



29 January 2015

Secretariat of the Committee on the Elimination of Discrimination against Women
United Nations Office of the High Commissioner for Human Rights
Palais Wilson
52, rue des Pâquis
CH-1201 Geneva, Switzerland

Hereby, the Ecuadorean Front for Sexual and Reproductive Rights and Planned Parenthood Federation of America, present a joint report before the Honorable Committee on the Elimination of Discrimination against Women to complement the Committee's work by offering information for Ecuador's review, that will take place on the 60th session, in February 2015.

We want to thank you in advance for your prompt attention to this matter,

Respectfully,

The Ecuadorean Front for Sexual and Reproductive Rights
Planned Parenthood Federation of America

Español

29 de enero de 2015

Secretaría del Comité para la Eliminación de la Discriminación contra la Mujer Oficina del Alto Comisionado de Derechos Humanos de Naciones Unidas
Palais Wilson
52, rue des Pâquis
CH-1201 Ginebra (Suiza)

De nuestra mayor consideración,

Por medio de la presente, El Frente Ecuatoriano por los Derechos Sexuales y Reproductivos y Planned Parenthood Federation of America tenemos el agrado de dirigirnos a ustedes con el fin de presentar ante el Honorable Comité para la Eliminación de la Discriminación contra la Mujer un informe para complementar el trabajo del Comité respecto de la revisión de Ecuador, prevista para la sesión N° 60, en Febrero de 2015.

Agradeciendo de antemano la atención prestada a la presente,

Cordialmente,

El Frente Ecuatoriano por los Derechos Sexuales y Reproductivos
Planned Parenthood Federation of America



**Secretary of the Committee on the Elimination of Discrimination against Women
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52, rue des Pâquis
CH-1201 Geneva (Switzerland)**

Ref. Report of the 60th Session of CEDAW (February 16 to March 6, 2015) on the right to sexual and reproductive health in Ecuador

Dear Sirs:

I. Introduction

Under the 60th Session of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), “El Frente Ecuatoriano por los Derechos Sexuales y Reproductivos,” composed of seven civil society nonprofit organizations,¹ in addition to [Planned Parenthood Federation of America](#), wish to supplement the work of the Committee providing information on the status of Ecuador regarding the rights protected by the Convention on the Elimination of Discrimination against Women² (CEDAW). These civil society organizations hereby submit this report noting our particular concern about the level of compliance of the Ecuadorian State with its international obligations pertaining to the enjoyment of reproductive rights, particularly access to safe and legal abortion under the rights enshrined in CEDAW.

This report is divided into two parts. The first part provides information about the limits imposed on access to safe and legal abortion in Ecuador, and further reveals the high incidence of rape and sexual violence in Ecuador in addition to an elevated rate of maternal mortality, and other health risks to Ecuadorian women. The second part provides a legal analysis based on the information presented in the first part, showing that the Ecuadorian State is in breach of its obligations under CEDAW regarding the rights to material equality, health, sexual and reproductive rights, and the right to live free from violence.

II. Situation in Ecuador

The lack of specific, State-level information on unsafe abortion and its relationship to maternal mortality, in addition to the restrictions on access to therapeutic abortion and abortion in cases of rape, continued violations of doctor/patient confidentiality and the criminalization of women with suspected illegal abortions, violates the rights of Ecuadorian women including the right to health, to privacy, to live free from violence as well as reproductive rights, while consequently subjecting women to discriminatory conditions.

It is estimated that maternal mortality in Ecuador is one of the highest in Latin America,³ a concern expressed by the Committee in its latest report to the Ecuadorian State.⁴ According to the Ecuadorean Yearbook of Vital Statistics, Births and Deaths, the maternal mortality rate was 45.7 per 100,000 live births in 2013 and the third cause of mortality, which means that the country will not meet its goal of reducing maternal deaths as set out in the National Plan of Good Living [Plan Nacional del Buen Vivir].⁵ Ecuador's Ministry of Public Health admits that most maternal deaths in the country involve women who find themselves in vulnerable conditions such as poverty, are geographically removed from existing health services, or come from certain ethnic backgrounds.⁶



1. Lack of information on maternal mortality and unsafe abortion

These alarming maternal mortality figures are closely related to unsafe abortion. In its 6th and 7th Report to the Ecuadorian State, the Committee expressed concern that unsafe abortions in the country are not documented officially and the link with maternal mortality is unknown.⁷ The Pan American Health Organization has also shown that maternal mortality in Ecuador is “one of the most difficult indicators to assess” because in Ecuador there are various sources to calculate an accurate statistic.⁸

Limited information does exist on the link between maternal morbidity and unsafe abortion. According to the National Institute of Statistics and Censuses [Instituto Nacional de Estadísticas y Censos], unsafe abortion is the second leading cause of female morbidity and the fifth leading cause of overall morbidity.⁹ As for hospital discharges, the main causes in the last decade were spontaneous birth, caesarean section and unspecified abortion.¹⁰ Specifically, abortion was recorded in 40,256 hospital discharge records per year.¹¹ Adolescent girls and young women showed higher hospitalization rates for abortion-related complications.¹²

Unfortunately, there is a lack of official government data demonstrating the link between unsafe abortions to maternal mortality risks in Ecuador. The only available information is from a short study commissioned by Human Rights Watch (HRW), which indicates that at least 10 women were killed in Ecuador due to abortion-related complications in 2013.¹³ Given that very few cases are reported and the actual cause of death of these women is not properly recorded, the number of women who die due to unsafe abortions is undoubtedly higher. A report from Ecuador's National Institute of Statistics and Censuses describes the reason for these deaths in very general terms as sepsis, hemorrhaging and other pregnancy and postpartum complications, rather than abortions.¹⁴ It is therefore possible that the actual figure of abortion-related deaths include these 10 cases discovered by HRW, along with deaths that are documented as postpartum hemorrhage, sepsis and unspecified causes.¹⁵

Without accurate information on the issue, the State is not taking necessary and effective measures to reduce maternal morbidity and mortality associated with unsafe abortion that could potentially eliminate discrimination against women with regards to their lives and health. Even a 2011 study by the Ecuadorian State notes that “there is high underreporting of maternal deaths, especially those that have occurred from abortion-related complications of any kind.” Thus, the study suggested the establishment of an epidemiological oversight system and an improvement in the quality of information collected.¹⁶ So far, no State actions have been sufficient for meeting the sexual and reproductive health needs of Ecuadorian women.

