavez has also been involved in a fraudulent change of address, and in another clinic that was closed down in a different city.
- Once the investigation ended, the Judge considered that its results affirmed that a hate crime had been committed by Plaza Vasquez, Urrutia Illicachi and Vasconez Perez, who were in direct contact with the alleged victim since her arrest in Guayaquil - in collusion with her parents - until her stay in the women's recovery clinic "Esperanza", in Tena city, where she was hospitalized for a "dehomosexualization" treatment requested by her parents who did not accept her sexual orientation. In spite of coming to this conclusion, the Judge did not order the preventive arrest of the defendants.
- On January 14, 2014, the defendants were called to appear for trial on February 10, 2014. Non-official sources report that Vasconez Perez has already left the country, even though the Court had placed an order forbidding her to do so.

### **1.3 Laws and regulations**

Considering the existence of discriminatory practices that violate the rights of LGBTI persons in the so called "rehabilitation" clinics or therapeutic centres, it is a concern that national laws still allow impunity in these cases affecting the rights of LGBTI persons but also of those with addiction problems in general.

#### **Organic Health Law (Law 67, Official Registry Supplement 423, December 22, 2006):**

- It does not indicate the need to update medical techniques and also health regulations according to international advances in terms of non-pathologizing and non-psychiatrizing sexual orientation and gender identity.
- It fails to include human rights as a public health issue even though it does mention that living a life free from violence is a public health issue (Art.6.7 and Art. 7 Organic Health Law).
- The situation of vulnerability of LGBTI persons - a population with a high incidence of rights violations - is not made explicit even though it has been recognized as such by the highest national authorities (Articles 6 and 7).
- It does not allow punishing and closing down public or private health services (clinics or rehabilitation centres) whose practices violate rights in general and specifically when the so called "dehomosexualization" therapies are offered and imposed on LGBTI persons (Articles 242-258)
- No competent authority for closing down, evaluating and overseeing rehabilitation centres is designated.

Another concern is that, according to the principle of a hierarchy of norms, the advances achieved in the **Rules for Controlling Recovery Centres for Persons with Addictions**<sup>29</sup>, are set back because of the previously mentioned gaps.

### **Fulfilment of international recommendations to be followed-up**

In 2008, the Human Rights Committee expressed its concern about the internment of lesbian women in Rehabilitation Centres in its Concluding Observations on Ecuador<sup>30</sup>, requesting the State to adopt measures to protect them from the so-called "sexual re-orientation treatments". It was also recommended that the alleged confinements and tortures be investigated and that corrective measures be adopted, in keeping with the Yogyakarta Principles that demand legislative measures to impose punishments for violence based on sexual orientation perpetrated by any actor, including families<sup>31</sup>.

In 2009, in its shadow report *Taller de Comunicación Mujer* described cases of illegal deprivation of liberty and torture against lesbian women<sup>32</sup> and violations to Articles 2.1, 7, 9.1, 17.1, 17.2 and 26 of the International Covenant on Civil and Political Rights. The report included recommendations that have not been fully implemented, like investigating and punishing those responsible for the torture and mistreatment of lesbian women in private clinics; and protecting lesbian and trans women from violence and abuses perpetrated not only by institutions but also by their families.

Even though the Yogyakarta Principles point out that States must "Amend any legislation to ensure its consistency with the universal enjoyment of all human rights"<sup>33</sup>, the law lacks any express prohibition to apply medical-scientific techniques and advances with the erroneous end of "curing" lesbians, gays and others of their sexual orientations. Since 2005, the existence of 314 centres engaging in those practices has been documented. This means that Ecuador is violating the dispositions in Article 2.1 of the International Covenant on Civil and Political Rights<sup>34</sup>, and also not fulfilling the recommendation it

---

<sup>29</sup> Ministerial Agreement 00000767, May 11, 2012; Official Registry 720, May 11 2012. The new rules forbid "dehomosexualization" treatments. Its Article 20 says: "For admission, treatment and hospitalization of persons with addiction problems or dependency on psychoactive substances and, in general, for their functioning, rehabilitation centres and their staff are not allowed to:

- Offer, practice or recommend treatments or therapies whose end is to affect individual human rights, particularly the free development of one's personality, gender identity, sexual orientation (like the dehomosexualization treatments), freedom, integrity, non-discrimination, health and life, or any other type of practices ratifying or promoting gender-based violence or violence against boys, girls and adolescents;
- Employ any form of physical, mental or sexual abuse, or gender-based violence like the use of chains, handcuffs, shackles or similar artifacts, forced showers, or any form of intimidation".

