

**Submission to the Committee on the Rights of the Child  
Review of Ecuador  
90<sup>th</sup> Pre-Session  
July 2021**

We write in advance of the 90<sup>th</sup> pre-session of the Committee on Rights of the Child and its adoption of a list of issues prior to reporting regarding Ecuador’s compliance with the Convention on the Rights of the Child. This submission includes information on school-related sexual and gender-based violence, barriers to adolescent’s sexual and reproductive rights, including the lack of comprehensive sexuality education and criminalization of abortion, and barriers to justice and due process rights based on research conducted by Human Rights Watch between October 2017 and June 2021.

***School-Related Sexual and Gender Based Violence, including Digital Sexual Violence  
(Article 28)***

Sexual violence is a long-standing, pervasive problem in Ecuador’s education institutions. Since Ecuador’s 2017 review by the Committee on the Rights of the Child, Ecuador’s Ministry of Education has engaged in important efforts to acknowledge and take action to tackle the scale of sexual violence affecting its education institutions.<sup>1</sup> It introduced binding policies and step-by-step guidelines for education officials in cases of sexual violence, instructed education officials to report cases immediately, and to inspect and, where necessary, intervene in public or private schools when school authorities have failed to take necessary measures. The Ministry of Education also rolled out a comprehensive database in 2018 to track reporting, investigations and prosecutions of school-related staff who perpetrate sexual violence.

The government’s actions were triggered, in part, by the “AAMPETRA” commission, a special parliamentary commission set up in 2017 by Ecuador’s National Assembly after a case involving the systematic abuse and rape of 41 children at the Academia Aeronáutica Mayor Pedro Traversari (AAMPETRA), a private school in Quito, came to light.<sup>2</sup> The Commission was

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<sup>1</sup> See, Human Rights Watch, “It’s a Constant Fight”: School-Related Sexual Violence and Young Survivors’ Struggle for Justice in Ecuador, December 2020, <https://www.hrw.org/report/2020/12/09/its-constant-fight/school-related-sexual-violence-and-young-survivors-struggle>, pp. 17 – 25.

<sup>2</sup> Tatiana Cordero and Gloria Maira Vargas, *A mí también... acoso y abuso sexual en colegios del Ecuador: discursos opuestos y prácticas discriminatorias*, Taller de Comunicación Mujer, 2001, <http://biblioteca.igualdadgenero.gob.ec/cgi-bin/koha/opac-detail.pl?biblionumber=4340> (accessed September 24, 2020); Center for Reproductive Rights, “Supplementary information on Ecuador –Scheduled for review by the CEDAW Committee in its 42nd Session,” October 3, 2008,

set up to establish the facts related to school-related sexual violence against children in Ecuador. It attributed great responsibility to the Ministry of Education for its omissions and failure to act to tackle violence. In 2020, in the case of *Paola Guzmán v Ecuador*, a case involving a student who was repeatedly raped and sexually abused by the deputy principal at her public secondary school and took her life, the Inter-American Court of Human Rights found Ecuador responsible for violating Paola Guzmán’s rights to life, to study free from sexual violence, and to sexual and reproductive health and bodily autonomy. The Court also ordered reparations measures for Paola Guzman’s family, and time-bound actions to tackle school-related sexual violence at national level.<sup>3</sup> The government established a national day of remembrance for victims of school-related sexual violence, but other reparations ordered by the Court are still pending.

Despite these efforts, Ecuador still faces serious challenges in how schools and education officials respond to sexual violence in educational institutions. In December 2020, Human Rights Watch published its report “*It’s a Constant Fight*”: *School-Related Sexual Violence and Young Survivors’ Struggle for Justice in Ecuador*.<sup>4</sup> Sixteen out of 38 cases documented by Human Rights Watch were perpetrated between 2017 and 2019, when the government began to enforce a more robust approach and response to school-related sexual violence. Human Rights Watch found that the response of some schools and education authorities to cases of sexual violence falls short of the government’s commitment and its international human rights obligations. The government has yet to adopt a strong long-term agenda with commensurate funding to match its commitment and key obligation to prevent sexual violence in schools.

Human Rights Watch’s analysis of government data shows that from 2014 to May 2020, Ecuador’s Ministry of Education registered 3,607 cases of sexual violence against students that happened in or around schools.<sup>5</sup> These complaints affected 4,221 children and adolescents who suffered sexual violence by perpetrators inside education institutions. In the overwhelming majority of cases perpetrators were male: 3,480 compared to 95 female perpetrators.<sup>6</sup>

Human Rights Watch found that teachers, other staff hired by schools, school bus drivers and, in some cases, adult men who have targeted children in schools, have raped, sexually abused, and sexually harassed students. Students have also committed sexual abuses against their fellow students, including online. Sexual violence sometimes occurred over prolonged periods. Survivors were not only deeply affected by sexual violence, but they sometimes also faced

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[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/EQU/INT\\_CEDAW\\_NGO\\_ECU\\_42\\_8650\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/EQU/INT_CEDAW_NGO_ECU_42_8650_E.pdf) (accessed September 24, 2020).

<sup>3</sup> See, Human Rights Watch, “It’s a Constant Fight,” pp. 20 – 25.

<sup>4</sup> Human Rights Watch, “It’s a Constant Fight”: *School-Related Sexual Violence and Young Survivors’ Struggle for Justice in Ecuador*.

<sup>5</sup> Number out of a total number of 10,544 complaints registered by the Ministry of Education. Though school-related, the Ministry of Education counts cases involving school bus drivers as events happening outside of education institutions. Human Rights Watch included school bus drivers in this data analysis.

<sup>6</sup> See, Human Rights Watch, “It’s a Constant Fight,” pp. 30 – 33.

harassment, bullying and intimidation after they reported the abuses. Cases documented by Human Rights Watch show that reporting—which is mandatory, and should happen within 24 hours of officials detecting or being told about an alleged abuse, according to the Ministry of Education’s “guidelines”—is still tied to the willingness of school staff to apply and follow all government protocols. In some cases, Human Rights Watch found that a failure to follow the protocols has resulted in re-victimization, stigma, or harassment against an alleged victim and their parents.

In some cases, some teachers and school staff, including school counsellors, have protected colleagues against whom credible allegations of sexual abuse have been made, in breach of their legal obligations. Survivors of sexual violence and their relatives and representatives often encounter hostility, harassment, and intimidation from school authorities, teachers and peers. In seven cases, teachers, school officials, parent school associations or students have rallied against alleged victims and their parents, and in some cases, harassed and intimidated them to drop charges against a teacher or the school.