Even with the lack of information, there is no doubt that a problem exists, which is supported by studies that reflect the experiences and perceptions of Ecuadorians on abortion. The National Opinion Survey on Sexual and Reproductive Rights [Encuesta Nacional de Opinión sobre Derechos Sexuales y Derechos Reproductivos] found that 11% of the population claims to know a woman, teenager or child who died from an unsafe abortion.¹⁷ Thus it follows that death from unsafe abortion is a known phenomenon by the Ecuadorian people. However, official and accurate statistics are still needed to find a possible solution.

2. Consequences of the lack of legislation on therapeutic abortion

For over 70 years and under two different Criminal Codes,¹⁸ including the most recent revision (2014), therapeutic abortion (i.e., abortion to prevent risks to the life or health of the pregnant woman) is legal in



the country. It was not until recently that the Clinical Practice Guidelines for Therapeutic Abortion [Guía Práctica Clínica de Aborto Terapéutico] were authorized, which must be immediately implemented by all health professionals who have traditionally been reluctant or slow to offer necessary procedures to protect the health of women, whether to avoid legal sanctions or based on misconceptions about the law.

3. Elevated rates of sexual assault and women who become pregnant as a result, face limits in access to necessary medical care

According to the Atlas of Socio-Economic Inequalities [Atlas de las Desigualdades Socio-Económicas] published in 2014 by the own Ecuadorian State, about 380,000 women in Ecuador have been raped and one in every four women (25.7%) have experienced some sort of sexual violence (i.e. sexual abuse before the age of 18, sexual harassment, rape or forced to perform sexual acts against their will).¹⁹ These figures are even higher among girls and young women. In the past decade, pregnancy among girls ages of 10 and 14 increased by 74.8%, a situation that is closely linked to high rates of sexual violence. Currently there is an estimated 3,600 girls in Ecuador under the age of 15 who are mothers as a result of rape.²⁰ A testimony acquired by Fundación Desafío from a young rape victim reveals the multiple abuses these girls and women endure:

As I was telling you, my stepfather raped me. I told my mom and my mom asked me why the sheet was stained; I told her, but she did not want to believe me. So, my stepfather... I [sic.] was lying down and my stepfather would rape me when because [sic.] the bed was a full size bed. He did several times [...] When the police arrived, my mom was healing his head, my mom told them that he had raped me several times and the police officer asked why, why [sic.] I was in the corner, I did not want to see any police officer and a lady officer came dressed as a civilian and told me to come with her and took me in a car with my sisters and my mom and took me with a psychologist and that is how I had my first pregnancy.²¹

In Ecuador, rape survivors who become pregnant as a result of this violent act experience several situations of vulnerability and discrimination. A woman interviewed in a focus group by the NGO SENDAS gave her testimony, which demonstrates these additional conditions:

When I was raped I was scared and did not get my period, I waited and waited like 15 more days until I took a test and it was positive, it was difficult, I could not have a child in those conditions, I did not want to get pregnant and much less have the son of the man who did so much damage to me, then with a friend we found a place, we got so many directions, we ended up in the bay, finally we got the address of a doctor, who was dead, it was very complicated, I was very frightened, I could feel everything he was doing, I was mistreated, and then I had to go home all sore. Nobody knew what happened to me. I felt the worst pain I've ever felt in my life, I thought I was going to die, but what I now say is that despite the pain I had, if I were to go through something like that again, I would not think twice, I do not want to have a child of a rapist to remind me every day of what happened to me. From there, I think every woman should decide whether to have a child under these conditions or not.²²

In addition to the multiple aggressions suffered by rape survivors and the fact that they are forced to continue a pregnancy, which is the result of the crime, most cases end with complete impunity. This situation of vulnerability is perpetuated as it continues to impact the woman's life when she makes choices regarding her education and future career choices. For example, a teenager expressed: "I did want to go to school, but with this *pipota* (pregnancy) ... now I'm embarrassed."²³



Rape survivors are not the only ones who think that being forced to continue an unwanted pregnancy resulting from a rape is detrimental to women's lives. Throughout an investigation conducted by the NGO CEPAM-Guayaquil, several health care professionals expressed their support for the decriminalization of abortion in cases of rape. For example, a doctor from the city of Guayaquil stated that:

I also think [abortion] would be justified in cases of rape, for example, they do not know the rapist, they do not know if he had HIV, I mean ..., or another disease, and the trauma that causes to the patient, to know that she will have an unwanted child... because just 15 days ago we had a 14-year-old patient who was raped, had the child and did not want the baby, she did not want to have anything to do with the baby, she would cry, I would bring her the baby I tried to talk to her, to guide her, but she did not want it, finally she accepted it, but we don't know what happened, the way she left, if she would give it away. I think in this case abortion would also be justified.²⁴

Similarly, 66% of survey respondents agreed that abortion should be legal in cases of rape, as noted by the National Opinion Survey on Sexual and Reproductive Rights [Encuesta Nacional de Opinión sobre Derechos Sexuales y Derechos Reproductivos].²⁵

4. Women's medical care does not always ensure confidentiality

Court cases and testimonies have shown that more and more service providers break confidentiality and report women who seek care for an incomplete abortion.²⁶ A baseline survey commissioned by the Ecuadorian Federation of Gynecology and Obstetrics [Federación Ecuatoriana de Sociedades de Ginecología y Obstetricia] polled 21 gynecologists from various provinces of Ecuador; of which 14 claimed to be willing to turn in their patients should they suspect an illegal abortion, while only 6 expressed they would still respect their patients' confidentiality.²⁷