<sup>30</sup> CCPR/C/EQU/CO/5, October 29, 2008. Para. 12

<sup>31</sup> Yogyakarta Principles. Principle 5

<sup>32</sup> These cases were also brought to the Ministry of Justice and Human Rights, and reported in other international spaces like the Regional Tribunal on Women's Economic, Social and Cultural Rights (2005).

<sup>33</sup> Yogyakarta Principles. Principle 1: The right to the universal enjoyment of human rights

<sup>34</sup> Art. 2.2 ICCPD "(...) each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

received during the Universal Periodic Review in 2008 to review its national legislation and make it compatible with its international human rights obligations<sup>35</sup>.

There is a proposal of a new Organic Health Law under discussion that has not been shared with the public yet. Demands that try to make the Ecuadorean legal framework more compatible with the Yogyakarta Principles to ensure full protection against harmful medical practices based on sexual orientation or gender identity have not been integrated into it<sup>36</sup>. Even though the Ministry of Health has undertaken serious efforts to improve the regulation controlling the so called Recovery Centres for Addictions, it is important to insist that the law must incorporate explicit prohibitions and punishments for practices that violate human rights, particularly when "dehomosexualization therapies" are offered and carried out.

#### **1.4 Requests**

- Due to the complexity of the issue, the involvement of mafias and corruption networks including both public and private actors, and the presence of multiple crimes - hate; aggravated kidnapping; the involvement of persons with military, police or similar training - it should be addressed as a social phenomenon and not only as isolated individual cases. A high level investigation must be conducted to clarify the facts and to expose collusions and actions that allow and perpetuate impunity and the very crimes described in the previous sections.
- Procedures and protocols must be developed, particularly for the Justice system and for dealing with victims, adjusted to the needs and specificities of LGBTI persons across the country.
- Educational, communication and justice overseeing mechanisms are required to eradicate the different forms of discrimination and exclusion faced by the LGBTI population, as well as mechanisms to avoid impunity for these human rights violations. This will require that the Antidiscrimination System prescribed in Article 11.2 of the national Constitution is implemented.
- Amendments to the Organic Health Law are urgently required, so it will include the enjoyment of human rights as a necessary condition for a healthy life, turning attacks and rights violations into a public health issue and also taking into account the needs and specificities of the LGBTI population. It must also make explicit that sexual and gender diversity are not pathologies and that all medical and health norms and techniques across the country must be amended according to international medical advances.
- Even though the Rules for Controlling Recovery Centres for Persons with Addictions are in force, we consider it indispensable that the higher norm, that is the Organic Health Law, includes an explicit mandate to eradicate rights violations of the LGBTI population caused by the offer of "dehomosexualization" therapies on the part of Rehabilitation Centres.

## **2. Abortion in the New Organic Comprehensive Penal Code of Ecuador**<sup>37</sup>

### **2.1 National context**

---

<sup>35</sup> UPR Working Group Report, Ecuador 2008. Para. 135.2. To keep its positive efforts in the ongoing process to review its national legislation to make it compatible with its international human rights obligation (Egypt).

<sup>36</sup> Yogyakarta Principles. Principle 18. Protection from Medical Abuses, 18.a.

<sup>37</sup> At the time of producing this report (January 2014), the Legislative Assembly is revising the 73 objections posed by the President to the original COIP proposal.

As a secular country, Ecuador has made apparent progress in civil rights issues, but in legal and daily practices moral judgements are still guiding the formulation of public policies controlling and criminalizing bodily autonomy by legitimizing the use of structural violence.<sup>38</sup> In Ecuador, abortion is still criminalized.

Most unsafe abortions in the country are performed in areas where socioeconomic conditions show low levels of access to education, health and timely information<sup>39</sup>, and they are the second highest cause of maternal morbidity. Between 1998 and 2009, abortion cases have more than doubled from 11,000 to 25,000. The World Health Organization estimates that an abortion is performed in Ecuador every 4 minutes. In a survey, 32% of the population (that is 1 out of 3 persons) said they know a woman who underwent an abortion. Breaking up that percentage per region, it is 39% in the Coast and 25% in the Highlands and Amazonia<sup>40</sup>.

The Ministry of Public Health (2012) estimates that 25,391 abortions are performed every year in the country, with the highest figures coming from the Guayas Province even though they are not exact<sup>41</sup>. However, several authorities and specialists agree that the actual figures are higher due to under-reporting, as it is hard to quantify abortion cases in underground clinics. The average yearly rate of increase for abortions in Ecuador is 7%.