Student welfare teams, which often include school psychologists and counsellors, play a crucial role in child protection and safeguarding. Nationally, there are far too few of them. There is a significant shortage of student welfare teams for public schools: current estimates, as of December 2020, show that there are 3,263 school counsellors and psychologists nationally, with one counsellor for every 1,200 students enrolled in public schools, according to Ministry of Education officials.<sup>7</sup> Some teams and school counsellors have also been pressured not to report cases, were pressured not to act on allegations of sexual abuse, or downplayed a child’s testimony, undermining their key role.

Private schools do not appear to follow government protocols in a uniform way. Human Rights Watch documented 15 cases where abuses took place in private schools, including in one military-run and two religious schools. In most cases, private schools focused on covering up a particular incident, attacked the parents’ or student’s reputation, and generally turned their backs on parents and their children. Some schools focused on preventing damage to the school’s image or reputation; in some cases, schools resorted to defensive or threatening acts against the victim.

A 2015 ministerial protocol dictates that any education institution is liable to inspection on the ground of violations of the right to education, interruptions, violent acts that impact student’s integrity, and internal crises due to negligence.<sup>8</sup> When this happens, the Ministry of Education can order an “intervention” to inspect the school, investigate allegations, oblige the school to implement measures ordered by officials, and even order a temporary or permanent school

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<sup>7</sup> Human Rights Watch Skype interview with Laura del Carmen Salvador Puig, Directora Nacional de Educación Para la Democracia y Buen Vivir, January 16, 2020; Human Rights Watch video interview with Sebastián Salazar Nicholls, Director Nacional de Educación Para la Democracia y Buen Vivir, and Lorena Peñaherrera Vaca, analyst, Ministry of Education, September 17, 2020.

<sup>8</sup> Ministerio de Educación, “Acuerdo Nro. MINEDUC-ME-2015-00100-A,” May 5, 2015, <https://educacion.gob.ec/wp-content/uploads/downloads/2015/06/ACUERDO-Nro.-MINEDUC-ME-2015-00100-A.pdf> (accessed September 24, 2020).

closure. Yet, private schools are not subject to interventions on a regular basis even when numerous cases of sexual violence are reported, though some progress has been made in recent years. However, because many private schools are registered as business entities, and fall under the Ministry of Labor, there is a loophole in the Ministry of Education's ability to enforce this obligation.

### ***Lack of Compulsory Screening of Professionals***

All public school teachers should go through a thorough and exhaustive hiring process.<sup>9</sup> But in some private schools teachers only require a teaching certificate to be hired.<sup>10</sup> The AAMPETRA case established a precedent mandating all private schools to regularize the hiring process for teachers and other school staff at private schools, and apply psychometric tests prior to confirming employment. Still, a string of cases since 2017 has shown the government's lack of rigorous application of hiring standards, including the absence of background and reference checks for all teachers.<sup>11</sup>

In its last review, the CRC called on Ecuador to "introduce compulsory screening processes and background checks of all professionals working with and for children in public and private schools."<sup>12</sup> This remains outstanding. For example, it is unclear whether all teachers found guilty of sexual violence were officially removed from teaching after the Ministry of Education's investigations into archived cases; some appear to have been reinstated.<sup>13</sup> Teachers who are administratively dismissed from public schools following investigations of sexual violence can still be hired by private schools, according to information gathered by Human Rights Watch. Government protocols are binding with respect to all public workers, including school staff.<sup>14</sup> However, auxiliary staff hired privately are excluded, but they are bound by the Code of Work, a binding employment law which regulates and stipulates employers and employees' obligations and responsibilities.<sup>15</sup>

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<sup>9</sup> See Mayuri Castro, "Así está dividido el Magisterio Nacional," *GK*, September 11, 2020, <https://gk.city/2020/09/11/magisterio-nacional-ecuador/> (accessed August 13, 2020).

<sup>10</sup> Human Rights Watch interview with Diego Paz Enríquez, former Ministry of Education sub-secretary, July 2, 2019.

<sup>11</sup> Notably, incidents of widespread, systemic sexual abuse of students in the Colegio Réplica Aguirre Abad of Guayaquil, a large public school, where four men who have been found guilty of sexually abusing and torturing 99 children were found to have no teaching credentials. Human Rights Watch WhatsApp interview with Yoli Pinillo Castillo, prosecutor, July 24, 2020; Human Rights Watch telephone interview with Martha Roldós, Fundación Mil Hojas, July 1, 2019; "Abusos Sexuales en plantel de Guayaquil salieron a la luz por padres de familia," *El Universo*, October 15, 2017, <https://www.eluniverso.com/noticias/2017/10/15/nota/6430879/abusos-sexuales-plantel-salieron-luz-padres>; "Preocupa a Fiscalía que hayan más casos de abuso sexual a menores en plantel," *El Universo*, October 11, 2017, <https://www.eluniverso.com/noticias/2017/10/11/nota/6426067/examenes-cuatro-alumnos-escuela-fiscal-confirman-que-hubo-abuso> (all accessed December 12, 2019).

<sup>12</sup> CRC, Concluding observations on the combined fifth and sixth periodic reports of Ecuador, CRC/C/ECU/CO/5-6, October 26, 2017, <https://undocs.org/en/CRC/C/ECU/CO/5-6> (accessed September 24, 2020), para. 27(b).

<sup>13</sup> Human Rights Watch telephone interview with Martha Roldós, Fundación Mil Hojas, July 1, 2019.

<sup>14</sup> See for example, Decreto No. 710 Correspondiente a la Ley Orgánica del Servicio Público, Publicado en el Registro Oficial, Suplemento No. 418 de 1 de abril del 2011.

<sup>15</sup> Ministerio del Trabajo, Código del Trabajo, 2012, <http://www.trabajo.gob.ec/wp-content/uploads/downloads/2012/11/C%C3%B3digo-de-Tabajo-PDF.pdf> (accessed November 18, 2020).

### ***Limited National Budget for Prevention of Sexual Violence, Teenage Pregnancy***

Ecuador has not invested consistently in tackling school-related sexual and gender-based violence. A 2018 report by the state’s comptroller found that former President Rafael Correa’s government, which ended in May 2017, had not “executed a budget” to implement its 2011 national plan to eradicate sexual offenses in Ecuador’s education system.<sup>16</sup> Since 2018, the government has marginally increased line budgets to “strengthen the integral approach to situations of violence detected or committed in the national education system” from a modest US\$2 million in 2019, to \$2.1 million in 2020.<sup>17</sup>

In 2020, amid wider austerity-related cuts, the government cut its budget for its national plan to prevent gender-based violence by 84 percent, from \$5.4 million to nearly \$877,000, and cut the entire modest budget to implement its policy on the prevention of teenage pregnancies, halting the implementation of key initiatives.<sup>18</sup> This disinvestment prompted concern from UN experts and civil society.<sup>19</sup> Due to these cuts, the Ministry of Education had to spread thin its scarce resources to tackle sexual violence and the prevention of teenage pregnancies, according to former government officials interviewed by Human Rights Watch.