Other interviews with health care providers revealed that physicians are willing to report women who have allegedly induced an abortion, and actually do so. One health care provider said:

I was very concerned to hear a comment by the Medical Director of XXX Hospital in a workshop for analyzing references and counter-references, in which he stated that abortions have increased, that over 3 women per day are treated and suspected of an abortion, and that they would no longer be accomplices in the crime, so they will proceed to report these cases to the prosecutor's office so they can investigate these alleged induced abortions. He said he had already reported one case, but by the time the police arrived the girl had gotten away, I don't know if the girl received care or what happened to her, but she was bleeding in her first trimester [sic].²⁸

By being reported after seeking health services, these women suffer stigmatization at the hand of medical professionals who, in addition to conducting judgmental practices, also violate the right to doctor-patient confidentiality.

5. Women who require medical attention are indiscriminately prosecuted

In addition to violations of their right to privacy and doctor-patient confidentiality, Ecuadorian women are being discriminated by the judiciary, who prosecutes them immediately after entering a hospital with a suspected abortion in progress.



The records from six cases from the coast and highlands of Ecuador indicate that women were prosecuted with the testimony of medical personnel alone; in violation of the provisions of the Ecuadorian Constitution,²⁹ the Comprehensive Organic Criminal Code (which declares inadmissible any statement from a health professional),³⁰ and the international treaties the Ecuadorian State has ratified.³¹ The records also reveal that women were questioned by the police without the presence of a lawyer.³² Legal representation is neither guaranteed at the moment of interrogation nor when women are under police custody.³³

During detention, women were subjected to unnecessary testing or treatments, including testing of bodily fluids. These types of tests should only be done during a forensic examination in rape cases, with consent from the woman or prior consultation with her lawyer. While the results of these tests may reveal an abortion in progress, it cannot demonstrate whether the abortion itself was induced or not. However, in practice, the results from these tests are being used as conclusive evidence to accuse women of an illegal abortion.

The terms in which these women were prosecuted are also inadmissible because these cases were ruled to be “*in flagrante delicto*,” or caught in the act. Nonetheless, the necessary legal elements needed for such a ruling per the Criminal Code had not been met.³⁴ None of the case files show any evidence of an instrument or drug that could induce an abortion and furthermore, one of the women stated that she had miscarried after moving heavy furniture in her house. In the event that there was a crime, according to Ecuadorian law, it could only be considered *in flagrante delicto* if the police had been with the accused at the exact time that she allegedly used an abortion-inducing drug or instrument, and the abortion occurred right then, or up to 24 hours after that fact. The same records show that there was a wide gap between the alleged offense and police intervention.

*Miss X was questioned ... who indicated that she was 5 months pregnant and that **approximately one month before** she had taken 3 pills of cytotec orally and 4 vaginally; for that reason, after experiencing stomach pain and heavy bleeding, she had come to this health care institution to see an on-duty doctor (emphasis added).³⁵*

In short, these women were imprisoned and/or prosecuted without any legally valid evidence of *in flagrante delicto*.

It is worth noting that in addition to the various domestic and international jurisprudence that defends the freedom of women to have an abortion, the Ecuadorian population is also against the criminalization of these women. According to the National Opinion Survey on Sexual and Reproductive Rights, 74% of Ecuadorians surveyed believe that a woman who has an abortion should not go to jail.³⁶

III. Legal analysis

Ecuadorian women face five fundamental problems accessing a safe and legal abortion in their country: 1) inadequate information and records linking maternal mortality to unsafe abortion, which limits public policies that can improve women’s health; 2) a failure to implement the Criminal Code that allows therapeutic abortion and abortion for rape victims with mental disabilities; 3) the criminalization of women suspected of abortion even in cases of rape, given the unacceptable high rates of sexual violence in Ecuador; 4) violation of doctor-patient confidentiality and privacy when reporting women suspected of an abortion, which prevents women from seeking obstetrical care for fear of being incarcerated; and (5) the indiscriminate prosecution of women without proper cause. These five issues violate women's right to



health, the right to live free from violence, sexual and reproductive rights, and the right to substantive equality.

A. The Ecuadorian State violates the right to health of Ecuadorian women by not having specific information on maternal mortality and abortion-related risks

In the absence of a specific study that disaggregates the number of unsafe abortions in Ecuador and its relationship to maternal mortality, the Ecuadorian government is failing to take steps to ensure that women are treated equally to men. Material equality – where men and women have “human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”³⁷ – requires that the State establish conditions that ensure that women are *at par* with men. The high rate of maternal mortality in Ecuador is a discrimination issue, since women are the only ones likely to suffer the consequences.

Article 2 of CEDAW obliges States to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”³⁸ That is, the State must take immediate action if it is determined that there is a problem that puts women at a disadvantage. To prevent high rates of maternal mortality, it is essential for the Ecuadorian population to have all the information related to unsafe abortion. With no specific, accurate and disaggregated information on maternal mortality and its link to unsafe abortion, Ecuadorian women are at a permanent disadvantage with regards to their life and health. Therefore, the Ecuadorian State has not complied with its obligation to take appropriate and immediate action to address this discrepancy.

B. Failure to implement the guidelines allowing therapeutic abortion and abortion for rape survivors with mental disabilities in Ecuador constitutes discrimination against women and violates their rights to health, reproductive autonomy and substantive equality

In Ecuador, abortion is a reality and unsafe abortion is a public health problem, affecting mainly the poorest women. Many of them could have access to safe and legal abortion, including therapeutic abortion, but the lack of compliance of the Clinical Practice Guidelines for Therapeutic Abortion, in addition to the lack of knowledge about their rights, discourages women from seeking the care they deserve and prevents health care professionals from providing needed services.