According to data from the National Institute of Statistics and Census (INEC in Spanish), confirmed by the Ministry of Health and the Pan American Health Organization (PAHO), in Ecuador the maternal mortality rate (per 100,000 alive births) rose remarkably between 2007 and 2010. In 2007 it was 62.0, and increased to 78.6 in 2008; 96.3 in 2009 and 92.6 in 2010. The total number of maternal deaths in 2010 was 203. These rates are among the highest in Latin America. The same source indicates that the main causes of maternal deaths in 2010 were: gestational hypertension, eclampsia, post-delivery bleeding and puerperal sepsis - all of them preventable<sup>42</sup>.

Data from the National Health System and INEC in 2010 established that there were 42,541 abortion-related cases, 23,364 of which correspond to unspecified abortion - that is, 54.92%. Out of the unspecified abortions, 4,327 correspond to adolescents between 12 and 19 years of age; 12,508 to women between 20 and 30; and 6,580 to women above 30.

This data shows that unspecified abortions are the first cause of hospitalization for women in health services, because of complications resulting from the procedure being performed in risky and unhealthy conditions. Most of those complications consist of uterine perforations, bleeding and infections that can result in women's death or infertility (MSP, 2012).

Deaths due to unspecified abortions constitute 15.6% of the total number of deaths: the 5th highest among causes of women's death and 3rd highest among causes of maternal death (MSP, 2012).

---

<sup>38</sup> Auz, Fernanda. Blog Report at [jovenesdespenalizacionaborto.wordpress.com](http://jovenesdespenalizacionaborto.wordpress.com), Coordinadora Juvenil por la Equidad de Género, Quito-Ecuador. 2013

<sup>39</sup> Cevallos, María Rosa. El temor encarnado-formas de control y castigo a mujeres con aborto en curso. 2012.05.01. FLACSO Ecuador.

<sup>40</sup> Encuesta Nacional de DESDE y Aborto. CEDATOS-Frente Ecuatoriano por la Defensa de los DSDR, November, 2013.

<sup>41</sup> El aborto en el Sistema de Salud Pública, MSP 2012.

<sup>42</sup> "Nuestro recorrido hasta llegar al comité de los derechos económicos sociales y culturales", Women's organization shadow report on the health and reproductive health of women in Ecuador and the ESCR Committee, January 2013.

According to the 2013 National Survey on Sexual and Reproductive Rights and Abortion conducted by CEDATOS<sup>43</sup> and the Ecuadorean Front for the Defence of Sexual and Reproductive Health and Rights, 66% of those surveyed knew of at least one location where abortions were performed and considered those abortions to be unsafe.

In Amazonia, 33% of the population thinks unsafe abortions are performed in their area. The figure rises to 53% in the Highlands and 77% in the Coast<sup>44</sup>.

In Ecuador, 65% of the population is in favour of expanding the current grounds for legal abortion in case of rape to allow legal, safe and free abortion.<sup>45</sup>

## **2.2 Sexual violence and abortion in Ecuador**

In Ecuador, women continue to be subjected to structural patriarchal violence. Official data show that 61% of women have experienced some kind of gender violence, while 1 out of 4 women has suffered sexual violence. 76% of women experiencing violence said the aggressor had been her partner or former partner, and that the main site for violence was her home.<sup>46</sup>

Dr. Phelan<sup>47</sup> estimates that there is approximately 30% possibility that a rape results in pregnancy. In our country, an unwanted pregnancy can result from an involuntary sexual relationship (the product of the deep sexual violence permeating our society - rapes, incest, statutory rape) - and in those cases sometimes the cycle of violence is reinforced. It can also happen in the context of a voluntary sexual relationship, when contraception fails or has not been used - and even in these cases, it might expose the pregnant woman to violence on the part of her partner.

Every year there are about 300,000 pregnancies in Ecuador (data from 2012). 1 out of 2 of them is unwanted, and 1 out of 5 corresponds to adolescents (MSP, 2012). 60% of teenage pregnancies are interrupted in unhealthy conditions. This shows that many abortions are the result of unwanted pregnancies.

Geneticist César Paz y Miño supports decriminalizing abortion when the pregnancy is the product of rape, there is fetal malformation and/or the woman's life is at risk. However, like most health professionals, he considers that the decision to stop a pregnancy cannot be left to the pregnant woman but has to be regulated by the medial establishment, tied to State laws and protocols that render women's sexuality homogeneous under biological reproduction criteria. This is but one example showing how the roots of the criminalization of abortion lie with the collective societal views on how women's bodies are to be controlled.<sup>48</sup>

---

<sup>43</sup> CEDATOS - Study and Data Centre - develops methodologies to design, implement and execute economic, social, market and public opinion studies.