*Human Rights Watch recommends that the Committee call on the government of Ecuador to:*

- Adopt a child and adolescent-centered plan focused on streamlining efforts to ensure young victims are protected and adequately accompanied from the moment they report sexual violence until judicial proceedings have ended. This plan should include adequate access to psychological therapy for child survivors and their parents;
- Regularly publish disaggregated data on complaints filed in schools, victims and perpetrators that includes ethnicity, gender, and disability, gathered by all relevant government and judicial institutions – and ensure these are available to the public, protecting private information. Regularly publish data on cases of school-related sexual violence on the ministry’s website;

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<sup>16</sup> Contraloría General del Estado, “Examen Especial a los fondos asignados y utilizados por el Ministerio de Educación para la ejecución de los estudios, planes, proyectos, programas y campañas relacionadas con el “Plan Nacional Integral para erradicar los delitos sexuales en el sistema educativo,” su administración y liquidación en el MINISTERIO DE EDUCACION y entidades relacionadas, por el período comprendido entre el 1 de enero de 2013 y el 30 de junio de 2018,” DNA2-0002-2019, copy on file with Human Rights Watch (unofficial translation by Human Rights Watch). pp. 7, 13.

<sup>17</sup> Ministerio de Economía y Finanzas, Proforma del Presupuesto General del Estado–Programa Anual de Inversiones Entidad–CUP Gastos (US Dolares), Ejercicio: 2019, copy on file with Human Rights Watch; Proforma del Presupuesto General del Estado–Consolidado por Plan Anual de Inversiones Entidad CUP–Egresos (US Dolares), Ejercicio: 2020, copy on file with Human Rights Watch.

<sup>18</sup> Susana Roa Chejín, “El país con la tasa más alta de embarazo adolescente podría quedarse sin presupuesto para prevenirlo,” *GK*, December 9, 2019, <https://gk.city/2019/12/09/prevencion-embarazo-adolescente-ecuador-presupuesto/> (accessed July 15, 2020).

<sup>19</sup> UNHRC, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para. 46; Valeria Heredia, “Médicos y mujeres rechazan reducción de presupuesto en prevención de embarazo adolescente y violencia de género,” *El Comercio*, December 3, 2019, <https://www.elcomercio.com/actualidad/reduccion-presupuesto-prevencion-violencia-genero.html> (accessed October 13, 2020).

- Allocate adequate resources to prevent and tackle school-related sexual violence, including funding for a nation-wide roll-out of mandatory trainings for teachers, district and provincial education officials, and student welfare teams on legal responsibilities, prevention of sexual violence, child protection, and child rights;
- Guarantee that all schools, public or private, protect children and adolescents, fully enforce all policies and protocols in private schools and consistently hold private schools to account for cases of sexual violence. Increase scrutiny of private schools, including non-denominational, religious or military schools, and enforce existing protocols to guarantee that private schools are accountable for obstructing investigations, or judicial proceedings;
- Fully comply with the Inter-American Court of Human Rights' ruling in *Paola Guzmán v Ecuador*.

### ***Barriers to Children and Adolescent's Sexual and Reproductive Rights (Articles 12 and 28)***

The government has partially implemented, or in some cases, failed to implement, relevant measures recommended by the CRC in 2017, notably its recommendation to ensure girls have “access to sexual and reproductive health services, including therapeutic abortion.”<sup>20</sup> Human Rights Watch found that Ecuador has not fully adopted comprehensive sexuality education (CSE) as part of its national curriculum, in line with international standards.<sup>21</sup> Girls are less likely, than adult women, to have access to sexual and reproductive health services, including contraception and health information necessary to find comprehensive reproductive health services, including abortion. This makes them a particularly high-risk population.<sup>22</sup>

High rates of sexual violence paired with minimal access to sexual and reproductive health services mean that girls and women are frequently forced to carry unwanted pregnancies to

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<sup>20</sup> See Concluding Observations, paras. 35 (a) – (d).

<sup>21</sup> UNESCO, UNICEF, et al., *International technical guidance on sexuality education: an evidence-informed approach*, 2018, <https://unesdoc.unesco.org/ark:/48223/pf0000260770> (accessed September 24, 2020).

<sup>22</sup> Guttmacher Institute, “Very Young Adolescents’ Sexual and Reproductive Health Needs Must Be Addressed,” May 24, 2017, <https://www.guttmacher.org/news-release/2017/very-young-adolescents-sexual-and-reproductive-health-needs-must-be-addressed> (accessed June 16, 2021). See, for example, the *Norma case against Ecuador before the Human Rights Committee: Center for Reproductive Rights, “They Are Girls: Reproductive Rights Violations in Latin America and the Caribbean,” May 29, 2019*, <https://reproductiverights.org/sites/default/files/documents/20190523-GLP-LAC-ElGolpe-FS-A4.pdf> (accessed June 16, 2021). Liz Ford, “Latin American rape survivors who were denied abortion turn to UN,” *The Guardian*, May 29, 2019, <https://www.theguardian.com/global-development/2019/may/29/latin-american-survivors-who-were-denied-abortions-turn-to-un> (accessed June 15, 2021). Inter-American Court of Human Rights, *Guzman Albarracin and others vs. Ecuador*, June 24, 2020, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_405\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_405_esp.pdf) (accessed June 16, 2021).

term. Between 2003 and 2018, 71 out of every 1000 girls and young women aged 12 to 19 gave birth.<sup>23</sup> In 2017, nearly 6,500 girls dropped out of school prematurely because of pregnancy.<sup>24</sup> The National Coalition of Women of Ecuador, based on government data, estimated in 2017 that six out of ten victims of rape were children and adolescents, and eight out of every ten cases of sexual violence happened at home perpetrated by a relative.<sup>25</sup> Incest, which experts and journalists have called a “silent epidemic” in Ecuador, is dramatically underreported—hindered by stigma, taboos, and a lack of specific criminalization of this offence.<sup>26</sup>

### ***Lack of Compulsory Comprehensive Sexuality Education***

Historically, Ecuador’s focus on sexuality education has been piecemeal, and tied to the government’s effort to curb teenage pregnancies.<sup>27</sup> Between 2014 and 2017, the government undermined efforts to provide CSE, including by stripping Ecuador’s 2012 comprehensive national strategy for family planning and prevention of adolescent pregnancy,<sup>28</sup> and adopting instead content focused on promoting abstinence from sex and safeguarding “traditional” families.<sup>29</sup> Conservative groups have sought to jeopardize the government’s efforts to expand content related to sexuality education, and have rallied against content related to sexual orientation and gender identity.<sup>30</sup>

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<sup>23</sup> United Nations Population Fund, “World Population Dashboard Ecuador,” <https://www.unfpa.org/data/world-population/EC> (accessed October 20, 2020); Isabela Ponce, “Virginia Gómez de la Torre: ‘El Estado es encubridor y cómplice de los violadores sexuales,’” *GK*, September 17, 2018, <https://gk.city/2018/09/17/embarazo-ninas-ecuador-violacion-derechos/> (accessed January 10, 2020); Susana Roa, “El país con la tasa más alta de embarazo adolescente podría quedarse sin presupuesto para prevenirlo,” *GK*, December 9, 2019, <https://gk.city/2019/12/09/prevencion-embarazo-adolescente-ecuador-presupuesto/> (accessed January 10, 2020).

