



**Violations in Ecuador in relation to
non-discrimination and equality laws
(Article 2, paragraph 1 and Articles 3, 25 and 26)**

**Submitted for consideration in the 117th session of the
Human Rights Committee
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Presented by:

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EXECUTIVE SUMMARY

1. This is a report presented by a coalition consisting of: the Ecuadorian Organization of lesbian women, Equal Civil Marriage and the International Network of Human Rights – RIDH. The objective of the report is to denounce violations of rights recognized in the International Covenant on Civil and Political Rights (ICCPR) and draw the attention of the Human Rights Committee to this situation. At this time, we wish to submit this alternative report for consideration by the esteemed Committee in its examination of completion of Articles 2 and 26: obligations of respect and assurance of rights; rights to equality and non-discrimination, in the framework of the sixth Review of the Ecuadorian State that will take place in June 2016.
2. This report includes the principal concerns of the Ecuadorian civil society organizations in the face of administrative and legislative provisions adopted by the Ecuadorian state related to protection from discrimination based on sexual orientation. Furthermore, it presents emblematic cases that highlight the setbacks in civil and political rights in Ecuador. The cases seek to reply to the questions raised by the Human Rights Committee (CCPR) related to the obligation to respect the rights included in the International Covenant on Civil and Political Rights (ICCPR), among them equality and non-discrimination.
3. The cases presented reveal the breach of constitutional legislation and international treaties related: non-discrimination; collective and personal identity rights; the right to free personal development; recognition of diverse forms of family to guarantee the full dignity of human beings, communities, peoples or a nationality.

OBLIGATIONS OF THE ECUADORIAN STATE RELATED TO NON-DISCRIMINATION AND EQUALITY

4. The Ecuadorian constitution guarantees and recognizes the fundamental rights inherent to the dignity of the human being and establishes guarantees to defend it. The rights guarantees in the founding charter are consistent with international instruments of human rights. The Constitution has a series of provisions that reflect its protective nature of fundamental rights such as liberty, formal and material equality, and inclusion. The negative obligation of the State is to not discriminate against anyone, ever, for any reason.
5. The Constitution of 2008 opens a range of possibilities, not only to reverse the marginality of the LGBTI population, but also for its incorporation in the construction of a new form of coexistence in difference, as according to the objective of the national Plan for Well-Being.
6. With the Constitution of 2008, for the first time a series of Articles names the facets of human personality such as sexual orientation and gender identity. It also not only establishes that these human characteristics cannot be a motive for discrimination, but also that the people who form part of the diversity of sex and gender have a series of rights under these provisions. In this way, tacit legal discrimination –ignoring, looking away or avoiding reality – is over.

7. The provisions of the Constitution of 2008 that guarantee tangible and formal equality, inclusion and non-discrimination. These range from the prohibition of discrimination based on sex, gender identity and sexual orientation, cultural identity, etc., of Article 11, Section 2 to considering the rights of personal and collective identity, including freely choosing one's first and last name, as stated in Article 66, Section 28. They also guarantee; the right to free development of one's personality according to Article 66, Section 5, and the recognition of diverse forms of family, according to Article 67. These include all of the rights not specifically identified but constructively stated in that little used provision of the Constitution, Article 84, that recognizes all the expected rights in the constitutional norm and the international treaties that may be necessary to guarantee the full dignity of human beings, communities, peoples or nationalities.

GENERAL CONTEXT OF ECUADOR RELATED TO DISCRIMINATION AND EQUALITY

Articles 2, 3 and 26: obligations of respect and protection; rights to equality and non-discrimination