<sup>44</sup> Encuesta Nacional DSDR y aborto. CEDATOS-Frente Ecuatoriano por la Defensa de los DSDR. November 2013.

<sup>45</sup> Ibid.

<sup>46</sup> Primera Encuesta Nacional de Relaciones Familiares y Violencia de Género contra las mujeres, INEC 2012.

<sup>47</sup> Sharon Phelan, MD. Member of the American Congress of Obstetricians and Gynecologists, ACOG.

<sup>48</sup> Auz Fernanda, Blog report at [jovenesdespenalizacionaborto.wordpress.com](http://jovenesdespenalizacionaborto.wordpress.com), Coordinadora Política Juvenil por la Equidad de Género, 2013.

### **2.3 Restrictive laws violating women's rights**

In Ecuador, criminalizing abortion when the pregnancy is the result of rape has not had a preventive or a dissuasive effect. Women continue to resort to clandestine abortions because of the complex personal situations they are facing. This is why abortion needs to be addressed as a public health issue and not from a punitive approach. Given these circumstances and what the Human Rights Committee has already stated, the State of Ecuador discriminates against women when denying them access to abortion in case of rape.<sup>49</sup>

Currently, the law does not criminalize women who undergo an abortion only under two circumstances: if their health or life is at risk or when the pregnancy is the result of rape and the woman is "an idiot or insane"<sup>50</sup>. This formulation leaves out other equally serious circumstances under which a woman should be able to access safe abortion: when the pregnancy is the result of sexual violence - for all women who have been victims of this crime - and when there is congenital malformation of the fetus.<sup>51</sup>

Lack of access to legal and safe abortion places the health and life of those women who require it at risk, denies their right to dignified treatment and to self-determination, and jeopardises their life project. Under the Covenant on Economic, Social and Cultural Rights, State parties commit to ensure that women and men will be equally entitled to enjoy all rights guaranteed by the Covenant, including the right to the highest possible level of physical and mental health that in turn includes sexual and reproductive health. Thus, the State of Ecuador has at the very least the obligation to expand the grounds for legal abortion specified in the Legal Code in order to improve the enjoyment of their right to health by all women.

### **2.4 Current national and international norms and recommendations to Ecuador**

Article 66.10 of the Constitution of Ecuador recognizes and guarantees to all persons the right to "*make free, responsible and informed decisions on their reproductive health and life, and to decide how many children they want to have*". Thus, if there had been an intention to harmonize the 2008 Constitution with the new Comprehensive Organic Penal Code (COIP in Spanish), grounds for legal abortion would have been expanded in at least what concerns rape, by amending Article 447.2 that says: "if the pregnancy is the result of rape or statutory rape against an idiot or insane woman. In this case, the consent of the woman's legal representative will be required in order to perform the abortion".

The Committee on Economic, Social and Cultural Rights has reiterated the link that exists between illegal and unsafe abortions and high maternal mortality rates. Thus, those States that fail to

---

<sup>49</sup> Ibid

<sup>50</sup> Comprehensive Organic Penal Code of Ecuador, Article 447

<sup>51</sup> "Nuestro recorrido hasta llegar al comité de los derechos económicos sociales y culturales", Women's organization shadow report on the health and reproductive health of women in Ecuador and the ESCR Committee, January 2013.

guarantee women's health and lives in a holistic way are directly responsible for the persistence of unhealthy conditions like clandestine and unsafe abortions in our country.

Ecuador has signed and ratified different international human rights conventions, covenants and commitments like the International Covenant on Economic, Social and Cultural Rights whose article 12.1 states that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". These internationally binding documents are not reflected in public policies and thus are unable to transform women's situation in such a way that they will live decent lives.

Thanks to the work of several women's movement organizations on the compliance of the State of Ecuador with international dispositions in the area of sexual and reproductive rights, or their lack thereof, the ESCR Committee issued recommendations. One of them said: *The Committee notes with concern that, under article 447 of the Criminal Code of Ecuador, the only cases in which an abortion is not an offence is when it is performed because the mother's life or health is endangered or when a woman with mental or psychosocial disabilities has been raped*".<sup>52</sup>

The only recommendation on the issue of decriminalizing abortion that was echoed in the final COIP proposal was: *"The Committee recommends that the State party amend its Criminal Code so as to establish that abortion is not an offence if the pregnancy is the result of rape, regardless of whether or not the woman in question has a disability, or if the existence of congenital anomalies has been established. The Committee urges the State party to expunge the terms idiota ("idiot") and demente ("insane") in reference to women with mental and/or psychosocial disabilities from its Criminal Code"*.<sup>53</sup>

The United Nations Human Rights Committee has identified a link between guaranteeing equal rights for women and men and denying abortion in cases of rape or forcing women to be subjected to clandestine and risky abortion procedures.<sup>54</sup> In its General Comment 16, it prohibits State parties from putting into place any legal obstacle hindering equality in access to public health services, including legal restrictions in the area of reproductive health<sup>55</sup>.