<sup>24</sup> “Embarazos son la cuarta causa de abandono escolar,” *El Telégrafo*, July 21, 2018, <https://www.eltelegrafo.com.ec/noticias/sociedad/6/embarazo-causa-abandono-escolar-ecuador> (accessed July 20, 2020); Jenny Benalcazar Mosquera, “Que sean niñas y no madres antes de tiempo,” *El País*, March 27, 2019, [https://elpais.com/elpais/2019/03/14/planeta\\_futuro/1552583323\\_660140.html](https://elpais.com/elpais/2019/03/14/planeta_futuro/1552583323_660140.html) (accessed July 20, 2020).

<sup>25</sup> Coalición Nacional de Mujeres del Ecuador, “Contribución conjunta para el examen del Comité de Derechos del Niño,” July 2017, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/EQU/INT\\_CRC\\_NGO\\_ECU\\_28670\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/EQU/INT_CRC_NGO_ECU_28670_S.pdf) (accessed September 24, 2020), pp. 5-6.

<sup>26</sup> Isabela Ponce, “El silencio más grande de todos,” *GK*, March 1, 2018, <https://gk.city/2018/03/01/incesto-en-ecuador/> (accessed January 10, 2019); Isabela Ponce, “Virginia Gómez de la Torre: ‘El Estado es encubridor y cómplice de los violadores sexuales,’” *GK*, September 17, 2018, <https://gk.city/2018/09/17/embarazo-ninas-ecuador-violacion-derechos/> (accessed January 10, 2020).

<sup>27</sup> Ana María Carvajal, “Las cifras de embarazos en el país crecieron en niñas de 10 a 14 años,” *El Comercio*, March 2, 2015, <https://www.elcomercio.com/tendencias/cifras-embarazosadolescentes-ecuador-enipla-planfamiliaecuador.html> (accessed August 31, 2020).

<sup>28</sup> Ministerio de Salud, Plan Toda una Vida, “Estrategia Nacional Interseccional de Planificación Familiar y Prevención del Embarazo de Adolescentes (ENIPLA),” 2012 - 2015 (copy on file with Human Rights Watch).

<sup>29</sup> “Las Cuatro Cosas que Debe Saber Sobre el ‘Ministerio de La Moral,’” *Plan V*, March 3, 2015, <https://www.planv.com.ec/investigacion/investigacion/cuatro-cosas-que-debe-saber-sobre-el-ministerio-la-moral> (accessed January 10, 2020); Human Rights Watch interview with Paulina Ponce, Planned Parenthood Global, Quito, June 20, 2019; Human Rights Watch interview with Margarita Velasco, Observatorio Social del Ecuador, Quito, June 21, 2019.

<sup>30</sup> See, Diego López Marina, “Profamilias logran que Gobierno de Ecuador modifique texto escolar con ideología de género,” *ACI Prensa*, July 3, 2020, <https://www.aciprensa.com/noticias/profamilias-logran-que-gobierno-de-ecuador-modifique-texto-escolar-con-ideologia-de-genero-77603> (accessed September 12, 2020).

In 2018, the new government took some steps to tackle previous regressive policies, including by adopting a 2018 strategy and new guidance to prevent teenage pregnancies<sup>31</sup>—an important and welcome milestone to return to an approach centered on girls’ and women’s sexual and reproductive rights, according to experts. It also published guidance to tackle violence and discrimination against lesbian, gay, bisexual, and transgender (LGBT) and gender non-conforming students.<sup>32</sup> In 2019, the Ministry of Education incorporated more CSE-related material into the existing curriculum. Ecuador’s 2011 Organic Law on Intercultural Education states that the aims of education include free access to information about sexuality and sexual and reproductive rights to ensure responsible and informed decision-making.<sup>33</sup>

Yet, at present, existing content is not framed through a human rights lens. Many teachers are conservative in their views about sexuality: teachers often reinforce gender stereotypes and stigmatize adolescent sexual behavior, especially girls’ sexuality, and often omit any discussion of sexual orientation and gender identity.<sup>34</sup>

### ***Impact of Lack of Information About Sexual and Reproductive Health and Rights***

Human Rights Watch has found that the lack of CSE leaves children and adolescents without the information they need to make informed decisions about their sexuality and reproduction. In turn, this can make them vulnerable to sexual exploitation and abuse, unplanned and unwanted pregnancy, and unsafe abortion.<sup>35</sup> It also exposes them to digital sexual violence.

Human Rights Watch’s analysis of Ministry of Education data shows that 30 percent of cases of sexual violence detected in schools are perpetrated by children.<sup>36</sup> The Prosecutor’s Office has registered complaints and conducted investigations involving children for rape, sexual abuse, and distribution of pornographic material to other students.<sup>37</sup> Human Rights Watch also found that between January 2015 and December 2019, the Prosecutor’s Office registered 342 cases where girls and boys had been contacted for sexual purposes using online or electronic media.<sup>38</sup>

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<sup>31</sup> Ministerio de Salud Pública, Ministerio de Educación, et al., *Política Intersectorial de Prevención del Embarazo en Niñas y Adolescentes, Ecuador 2018-2025*, July 2018, [https://ecuador.unfpa.org/sites/default/files/pub-pdf/Politica\\_Interseccional%20%282%29.pdf](https://ecuador.unfpa.org/sites/default/files/pub-pdf/Politica_Interseccional%20%282%29.pdf) (accessed July 15, 2020).

<sup>32</sup> Consejo Nacional para la Igualdad de Género, *Guía de Orientaciones técnicas para prevenir y combatir la discriminación por diversidad sexual e identidad de género en el sistema educativo nacional*, 2018, [https://www.igualdadgenero.gob.ec/wp-content/uploads/2019/02/GU%C3%8DADIVERSIDADES\\_FINAL.pdf](https://www.igualdadgenero.gob.ec/wp-content/uploads/2019/02/GU%C3%8DADIVERSIDADES_FINAL.pdf) (accessed October 10, 2020).