The World Health Organization (WHO) has established that in countries where abortion is legal, such is the case in Ecuador under article 150 of the Comprehensive Organic Criminal Code,³⁹ there is an obligation to provide this service in the public health system, eliminating unnecessary risks and barriers for women who need it.⁴⁰ However, the laws have not been consistently applied in Ecuador, violating women’s reproductive rights and their right to health and substantive equality.

As per the recommendations of World Health Organization, the implementation of the Clinical Practice Guidelines for Therapeutic Abortion could facilitate real access without discrimination to all women who need an abortion. The implementation of this national protocol should be understood as an instrument for reducing and eliminating barriers to access to services and as a way of providing clarity and certainty to service providers about how to provide legal abortion.

Failure to implement a protocol that guides health care professionals for providing therapeutic abortion threatens the health of Ecuadorian women while discriminating them, in violation of their right to health without discrimination stipulated by Article 12 of CEDAW.⁴¹ This article provides that States must take “all appropriate measures to eliminate discrimination against women in the field of health care in order to



ensure, on a basis of equality between men and women, access to health care measures, including those related to family planning.”⁴² Other international human rights treaties ratified by Ecuador also protect the right to health.⁴³

The CEDAW Committee has determined the State's obligations with respect to the right to health, including sexual and reproductive health, and nondiscrimination. According to its Recommendation No. 24, States must refrain “from obstructing actions taken by women to achieve their goals in health.”⁴⁴ Even with the approval of the Clinical Practice Guidelines for Therapeutic Abortion, failure to implement them would become one such obstruction to the fulfillment of women’s right to health and non-discrimination.

General Recommendation No. 24 is even more explicit when legal services are limited; because it maintains that “the refusal of a State to provide for the provision of certain reproductive health services for women in legal terms is discriminatory.”⁴⁵ This report previously showed that health professionals call for legislation to provide therapeutic abortion, and failure to enact it means also failing to protect the health of women.

Failure to implement the Clinical Practice Guidelines for Therapeutic Abortion directly hampers and prevents access to legal abortion. The limits on access to therapeutic abortion violate the right to substantive equality as this is a service that only women need. Its restrictions mean hindering women from terminating a pregnancy when their life is at risk or their physical, mental and social health is at risk, which is discriminatory and violates Articles 1 and 2 of CEDAW. The violation of the right to health is evident in the serious risks women face in their physical, mental and social health in having to carry a pregnancy to term, thus also violating Article 12,⁴⁶ as stated in General Recommendation No. 24 of the CEDAW.⁴⁷ Reproductive autonomy,⁴⁸ in addition to women’s ability to make life decisions, are limited once they lose the ability to make decisions about their health, their bodies or a pregnancy; thus, violating their reproductive rights.

Therefore, we respectfully request that the CEDAW Committee remind the Ecuadorian State of its obligation to respect, protect and fulfill the right to a legal therapeutic abortion as enshrined in the Ecuadorian Criminal Code, recommending immediate implementation of the Clinical Practice Guidelines for Therapeutic Abortion to facilitate access to therapeutic abortion in accordance with international human rights instruments signed by Ecuador.

C. The criminalization of abortion in cases of rape violates CEDAW Committee recommendations, primarily Recommendations No. 19 and 24 and other international human rights jurisprudence that protects women’s right to health, autonomy, freedom from violence and other sexual and reproductive rights.

The prohibition of legal abortion in cases of rape violates the rights to health, sexual and reproductive rights, material equality and freedom from violence. Two United Nations Committees on Human Rights have asked the Ecuadorian State to take measures to protect sexual and reproductive rights of women in Ecuador who have been raped. The Committee against Torture recommended that Ecuador “fully ensure access to victims to specialized health care services in family planning and prevention and diagnosis of sexually transmitted diseases.”⁴⁹ And more specifically, the Committee on Economic, Social and Cultural Rights in its report to Ecuador in 2012 recommended the decriminalization of abortion when the pregnancy resulted from rape.⁵⁰

In Recommendation No. 19,⁵¹ the CEDAW Committee noted that violence against women and failure to eradicate that violence constitutes a form of discrimination, violating Article 1 of the Convention, and that



gender-based violence affects women disproportionately. Gender-based violence is a health issue, according to General Recommendation No. 24.⁵² Therefore, States should ensure the provision of adequate health services for victims of domestic violence, including sexual violence.

A woman who has been raped experiences trauma long after the act, with psychological consequences, while putting her at risk of sexually transmitted infections and other physical ailments, in addition to forcing her into maternity as the product of that rape. Additionally, Recommendation No. 24 states that “Girls and adolescents are often exposed to sexual abuse by older men and family; consequently, they are at risk of physical and psychological harm and unwanted or premature pregnancies.”⁵³ For its part, the Human Rights Committee has expressed concern with the high rate of young girls who have been victims of rape in Ecuador and the consequences they face for the rest of their lives.⁵⁴

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has also explained that the criminalization of abortion constitutes a barrier that prevents women from exercising their right to health.⁵⁵ In that vein, the Committee has recommended that: “To the extent possible, legislation criminalizing abortion should be amended in order to remove punitive provisions imposed on women who have undergone abortions.”⁵⁶

In early drafts of the Criminal Code during the years 2012 and 2013, an attempt was made to legalize abortion in cases of rape. The women’s movement managed to secure the support of a significant number of Assembly members. Unfortunately, this initiative was censored by the Executive branch, which sanctioned the female legislators who submitted the draft to the Assembly and then insulted them in the most disrespectful ways on the basis of their gender.⁵⁷ In addition, President Rafael Correa threatened to resign if the motion for decriminalization of abortion in cases of rape was not withdrawn.⁵⁸