But in our country the State, through its Executive Power, has made any progress towards the right to legal abortion in cases of rape for all women impossible by speaking officially against decriminalizing abortion on any grounds. Thus it has put pressure on its party's representatives who also hold an absolute majority in the National Assembly.

On October 10, 2013, President Rafael Correa announced through TV station Oromar<sup>56</sup>, that he might submit his resignation given what he considered to be treason on the part of a group of ruling party

---

<sup>52</sup> Concluding Observations of the Committee on the third report of Ecuador as approved by the Committee at its forty-ninth session (14-30 November 2012).. E/C.12/ECU/CO/3, Recommendation 29.

<sup>53</sup> "Nuestro recorrido hasta llegar al comité de los derechos económicos sociales y culturales", Women's organization shadow report on the health and reproductive health of women in Ecuador and the ESCR Committee, January 2013.

<sup>54</sup> Human Rights Committee. CCPR/C/21/Rev.1/Add.10, General Comment 28, para. 10.

<sup>55</sup> "Nuestro recorrido hasta llegar al comité de los derechos económicos sociales y culturales", Women's organization shadow report on the health and reproductive health of women in Ecuador and the ESCR Committee, January 2013.

<sup>56</sup> Originally published by Ecuadorean newspaper El Telégrafo at <http://www.telegrafo.com.ec/politica/item/correa-habla-de-traicion-en-la-asamblea-y-ratifica-que-no-despenalizara-el-aborto-video.html>



MPs promoting the decriminalization of abortion in all cases of rape in the Comprehensive Organic Penal Code (COIP) that was at the time being discussed in the Assembly: "Let them do what they want: I will never approve of decriminalizing abortion beyond what is already in the law. Moreover, if such betrayals and lack of loyalty continue, if those regrettable things happening in the Alianza País bloc (referring to the ruling party bloc at the Legislative Assembly) prevail tomorrow, I will submit my resignation."

The events that unfolded in late 2013 made evident the lack of autonomy of the Legislative Power (in relation to the Executive), when representatives were forced to change their positions. This was an attack against the autonomy of the legislative function and its role of encouraging debate.

In the end, the latest draft amendment to the Comprehensive Organic Penal Code failed to include the proposals to decriminalize abortion in case of rape for all women. The words "insane or idiot" were merely changed into "mentally disabled" and the requirement to have the approval of the woman's legal representative was omitted.

This shows the lack of political will, even in a historical context where there are favourable conditions to make progress in reducing the structural violence that women face. The State and more particularly the Legislative Power were unable to draft laws according to the realities and needs of women.

## **2.5 Failure of the Ecuadorean State to implement international recommendations**

### **Concluding Observations of the Committee on the third report of Ecuador as approved by the Committee at its forty-ninth session (14-30 November 2012). E/C.12/ECU/CO/3, Recommendation 29**

*29. The Committee notes with concern that, under article 447 of the Criminal Code of Ecuador, the only cases in which an abortion is not an offence is when it is performed because the mother's life or health is endangered or when a woman with mental or psychosocial disabilities has been raped".*

*The Committee recommends that the State party amend its Criminal Code so as to establish that abortion is not an offence if the pregnancy is the result of rape, regardless of whether or not the woman in question has a disability, or if the existence of congenital anomalies has been established. The Committee urges the State party to expunge the terms idiota ("idiot") and demente ("insane") in reference to women with mental and/or psychosocial disabilities from its Criminal Code".*

## **2.6 Requests**

Considering the high rates of violence against women and adolescent pregnancies, as well as international recommendations, rape must be included as a ground for legal abortion applying to all women in order to protect their lives and avoid clandestine and unsafe abortions.

To this end, it is key that the State and their different institutions acknowledge the reality, demands and needs of women and update their laws, regulations, codes and protocols according. This will change the structural violence that women face at least partly, as it has not stopped in spite of the discourses around Living Well (*Buen Vivir*).