<sup>33</sup> Ley Orgánica de Educación Intercultural (LOEI), 2011, <https://educacion.gob.ec/wp-content/uploads/downloads/2020/06/LOEI.pdf> (accessed July 9, 2021), art. 3 (unofficial translation by Human Rights Watch).

<sup>34</sup> See Human Rights Watch, “It’s a Constant Fight,” pp. 52 – 55.

<sup>35</sup> See Human Rights Watch, “Amicus Curiae in the case of Guzmán Albarracín y otros vs. Ecuador,” July 15, 2020, <https://www.hrw.org/news/2020/07/15/amicus-curiae-case-guzman-albarracin-y-otros-vs-ecuador>.

<sup>36</sup> Human Rights Watch analysis of Ministry of Education data from 2014 to September 2020.

<sup>37</sup> Human Rights Watch analysis based on data from the Prosecutor’s Office “Sistema Integrado de Actuaciones Fiscales” (SIAF), from January 2015 to September 2020. See, Section “Government Data Shows Very High Levels of School-Related Sexual Violence” for further information.

<sup>38</sup> Ibid.



Human Rights Watch found that students share sexually explicit pictures with students in an unsolicited manner. Students also share albums of sexually explicit pictures of girls and young women, often called “packs of trading cards.”<sup>39</sup> Although these pictures are sometimes initially obtained consensually between students, many end up being shared via Facebook or WhatsApp groups hosted by students and adult men. In other cases, students reportedly take sexually explicit photos of parts of girls’ bodies without their knowledge.<sup>40</sup>

Experts at the Taller de Comunicación Mujer, an organization of feminist journalists, told Human Rights Watch that teachers lack the knowledge and tools to understand students’ evolving use of online spaces to learn about and express their evolving sexuality, the difference between consensual online interactions between students and violent or abusive ones, and how to tackle and respond to emerging forms of online abuse and exploitation in adequate ways.<sup>41</sup> School staff lack training and skills on how to handle these cases pedagogically, using child protection protocols.<sup>42</sup>

Human Rights Watch has also found, in its research on girls and young adult women prosecuted for abortion, that the lack of CSE in Ecuador’s schools and the criminalization of abortion, blocks girls and women from accessing information about reproductive health and abortion. In many cases, girls lack a basic understanding of contraceptive methods. Human Rights Watch found cases where girls used misoprostol –a pill included in the World Health Organization’s (WHO) Model List of Essential Medicines that is used to prevent and treat stomach ulcers, to start labor, for medical abortion, and to treat postpartum bleeding due to poor contractions of the uterus –as a contraceptive method or to “regulate irregular menstrual periods.”<sup>43</sup> Others said they had asked in a pharmacy, or asked friends, for a pill “so that my period would come.”<sup>44</sup>

### ***Lack of Effective Access to Abortion and Criminalization***

Pregnancies among girls under 14 in Ecuador are the result of rape as defined in Ecuador’s criminal code, frequently by family members or other men close to them.<sup>45</sup> Abortion is legally

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<sup>39</sup> Such pictures are shared in open and closed Facebook groups, both of which are publicly visible and identifiable through a simple search. Human Rights Watch conducted one search and found four such sites.

<sup>40</sup> Taller de Comunicación Mujer, *Diagnóstico Violencia de Género Digital en Ecuador*, April 2020, [https://www.navegandolibres.org/images/navegando/Diagnostico\\_navegando\\_libres\\_f.pdf](https://www.navegandolibres.org/images/navegando/Diagnostico_navegando_libres_f.pdf) (accessed September 24, 2020), pp. 46.

<sup>41</sup> Human Rights Watch interview with Anais Córdova and Mónica Diego, Taller de Comunicación Mujer, Quito, July 3, 2019.

<sup>42</sup> Human Rights Watch Skype interview with Laura del Carmen Salvador Puig, Directora Nacional de Educación Para la Democracia y Buen Vivir, January 16, 2020.

<sup>43</sup> Based on forthcoming Human Rights Watch report, “*Why Do They Want to Make Me Suffer Again?*” *The Impact of Abortion Prosecutions in Ecuador*, July 2021.

<sup>44</sup> Ibid.

<sup>45</sup> See for example, Ministry of Public Health et al., “Intersectoral Policy for the Prevention of Pregnancy in Girls and Adolescents: Ecuador 2018-2025” (“Política Intersectorial de Prevención del Embarazo en Niñas y Adolescentes: Ecuador 2018-2025”), July 2018, [https://ecuador.unfpa.org/sites/default/files/pub-pdf/Politica\\_Interseccional%20%282%29.pdf](https://ecuador.unfpa.org/sites/default/files/pub-pdf/Politica_Interseccional%20%282%29.pdf) (accessed June 1, 2021), p. 24. Public health data suggests that eight in ten adolescent pregnancies in girls under 14 are the result of sexual violence.

permitted in Ecuador in cases where the pregnant person’s life or health is in danger (commonly referred to as the “health exception” or “therapeutic abortion”), or when a pregnant person has been raped, according to a recent ruling by the Ecuadorian Constitutional Court, which has extended the rape exception to all pregnant people and not only to those with an intellectual disability. However, pregnant people, including children, face many barriers to accessing legal abortion and post-abortion care. Human Rights Watch found that the barriers include fear of criminal prosecution, stigmatization, mistreatment by health professionals, and a narrow interpretation of the health exception.

Ecuador’s current laws and policies create an environment that compels many girls and women to turn to unsafe procedures that threaten their health and lives. Girls and women who meet the criteria that would permit them to obtain an abortion under Ecuador’s law—because their life or health is in danger and/or the pregnancy results from rape—are often prevented from doing so based on narrow interpretations of the law. In practice, in the period prior to the Constitutional Court’s ruling, Human Rights Watch found that many people who had become pregnant as the result of rape could not obtain an abortion, even though being forced to continue a pregnancy from rape can carry grave risks to the physical, mental, and social wellbeing of the pregnant person. At time of writing, the Ombudsperson’s Office, acting on instructions from the Constitutional Court’s ruling, had submitted to the National Assembly a draft Organic Law on Abortion in Cases of Rape.<sup>46</sup>

Human Rights Watch reviewed nine case files involving girls under the age of 18 who were prosecuted for having an abortion. In two of the nine cases, one of a 17-year-old girl and another of a 15-year-old girl, the defendants were initially charged as adults. Later in the process, seven cases were resolved through a suspended proceeding (that is, a plea bargaining process) as provided for in the Children and Youth Code, introduced in 2014.<sup>47</sup> Judges often imposed psychological therapy and “family support” in these cases. The 15-year-old girl was charged with homicide and spent four years and three months in a juvenile center.<sup>48</sup> The 17-year-old girl was sentenced to three months of house arrest but did not have to serve any more time as she had already spent eighteen months in house arrest during trial.<sup>49</sup>

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However, according to the 2014 Criminal Code, all sexual relations with a minor under 14 years old are considered rape. Article 171 (3).