The prohibition of abortion in cases of rape violates women’s right to substantive equality. As in the case of therapeutic abortion, they are the sole beneficiaries of this medical intervention. Bans on needed abortion services, limit their access to health services in a discriminatory manner. The lack of a proper interpretation of the negative impact on women’s health due to pregnancies that are a result of a rape puts limits the fulfillment of women’s right to health. First, the Ecuadorian State is severely hampering the rights of women to achieve their health goals. Second, rape has serious impacts on the physical, mental and social health of women; and restricting abortion after rape fails to consider the right of Ecuadorian women to access abortion when their health is endangered, including their mental and social health, especially if the perpetrators are in their surrounding environments. As indicated in the report by Human Rights Watch, women and girls who have suffered sexual violence need medical attention, especially sexual and reproductive health, including abortion.⁵⁹

Finally, the prohibition of abortion in cases of rape restricts women’s right to be free from violence. As described in General Recommendations No. 24 and 19, States must establish health care procedures and protocols that adequately address violence against women. The prohibition of abortion in this case does not compensate the damage and threatens the health of women. It even leads them to resort to unsafe abortions; thus, re-victimizing them and putting them in a position of vulnerability, breaching the obligation of States to prevent coercion with respect to sexuality and reproduction, according to General Recommendation No. 19. For this reason, we ask the Committee to recommend that Ecuador decriminalize abortion in cases of rape.



D. The Ecuadorian State is violating the right to confidentiality enshrined in the Constitution of Ecuador, article 12, and General Recommendation No. 24 of the CEDAW, and other international human rights treaties, violating the rights to health, substantive equality and other sexual and reproductive rights.

Confidentiality is essential to receiving adequate health services without discrimination in a context in which counseling and exchange of information between women and their health care professionals is free from stigma, prejudice, and punishment; thus, safeguarding women's right to overall health, in accordance with Article 12 of CEDAW.⁶⁰

General Recommendation No. 24 of CEDAW states that the State has the duty to ensure, on a basis of equality between men and women: i) access to medical care, ii) information and education, and iii) women's rights to health care through legislation as well as executive and policy action.⁶¹ It also states that, "The lack of respect for the confidentiality of information ... may deter women from seeking advice and treatment and thereby adversely affects their health and welfare."⁶² By allowing health care professionals to violate confidentiality and women's autonomy and decision-making on family planning, as per General Recommendation No. 24 of CEDAW, women are discriminated in their right to health and wellness, along with other rights, including the right to privacy and the right to freedom.

Not only are rights to privacy violated, this pattern can deter women from seeking health services for fear of being reported and may lead them to choose to terminate their pregnancies by unsafe means. In Recommendation No. 24, this Committee notes that "women will be less likely to seek medical care for diseases of the genital tract, for contraception or for incomplete abortions, and in cases where they have suffered sexual or physical violence."⁶³ It also creates distrust in the health system in general, even for other services that are unrelated to sexual and reproductive health. This may lead women to be untruthful with health care professionals, increasing the risk of mortality and morbidity.

Aside from the CEDAW Committee, other international human rights bodies have analyzed the importance of confidentiality. In its analysis of the American Convention on Human Rights, ratified by the Ecuadorian State, the Inter-American Court of Human Rights stated that any mechanism that encourages doctors to report patients for possible criminal conduct violates the principle of legality established in Article 1 the American Convention. Specifically, in the case of *De la Cruz v. Peru*,⁶⁴ the Court held that the implied ban prohibiting a doctor from providing care to alleged terrorists is a severe attack against the respectability of the medical act. In addition, this practice violates Article 9 of the American Convention by penalizing the medical act, which was not only lawful, but also constitutes a duty for the physician.

In the case of Ecuador, where the police and the prosecutor pressure health care service providers to report women, the State is violating the principle of legality by forcing these service providers to report alleged criminal behavior based on information that has been obtained in the exercise of their profession.

E. The Ecuadorian State is discriminating against women when they are disproportionately subjected to prosecution after receiving care for a suspected abortion in progress

When women are reported and prosecuted for a suspected illegal abortion, their rights to freedom, non-discrimination, and autonomy, are being violated. Records from six cases reveal that women were detained immediately after seeking medical services. The arrest was based only on the testimony of service providers, without legal representation or admissible evidence. By subjecting them to arbitrary



deprivation of liberty, the Ecuadorian State is violating the right to non-discrimination of women in the country.

Article 2 of CEDAW requires that States establish “the legal protection of the rights of women on an equal basis with men and to ensure, through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination.”⁶⁵ The State will also have to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation.”⁶⁶ Moreover, even when there is evidence of an alleged abortion, according to General Recommendation No. 24 of the CEDAW, women should not go to prison. This Committee has emphasized that imprisonment should be fully eradicated in these cases.⁶⁷ The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has also stated that “as an interim measure, [the State must] consider the possibility of competent authorities in formulating policies and protocols imposing a moratorium on the enforcement of criminal laws relating to abortion.”⁶⁸ And in his 2013 report, the Special Rapporteur on torture urged all States to ensure that women have access to emergency medical care without fear of criminal sanctions or retaliation.⁶⁹ The latter urges States to ensure that any statements heard by medical professionals have no adverse consequences for women or health care professionals.

By criminalizing women for abortion, the State discriminates against them in violation of Article 2 of CEDAW, as shown by General Recommendation No. 24. The prosecution of women means that they are treated unequally compared to men who do not face these situations in the judicial system. By being immediately prosecuted, without valid evidence or legal defense, these women are exposed to arbitrary decisions depriving them of their right to due process.

QUESTIONS

Based on the information presented in this report, we hope that this Committee will consider the following questions for the Ecuadorian State:

- What measures has the Ecuadorian State taken to systematize and collect more accurate records on unsafe abortion and how this relates to maternal mortality?
- What measures has the Ecuadorian State taken to enable women to access legal abortion? When will the Clinical Practice Guidelines for Therapeutic Abortion come into effect? How will the State protect the right to health including all its physical, mental and social dimensions? What action is the State taking to train health care professionals and raise awareness among Ecuadorian women about how to access safe and legal abortion services?
- What steps are being taken to ensure access to abortion care in cases of rape, which is legally allowed in Ecuador?
- What steps are being taken by the State to respect, protect and guarantee the right to confidentiality?
- How can the State work to discourage discrimination and criminalization of women who are suspected of an illegal abortion?