<sup>46</sup> See, Surkuna, “Comunicado: Respalamos el Proyecto de Ley Orgánica para garantizar el derecho a la interrupción voluntaria del embarazo en caso de violación, presentado por la Defensoría del Pueblo a la Asamblea Nacional de Ecuador,” July 2, 2021, [https://surkuna.org/wp-content/uploads/2021/07/Comunicado-Un-Lev-Justa-Es-Reparadora\\_compressed-2.pdf](https://surkuna.org/wp-content/uploads/2021/07/Comunicado-Un-Lev-Justa-Es-Reparadora_compressed-2.pdf) (accessed July 9, 2021).

<sup>47</sup> The Childhood and Adolescence Code, Law no. 2002-100, art. 54, provides youth defendants with the opportunity to seek that their police or judicial records are not made public, and that the confidentiality of procedural information is respected.

<sup>48</sup> This is a case of the 148 cases analyzed by Human Rights Watch. This case is from 2015.

<sup>49</sup> This is a case of the 148 cases analyzed by Human Rights Watch. This case is from 2014.

Human Rights Watch found that girls and women living in poverty were much more likely to be affected. In the 148 cases reviewed by Human Rights Watch, most of the girls and women prosecuted for undergoing an abortion were young, from regions with substantial Indigenous or Afro-descendant populations; and a disproportionate number were from rural areas. From the 78 cases of girls and women where their age could be determined, the majority, 48 (61 percent), were ages 18-24, and 9 (12 percent) were girls under age 18.<sup>50</sup>

Although Ecuador's constitution guarantees confidentiality regarding individuals' health information, as a fundamental right, Human Rights Watch found that healthcare providers often reported a patient to the police in violation of healthcare professionals' duty of confidentiality.

### **Maternal Mortality and Morbidity**

Ecuador has high rates of maternal mortality and morbidity, including among girls.<sup>51</sup> Ecuador's maternal mortality rate in 2018 was reported to be 41.1 per 100,000 births.<sup>52</sup> There were 221 maternal deaths that year, half of which were the deaths of adolescents and youth; 3 were girls under the age of 14.<sup>53</sup> Inequalities persisted among poorer girls and women, and in rural areas.<sup>54</sup>

The fear of prosecution can drive women and girls away from seeking medical care when they urgently need it if they experience complications from an unsafe abortion, or even when experiencing miscarriage, increasing their health risks. These barriers to access to abortion and proper post-abortion care seriously endanger the lives of girls.

The Ecuadorian health system has inconsistently and arbitrarily interpreted what constitutes a threat to a girl or woman's health. Often in practice, risks to a pregnant person's mental health or social circumstances influencing physical or mental health are not considered sufficient to

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<sup>50</sup> See, Human Rights Watch, "Why Do They Want to Make Me Suffer Again?," Annex 1.

<sup>51</sup> According to the Ecuadorian Ministry of Health data, almost 10 percent of maternal deaths in 2019 and 6 percent in 2020 were a consequence of unsafe abortion. Ministry of Health, "Epidemiological Gazette of Maternal Death 51" ("Gaceta Epidemiologica de Muerte Materna se 53"), 2020, <https://www.salud.gob.ec/wp-content/uploads/2021/01/Gaceta-SE-53-MM.pdf> (accessed June 14, 2021); Ministry of Health, Epidemiological Gazette of Maternal Death 50" ("Gaceta Epidemiologica de Muerte Materna se 50"), 2019, <https://www.salud.gob.ec/wp-content/uploads/2020/01/Gaceta-SE-50-MM.pdf> (accessed June 14, 2021).

<sup>52</sup> UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, Visit to Ecuador, A/HRC/44/48/Add.1, May 6, 2020, <https://undocs.org/en/A/HRC/44/48/Add.1> (accessed August 31, 2020), para. 41; Ministry of Public Health, "Final Maternal Death Gazette of the Year 2018" ("Gaceta Final de Muerte Materna del Año 2018"), 2018, [www.salud.gob.ec/wp-content/uploads/2019/09/Gaceta-del-2018-de-MM.pdf](http://www.salud.gob.ec/wp-content/uploads/2019/09/Gaceta-del-2018-de-MM.pdf) (accessed August 31, 2020), p. 1.

<sup>53</sup> UN Human Rights Council (HRC), Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, Visit to Ecuador, A/HRC/44/48/Add.1, May 6, 2020, <https://undocs.org/en/A/HRC/44/48/Add.1> (accessed August 31, 2020), para. 41.

<sup>54</sup> *Ibid.*, para. 41.

grant access to a legal abortion, contrary to what the guidelines state.<sup>55</sup> Yet, a 2015 study reviewed the medical records of 139 girls who were forced into motherhood before the age of 14 and found that over 90 percent of them showed “depressive symptoms” and “adjustment disorder.”<sup>56</sup> A multi-country study by Planned Parenthood Global on the effects of forced motherhood found that girls interviewed in Ecuador expressed a range of emotions including fear, anger, neglect, terror, pain, guilt, sadness, anxiety, and depression.<sup>57</sup>

Despite the official approval of the Clinical Practice Guidelines for Therapeutic Abortion in December 2014,<sup>58</sup> according to the health providers interviewed by Human Rights Watch, the guidelines have not been systematically implemented. The government has not provided any timeline for when it will be implemented. Medical professionals interviewed by Human Rights Watch said they believed that the guidelines, if properly implemented applying a broad and comprehensive interpretation of the concept of health from a human rights perspective, could significantly contribute to reducing maternal mortality and morbidity associated with unsafe abortion.

*Human Rights Watch recommends that the Committee call on the government of Ecuador to:*

- Adopt age-appropriate comprehensive sexuality education and ensure it is a mandatory subject, that is accessible to all students;
- Adopt a protocol on the prevention of and response to school-related online sexual violence, including training for teachers and school officials, and sensitization campaigns in primary and secondary schools. Ensure that such a protocol and trainings are sensitive to, and do not criminalize or prohibit, consensual online conduct between students, and that they follow guidance from the CRC;
- Ensure the National Assembly discusses the Organic Law on Abortion in Cases of Rape presented by the Ombudsperson’s Office within six months, as ordered by the Ecuadorian Constitutional Court. Work with relevant authorities to guarantee access to legal abortion for anyone eligible under current law, including all survivors of rape, as

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<sup>55</sup> In a survey conducted in 2016 at public hospitals in Cuenca, 81.5 percent of respondents knew that therapeutic abortion is legal in Ecuador; however, only 29.6 percent could correctly quote the grounds on which abortion is not punishable. Bernardo José Vega Crespo et al., “Knowledge of actions and practices regarding voluntary and therapeutic abortion by specialists in gynecology and obstetrics who work in public hospitals in the county of Cuenca” (“Conocimiento actitudes y prácticas sobre el aborto voluntario y terapéutico en especialistas en ginecología y obstetricia que laboran en hospitales públicos del cantón Cuenca”), *Revista de la Facultad de Ciencias Médicas, Universidad de Cuenca*, vol. 34 (2016), p. 33.