RECOMMENDATIONS

On the basis of Ecuador's violation of the rights to substantive equality and non-discrimination (Art. 1 and 2), health (Art. 12), reproductive autonomy (Art. 16) and the right to freedom from violence, which are part of the Human Rights contained in the CEDAW Committee's General Recommendations No. 19 and



24, in addition to the General Comments of the CEDAW Committee to Ecuador in 2008 and other international instruments, we respectfully request that the CEDAW Committee make the following recommendations in the next session to the Ecuadorian State:

1. Strengthen the public information system on abortion in the country, eliminating the problem of insufficient record keeping and including tracking mechanisms that will evidence the link between maternal mortality and morbidity and unsafe abortion.
2. Take all necessary measures to ensure access to therapeutic abortion, which is legal in Ecuador, including the immediate implementation of the Clinical Practice Guidelines for Therapeutic Abortion. Ensure the availability of safe and legal abortion and women's access to quality care after an abortion; the implementation of the Clinical Practice Guidelines should include information and training in order to ensure adequate provision of health care for women and adolescents.
3. Decriminalize abortion and, more specifically, decriminalize abortion in cases of rape for all women in Ecuador and without discrimination.
4. Protect doctor/patient confidentiality and prevent health care professionals from reporting women suspected of an abortion. Such action will require training medical personnel about the consequences or sanctions involving violating this right and duty. The Ecuadorian State must clarify that Constitutional obligations to protect privacy must prevail over other legislation that may require health professionals to report women.

Sincerely,

Virginia Gómez de la Torre
Frente Ecuatoriano por los
Derechos Sexuales y Reproductivos

Heather Sayette
Latin America Program
Planned Parenthood Federation of America

¹ These organizations are: Coordinadora Política por Equidad de Género, CEPAM-Guayaquil, Fundación Desafío, SENDAS Foundation: Servicios Para Un Desarrollo Alternativo Del Sur, Red Salud Mujeres and Corporación Surkuna.

² Convention on the Elimination of All Forms of Discrimination against Women, adopted in December. 18, 1979, GA Res. 34/180, UN GA, Sess. 34, Supp. No. 46 at 193, UN Doc. A/34/46, STONU 13 (November 9, 1981). [*Hereinafter* CEDAW].

³ ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC). PROGRESS REPORT ON MDG5 IN LATIN AMERICA AND THE CARIBBEAN. IMPROVE MATERNAL HEALTH. 2010, *available at* http://www.cepal.org/mdg/noticias/paginas/2/40012/odm_5.pdf



⁴ Committee on the Elimination of Discrimination against Women, *Concluding observations: Ecuador*, Para. 38, Doc. UN CEDAW/C/EC/CO/7 (2008). [*Hereinafter* CEDAW Committee, *Concluding observations: Ecuador*, 2008].

⁵ GOVERNMENT OF THE REPUBLIC OF ECUADOR: NATIONAL SECRETARY OF PLANNING AND DEVELOPMENT. NATIONAL PLAN FOR GOOD LIVING 2013-2017, available at <http://www.buenvivir.gob.ec/>. The goal, according to the National Plan for Good Living, was to reduce maternal deaths by 29% from 1990 levels.

⁶ MINISTRY OF PUBLIC HEALTH OF ECUADOR. NATIONAL PLAN FOR ACCELERATED REDUCTION OF MORTALITY [PLAN NACIONAL DE REDUCCIÓN ACELERADA DE LA MORTALIDAD] MATERNAL AND NEONATAL. 2008, available at

<http://www.ossyr.org.ar/pdf/Plan%20Nacional%20de%20Reducci%C3%B3n%20Acelerada%20de%20la%20Mortalidad%20Materna%20y%20Neonatal%20Ecuador.pdf>. It is also important to note that in the last decade (2002-2012), the largest number of maternal deaths occurred in women aged 20-39, followed by adolescents (women aged 10-19), among whom is recorded about 15% of all maternal deaths. This means that about two out of ten maternal deaths involves an adolescent. See INSTITUTO NACIONAL DE ESTADÍSTICA Y CENSOS DEL ECUADOR. ANUARIO DE ESTADÍSTICAS HOSPITALARIAS: CAMAS Y EGRESOS HOSPITALARIOS. 2013, available at

<http://www.ecuadorencifras.gob.ec/camas-y-egresos-hospitalarios-2012>.

⁷ CEDAW Committee, *Concluding observations: Ecuador*, 2008, *supra* note 4.

⁸ PAN AMERICAN HEALTH ORGANIZATION (PAHO). *Health in the Americas. Ecuador*, available at

http://www.paho.org/saludenlasamericas/index.php?option=com_docman&task=doc_view&gid=128&Itemid=.

See ⁹ INSTITUTO NACIONAL DE ESTADÍSTICA Y CENSOS DEL ECUADOR. ANUARIO DE ESTADÍSTICAS HOSPITALARIAS: CAMAS Y EGRESOS HOSPITALARIOS. 2012 and 2013. With regard to the ten leading causes of morbidity, three relate to sexual and reproductive health, among them are “Unspecified abortion,” “False labor,” and “Maternal care for known or suspected abnormalities of the pelvic organs of the mother.” That is, abortion is a constant morbidity in the country. These data are much more relevant in late adolescents (aged 15-19), while in the group of early adolescents (aged 10-14) spontaneous delivery is the sixth leading cause of overall morbidity. [*Hereinafter* INEC 2013].

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ HUMAN RIGHTS WATCH. *Rape Victims as Criminals: Illegal abortion after rape in Ecuador* (2013) available at <http://www.hrw.org/node/118229>.

¹⁴ INEC 2013, *supra* note 9.

¹⁵ HUMAN RIGHTS WATCH. *Rape Victims as Criminals: Illegal abortion after rape in Ecuador* (2013) available at <http://www.hrw.org/node/118229>.

¹⁶ COMISIÓN DE TRANSICIÓN HACIA EL CONSEJO DE LAS MUJERES Y LA IGUALDAD DE GÉNERO. CÓMO SE VIVEN LOS DERECHOS REPRODUCTIVOS EN ECUADOR: ESCENARIOS, CONTEXTOS Y CIRCUNSTANCIAS (2011), available at <http://www.igualdadgenero.gob.ec/publicaciones/85-c%C3%B3mo-se-viven-los-derechos-reproductivos-en-ecuador-escenarios,-contextos-y-circunstancias.html>.

¹⁷ CEDATOS. ENCUESTA NACIONAL DE OPINIÓN SOBRE DERECHOS SEXUALES Y DERECHOS REPRODUCTIVOS. December 2012 and November 2013. [*Hereinafter* CEDATOS, SRR SURVEY].

¹⁸ Criminal Code (ECUADOR, valid until August 2014); Art. 447. COMPREHENSIVE ORGANIC CRIMINAL CODE (ECUADOR, 2014) Art. 150. [*Hereinafter* COCC]

¹⁹ SECRETARÍA NACIONAL DE PLANIFICACIÓN Y DESARROLLO DEL ECUADOR. ATLAS DE LAS DESIGUALDADES SOCIOECONÓMICAS. 2014.

²⁰ See FISCALÍA GENERAL DEL ESTADO ECUADOR: DIRECCIÓN GESTIÓN PROCESAL PENAL. NOTICIAS DEL DELITO A NIVEL NACIONAL 2013: VIOLACIÓN CUANDO LA VÍCTIMA FUERE MENOR DE CATORCE AÑOS. (Documenting 961 cases of sexual violence in the education system). See also Paola del Rosario Guzmán Albarracín v. Ecuador, Petition 1055-06, Report No. 76/08 (17 October 2008) (demonstrating the recurrence of abuse by school authorities who impregnate girls).

²¹ FUNDACIÓN DESAFÍO. Interview with 17 year-old woman. May 2014.

²² FUNDACIÓN SENDAS: SERVICIOS PARA UN DESARROLLO ALTERNATIVO DEL SUR. INVESTIGACIÓN CUALITATIVA SOBRE LA OPINIÓN DE DERECHOS SEXUALES Y DERECHOS REPRODUCTIVOS. Mujer adulta. Guayaquil (2013).



²³ FUNDACIÓN DESAFÍO, INTERVIEW WITH 17 YEAR-OLD WOMAN, QUITO, JUNE 10, 2014. [*Hereinafter* FUNDACIÓN DESAFÍO, INTERVIEW, JUNE 10, 2014]

²⁴ CEPAM-GUAYAQUIL FOUNDATION. IMPLEMENTATION OF THE BASELINE STUDY FOR STRENGTHENING COMPREHENSIVE SEXUAL AND REPRODUCTIVE HEALTH SERVICES IN FOUR HEALTH CENTRES IN ECUADOR. October 2009.

²⁵ CEDATOS, SRR SURVEY, *supra* note 17.

²⁶ THIRD COURT OF CRIMINAL GUARANTEES OF ESMERALDAS [JUZGADO TERCERO DE GARANTÍAS PENALES DE ESMERALDAS], Cases 324-2013, 0349-2013, 115-2013, 125-2013, 658-2013, 3688-2013. [*Hereinafter* COURT OF ESMERALDAS, TRIALS, 2013].

²⁷ FEDERACIÓN ECUATORIANA DE SOCIEDADES DE GINECOLOGÍA Y OBSTETRICIA. ENCUESTA DE CONOCIMIENTOS, ACTITUDES Y PRÁCTICAS RESPETO AL ABORTO EN UNA MUESTRA SELECCIONADA DE GINECÓLOGOS. JUNE 2014.

²⁸ MINISTRY OF PUBLIC HEALTH. INTERNAL MAIL. January 27, 2013.

²⁹ Political CONSTITUTION OF THE REPUBLIC OF ECUADOR [PC] Art. 76.4: “The evidence obtained or secured in violation of the Constitution or the law are not valid and have no evidential effect.”

³⁰ COCC Art. 503 (b): “Statements from persons holding a secret because of their profession, trade or function will not be heard, if they relate to the object of their secrecy.”

³¹ E.g. International Covenant on Civil and Political Rights, *adopted* Dic. 16, 1966, Art. 9, 10 and 14, AG Res. 2200 A (XXI), UN AG, Sess. 21, Supp. No. 16, UN Doc. A/6316 (1966), 999 UNTS 171 (*entered into force* Mar. 23, 1976) [*Hereinafter* ICCPR].

³² COURT OF ESMERALDAS, TRIALS, 2013, *supra* note 26.

³³ COURT OF ESMERALDAS, TRIALS, 2013, *supra* note 26.

³⁴ COCC Art. 527: “It is understood that for an in flagrante delicto, the perpetrator must commit the crime in the presence of one or more persons or be discovered immediately after the alleged commission, provided there was continuous persecution from the time of the alleged commission to apprehension, in addition to possession of weapons, instruments, proceeds of the crime, prints or documents pertaining to the recently committed crime. . . There can be no claim of continuous persecution if more than twenty-four hours elapsed between the commission of the offense and apprehension.”

³⁵ COURT OF ESMERALDAS, TRIALS, 2013, *supra* note 26.

³⁶ CEDATOS, SRR SURVEY, *supra* note 17.

³⁷ CEDAW, *supra* note 2, Art. 1.

³⁸ CEDAW, *supra* Note 2 Art. Art. 2.