<sup>56</sup> Fundación Desafío, “Lives Stolen, between omission and premeditation: the situation of forced motherhood in Ecuadorian girls” (“Vidas Robadas, entre la omisión y la premeditación: La situación de las maternidades forzadas en niñas del Ecuador”), 2016, <http://repositorio.dpe.gob.ec/bitstream/39000/2410/1/PE-004-DPE-2019.pdf> (accessed June 15, 2021); Planned Parenthood, “Stolen Lives: a multicountry study on the health effects of forced motherhood on girls 9-14 years old,” 2015, [https://www.plannedparenthoodaction.org/uploads/filer\\_public/db/6d/db6d56cb-e854-44bb-9ab7-15bb7fc147c5/ppfa-stolen-lives-english.pdf](https://www.plannedparenthoodaction.org/uploads/filer_public/db/6d/db6d56cb-e854-44bb-9ab7-15bb7fc147c5/ppfa-stolen-lives-english.pdf) (accessed June 15, 2021), p.25.

<sup>57</sup> *Ibid.*, p. 25,

<sup>58</sup> Ecuadorian Ministry of Health, “Clinical Practice Guidelines for Therapeutic Abortion,” 2015, <https://www.salud.gob.ec/wp-content/uploads/2016/09/Aborto-terapéutico.pdf> (accessed June 17, 2021).

per the recent ruling of the Ecuadorian Constitutional Court, and in accordance with Ecuador's international obligations and current recommendations from different UN bodies;

- Ensure public information is disseminated nationwide, particularly to girls and women and to national and local authorities and health professionals, clarifying the circumstances under which abortion is currently legal, including in light of the recent decision of the Ecuadorian Constitutional Court. Public messaging should be accessible and clearly state the government's obligation to provide abortion and post-abortion services and detail where these services can be obtained;
- Reform the Criminal Code to comply with the Constitution and Ecuador's international human rights obligations by allowing all pregnant people access to legal, voluntary, and safe abortions in all circumstances;
- Issue legislation reiterating the constitutional requirement of medical confidentiality and specifying that in cases of obstetric emergencies related to abortions there is no duty to report.

### ***Judicial Barriers for Survivors of School-Related Sexual Violence and Lack of Due Process Rights (Article 40)***

The rate of prosecutions for school-related sexual violence is very low: data from the Prosecutor's Office analysed by Human Rights Watch, shows that between 2015 and 2019 only 3 percent of reported cases of sexual violence against children and adolescents have gone to trial.<sup>59</sup>

Many children, and their families, have faced serious hurdles when seeking justice for the crimes they suffered: most families whose cases Human Rights Watch documented felt that they had been forced to fight for justice. Some survivors interviewed by Human Rights Watch felt they did not get justice; even when they went to trial. In the process, they sometimes exhausted their financial resources, with great impact on the mental health of all the family.

Ecuador's Constitution protects children's right to be treated as a priority group in judicial proceedings.<sup>60</sup> This means the best interests of the child should be the guiding principle throughout any proceedings, and trials should be expedited.<sup>61</sup> Ecuadorian law provides that children alleging abuse should only need to provide testimony once, in a manner appropriate to their age and evolving capacity.<sup>62</sup> A 2014 protocol provides that this should be provided in a

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<sup>59</sup> Human Rights Watch analysis based on data from the Prosecutor's Office "Sistema Integrado de Actuaciones Fiscales" (SIAF), from January 2015 to September 2020.

<sup>60</sup> Constitución de la República del Ecuador, 2008, art. 35.

<sup>61</sup> Ibid., arts. 81, 175.

<sup>62</sup> Ministerio de Justicia, Derechos Humanos y Cultos, Código Orgánico Integral Penal, <http://www.funcionjudicial.gob.ec/index.php/es/normativa/codigo-organico-integral-penal.html> (accessed September 24, 2020), art. 504.

Gesell chamber—a room where children are interviewed by a specialized child psychologist, while legal counsel and prosecutors observe from another room through a one-way mirror.<sup>63</sup> This modality seeks to reduce re-traumatization, limiting children’s exposure to the judicial proceedings. In Ecuador, there are 29 Gesell chambers, 22 located in provincial capitals, according to official data from the Prosecutor’s Office.<sup>64</sup> Five provinces have more than one Gesell chamber. Children in rural areas remote from provincial capitals that have a Gesell chamber must travel a long way to get to one.<sup>65</sup> According to the Prosecutor’s Office, nine Gesell chambers were not working, including in four provincial capitals that only have one chamber.<sup>66</sup> In 2020, budget cuts to the Prosecutor’s Office reduced the budgets available to repair some of these chambers.<sup>67</sup>

Most children lacked psychological support during their judicial proceedings: many faced obstacles when accessing therapy through the Ministry of Public Health given the severely limited availability of therapists,<sup>68</sup> the limited amount of time therapists can spend with every patient, and lack of accommodation to ensure children could access therapy after school hours. Due to the cost involved, few parents were able to hire private therapists to ensure their children received adequate mental health support.

Ecuador’s institutions, including its justice mechanisms, sometimes indirectly or directly blame victims of sexual violence, and occasionally their parents, for crimes perpetrated against them. Some parents and lawyers pointed out mistreatment of parents and open displays of sexism and misogyny during trials. Human Rights Watch documented numerous examples where prosecutors or experts in their offices doubted children’s testimony or questioned the complaint without good reason.<sup>69</sup> Ministry officials also pointed to instances where prosecutors do not accept complaints filed by school officials or student welfare teams, and situations where prosecutors attempted to remove facts from complaints to reduce charges against teachers.<sup>70</sup>

In some cases documented by Human Rights Watch, proceedings undermined children’s and adolescents’ dignity and their right to be heard, and exposed them to re-traumatization. Many prosecutors and judges lack the skills and training needed to work on cases related to sexual

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<sup>63</sup> Consejo de la Judicatura, “Protocolo para el Uso de la Cámara de Gesell,” Resolución 117-2014, 2014, <http://www.funcionjudicial.gob.ec/www/pdf/resoluciones/2014cj/117-2014.pdf> (accessed September 24, 2020).