³⁹ COCC Art. 150: “Non-punishable abortion.- Abortion performed by a doctor or other trained health care professional who has the consent of the woman or her spouse, partner, close relatives or legal representative, when she cannot consent herself, is not punishable in the following cases: 1. If it was practiced to prevent danger to the life or health of the pregnant woman and said danger cannot be prevented by other means. 2. If the pregnancy resulted from the rape of a woman suffering from mental disability.”

⁴⁰ WORLD HEALTH ORGANIZATION (WHO) ABORTION WITHOUT RISKS: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS (2003), *available at* http://whqlibdoc.who.int/publications/2003/9275324824_spa.pdf.

⁴¹ CEDAW, *supra* note 2, Art. 12.

⁴² CEDAW, *supra* note 2, Art. 12. *Also see* Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, (Sess. 20, 1999), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ch. I, para. 28, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [*Hereinafter* CEDAW Committee, *General Recommendation No. 24*]: Requiring that States Parties ensure all women “access to adequate health care services, including information, counseling and services in family planning.” CEDAW, *supra* note 2, Art. 16 (e): States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality between men and women: The same rights to decide freely and responsibly the number of children and spacing and to access information, education and means to enable them to exercise these rights.”

⁴³ *See* Universal Declaration of Human Rights, adopted in December. 10, 1948, art. 25, AG Res. 217A (III), UN Doc A/810 at 71 (1948); International Covenant on Economic, Social and Cultural Rights (ICESCR), December 16, 1966, art. 12.1 Res. AG 2200A (XXI), 21 UN GAOR Supp. (# 16) at 52, UN Doc. A/6316 (1966), 99 UNTS (March 6, 1969); American Convention on Human Rights (“Pact of San José de Costa Rica”), November 22, 1969,



art. 10.1 OAS Treaty Series No. 36, 1144 UNTS 123, entered into force on July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.LV/doc 11.82 0.6 rev. 25 (1992); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”), September 6, 1994, art. 25, October 1, 1995; Committee on Economic, Social and Cultural Rights. *Concluding observations: Ecuador*, E/C.12/ECU/CO/3 (2012). [*Hereinafter* ESCR Committee, *Concluding observations: Ecuador*, 2012].

⁴⁴ CEDAW Committee, General Recommendation No. 24, *supra* note 42.

⁴⁵ CEDAW Committee, General Recommendation No. 24, *supra* note 42. Para. 11.

⁴⁶ CEDAW, *supra* note 2. Art. 12 (1): “States Parties shall take appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality between men and women, access to health care measures, including those related to family planning.”

⁴⁷ CEDAW Committee, General Recommendation No. 24, *supra* note 42.

⁴⁸ CEDAW, *supra* note 2. Art. 16 (e): “The same rights to decide freely and responsibly the number of children and spacing and to access information, education and means to enable them to exercise these rights.”

⁴⁹ Committee against Torture, *Concluding Observations: Ecuador* CAT/C/ECU/CO/4-6 (2010). Parra. 18 (f).

⁵⁰ Hereinafter *ESCR Committee, Concluding observations: Ecuador*, 2008, *supra* note 43.

⁵¹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women (Sess. 20, 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ch. I, para. 24, UN Doc. HRI/GEN/1/Rev.9 (2008) [*Hereinafter* General Recommendation No. 19].

⁵² General Recommendation No. 24, *supra* note 42. Para. 12 (b): “The different forms of violence which may affect their health. Girls and adolescents are often exposed to sexual abuse by older men and family; consequently, they are at risk of physical and psychological harm and unwanted or premature pregnancies.”

⁵³ General Recommendation No. 24, *supra* note 42. Para. 12 (b).

⁵⁴ United Nations Human Rights Committee, *Concluding Observations: Ecuador*. CCCPR/C/79/Add.92 (1998).

⁵⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/66/254, August 3, 2011. [*Hereinafter* Report of Health Rapporteur Anand Grover. 2011].

⁵⁶ General Recommendation No. 24, *supra* note 42. Para. 31 (c).

⁵⁷ Dalo Bucaram, Twitter (January 11, 2014 3:15 PM EST),

<https://twitter.com/daloes10/status/424258647968202752/photo/1>.

⁵⁸ See EL UNIVERSAL. *Debate sobre aborto queda casi definido por advertencia de Correa*. July 10, 2012, available <http://www.eluniverso.com/2012/07/10/1/1355/debate-sobre-aborto-queda-casi-definido-advertencia-rafael-correa.html>. Also see ECUADOR TIMES . *Rafael Correa ratifica posición sobre el tema del aborto*. July 10, 2012, available at <http://www.ecuadortimes.net/es/2012/07/10/rafael-correa-ratifica-posicion-sobre-el-tema-del-aborto/>.

⁵⁹ HUMAN RIGHTS WATCH . *RAPE VICTIMS AS CRIMINALS: ILLEGAL ABORTION AFTER RAPE IN ECUADOR*, available at <http://www.hrw.org/node/118229>

⁶⁰ CEDAW, *supra* note 2. Art. 12.

⁶¹ General Recommendation No. 24, *supra* note 42. Para. 13.

⁶² General Recommendation No. 24, *supra* note 42. Para. 12 (d).

⁶³ General Recommendation No. 24, *supra* note 42. Para. 12 (d).

⁶⁴ *De la Cruz Flores v. Peru*, Merits, Reparations and Costs, Judgment, I/A Court HR (ser. C) No. 115, para. 101 (Nov. 18, 2004). “physicians have a right and a duty to maintain the confidentiality of the information they have access to in the exercise of their profession.”

⁶⁵ CEDAW, *supra* note 2. Art. 2.

⁶⁶ CEDAW, *supra* note 2. Art. 2 (d).

⁶⁷ CEDAW, General Recommendation No. 24, *supra* note 42. Para. 31 (c): “[L]egislation criminalizing abortion should be amended in order to remove punitive provisions imposed on women who have undergone abortions.”

⁶⁸ Hereinafter *Report of Health Rapporteur Anand Grover. 2011*, *supra* note 55. Para. 65 (i).

⁶⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013. Para. 90.