<sup>64</sup> Data provided to Human Rights Watch by the Prosecutor’s Office on October 17, 2020.

<sup>65</sup> Human Rights Watch interview with Efigenia Witt, lawyer, Quito, June 24, 2019.

<sup>66</sup> Data provided to Human Rights Watch by the Prosecutor’s Office on October 17, 2020.

<sup>67</sup> Ana Belén Rosero, “Fiscalía tiene menos dinero para el 2020; hay reclamos,” *El Comercio*, February 3, 2020, <https://www.elcomercio.com/actualidad/reduccion-presupuesto-fiscalia-2020-proforma.html> (accessed July 12, 2020).

<sup>68</sup> See UNHRC, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Visit to Ecuador,” UN Doc. A/HRC/44/48/Add.1, May 6, 2020, <https://undocs.org/en/A/HRC/44/48/Add.1>, para. 37.

<sup>69</sup> Human Rights Watch interview with representatives of Movimiento Sororidad, Cuenca, July 4, 2019; Human Rights Watch Skype interview with Laura Salvador Puig, Directora Nacional de Educación por la Democracia y Buen Vivir, January 29, 2020.

<sup>70</sup> *Ibid.*; Human Rights Watch video interview with Sebastián Salazar Nicholls, Director Nacional de Educación para la Democracia y el Buen Vivir, and Lorena Peñaherrera Vaca, analyst, Ministry of Education, September 17, 2020.

and gender-based violence. Most prosecutors are not specialized or trained in sexual violence offenses or cases involving children and adolescents: there are only 70 prosecutors working in specialized gender-based violence units and, of those, few have specialized knowledge of cases involving children, according to information obtained by Human Rights Watch.<sup>71</sup>

So far, discussions around reparations have not focused on how to repair the impact on a survivor's integrity and their sexual and reproductive rights, or the lifelong impact of trauma, stigma, and stress faced by survivors from the moment their cases are first officially filed until a judgment is reached.<sup>72</sup> Cases documented by Human Rights Watch seldom included reparations for parents or other family members—most parents, and some survivors, said prosecutors did not consult them on what they expected as reparation.

In its previous review, the CRC called on Ecuador to “adopt clear standards for the provision of remedies and redress for girl victims of sexual violence and abuse, including psychosocial redress and counselling, reparations, compensations and guarantees of non-repetition.”<sup>73</sup> In May 2020, the Special Rapporteur on violence against women called on Ecuador to ensure “the provision of reparations and remedies for survivors of sexual violence in schools and universities, including through a public apology and other appropriate measures of reparation to child survivors of sexual violence and their families.”<sup>74</sup> At time of writing, the government had developed neither of these standards—these were still dependent on prosecutors guided by the Penal Code—nor a mechanism to enforce compliance with reparations measures.<sup>75</sup>

### **Lack of Due Process Rights**

Human Rights Watch found that girls and women suspected of having sought abortions encountered barriers to accessing good quality legal representation, and violations of their due process rights. Human Rights Watch found that girls and women are often charged and convicted of abortion-related crimes based on evidence obtained illegally through violations of their right to privacy, medically invalid tests, and interrogations conducted without the presence of counsel and which often take place while a girl or woman is in hospital. In most of the cases, the main evidence against girls and women who sought an abortion consists of the medical history, the emergency care sheet, and the testimony of health providers who reported the woman or girl to the police, all in violation of medical confidentiality. Ecuadorian law bars

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<sup>71</sup> Data provided to Human Rights Watch by the Prosecutor's Office on October 17, 2020. An additional 70 prosecutor assistants (“Asistente de Fiscalía”), and 74 prosecutor secretaries (“Secretario de Fiscalía”) work in these units nationally.

<sup>72</sup> See, Human Rights Watch, “It's a Constant Fight,” pp. 64 – 69.

<sup>73</sup> CRC, Concluding observations on the combined fifth and sixth periodic reports of Ecuador, CRC/C/ECU/CO/5-6, October 26, 2017, para. 27(d).

<sup>74</sup> UNHRC, “Report of the Special Rapporteur on violence against women, its causes and consequences, Visit to Ecuador.” UN Doc. A/HRC/44/52/Add.2, May 22, 2020, <https://undocs.org/en/A/HRC/44/52/Add.2> (accessed July 21, 2020).

<sup>75</sup> Código Orgánico Integral Penal, arts. 77-78; Human Rights Watch interview with Mayra Soria, prosecutor, Quito, June 20, 2019; Human Rights Watch WhatsApp interview with Yoli Pinillo Castillo, prosecutor, July 24, 2020.

the use of evidence that has been obtained in violation of constitutional rights.<sup>76</sup> However, courts routinely seemed to allow the introduction of evidence obtained in violation of patients' constitutional right to medical confidentiality.

Moreover, when girls and women being prosecuted for abortion with consent raised allegations of gender-based violence—including allegations that they had been forced or coerced into abortion—these allegations were not investigated or taken into consideration, while the legal proceedings against them moved forward.

*Human Rights Watch recommends that the Committee call on the government of Ecuador to:*

- Investigate and prosecute all cases of school-related sexual violence, respecting the constitutional and legislative requirement to guarantee an expedited treatment of cases involving child or adolescent victims;
- Ensure the rights of young victims and their relatives under Ecuadorian law are protected throughout judicial proceedings, including by prioritizing their cases, seeking to ensure young victims only need to testify once or on as few occasions as necessary to ensure justice, and providing children and their relatives access to appropriate and accessible psychosocial services, including therapy;
- Adopt a law on reparations and remedies for child and adolescent survivors of sexual violence and their families, that is informed by survivors, and includes monetary and non-monetary remedies, symbolic reparations and acts of public reparation;
- Develop and strengthen trainings for justice sector officials regarding the right to access abortion from a comprehensive health perspective, the obligation of health care professionals to protect patient confidentiality, and on eliminating negative gender stereotypes;
- Train staff in the Attorney General's office and the Judiciary Council on gender sensitivity, including about gender-based violence, and ensure that they take gender into account when handling cases;
- Take steps to improve the justice system response to gender-based violence, including sexual violence, and ensure that any time allegations of gender-based violence arise in an abortion case those allegations are investigated and, as appropriate, prosecuted;
- Regularly report the number of prosecutions for abortion, and provide disaggregated data by age.

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<sup>76</sup>Ecuadorian Constitution, art. 76: "In all proceedings in which rights and obligations of any kind are determined, the right to due process shall be ensured, which shall include the following basic guarantees... 4. Evidence obtained or acted upon in violation of the Constitution or the law shall have no validity whatsoever and shall not qualify as evidence."