8. In Ecuador, while both domestic law and international human rights establish the rights to equality and non-discrimination, their effective enforcement has not materialized in practice, as reflected in many ways. Given the obligations of respect and protection established in Article 2 related to the rights to equality and non-discrimination, it is noteworthy that while the State has made efforts there still exist practices, policies and even norms that turn out to be discriminatory based on sexual orientation, as detailed further in this section.
9. The enormous potential of the Constitution regarding LGBTI people, as well as sexual and gender diversity more broadly, has not been developed yet. Promoting this idea with all that is missing is a challenge. Despite the good news that is the existing legal framework in the country that promotes equality and inclusiveness, and even criminally penalizes segregationist conduct resulting in damage, injury or that hinders the sexually diverse population from exercising their rights, it is necessary to admit that discrimination has not been eradicated from the country. Furthermore, discrimination often happens not only within the civilian population, but is also by public officials, notaries, judges, police officers and other officials of justice.
10. In Ecuador, cases of mistreatment of the LGBTI population remain a constant, highlighting the need to issue non-discrimination policies based on sexual orientation and gender identity; but beyond their implementation, their transformation into actions is urgent.
11. In 2013, the National Institute for Statistics and Census (INEC) published the results of the first study on life conditions of the LGBTI population in Ecuador. The data collection was conducted between November 2012 and January 2013 by means of 2,805 interviews of people in the LGBTI community in Ecuador based on a mapping of this population. It was a joint task between INEC as the technical counterpart, and the Transition Committee to the National Council of Women and Gender Equality. In this first study on living conditions and social inclusion of the LGBTI population published by INEC, one of the statistical results is that 70.9 % of

the LGBTI population claims to have experienced discrimination because of their sexual orientation or gender identity, primarily in familial settings.¹

12. INEC's report shows that while the family is the first and most common setting where the rights of LGBTI people are violated, is not alone. Of the population surveyed by INEC for their study, 27.3% reported having experienced violence by law enforcement officials, of which 94% said they had been victims of shouting, insults, threats and ridicule; and 45.8% had been arrested arbitrarily. Reporting these abuses to public officials and police officers puts LGBTI people in the delicate situation of making their sexual orientation or gender identity completely visible, which is not what they want. Rather, exposure is something they want to avoid. This makes the abuses and violations of the rights of the LGBTI population mostly go unpunished. Other spaces in which the sexually diverse community has denounced discrimination, exclusion and rejection are the establishments of health, education, labor and justice.
13. The key point of the INEC study that it diagnosed that unfortunately there is deeply rooted structural homophobia in Ecuadorian society at all levels. The fact that today Ecuador has national laws that in theory favor the inclusion and seek to eradicate all types of discrimination is not enough.
14. The violation of the right to a dignified life that the LGBTI population has suffered is made constantly evident by hindering the exercise of their rights. This includes preventing changes to one's name or sex on identity documents; denying recognition of a stable union of an emotional and romantic nature between same sex couples, and; preventing students that dress according to their gender to attend classes in their school. This extends to the violation of the immaterial such as reputation, honor, peace and respect for privacy.
15. The weight of hate crimes committed against the LGBTI population as well as the daily abuse and rejection they face cannot be overlooked. Such cases include the constant examples of homophobia that appeared in opinion columns or letters published by the media by Catholic priest "P. T." in May 2012 and the then-presidential candidate Pastor "N.Z." in January 2013. Opinion columnists who freely spread expressions that incite hatred and contempt against sexual minorities constantly assault the LGBTI population. It is insufficient that the Ecuadorian Ombudsman's Office, the national institution with knowledge of the jurisdictional mechanisms available in cases of hate crimes (Article 20 of the Convention), merely signs "open letters" in defense of the victims of LGBTI-phobia, measures that are insufficient to address human rights violations.²

¹ http://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/LGBTI/Analisis_situacion_LGBTI.pdf

² http://lahora.com.ec/index.php/noticias/show/1101470476/1/Demanda_a_Nelson_Zavala_por_comentarios_sobre_Glbt.html#.V0L6s5GLTIV
<http://www.larepublica.ec/blog/sociedad/2012/05/09/p-paulino-toral-se-vuelve-tt-por-carta-contra-las-familias-diversas/>

16. There are outstanding issues regarding human rights in terms of recognition of unions between same-sex couples and in other areas there remain discriminatory and stigmatizing practices, some even backed by the Ecuadorian legal framework. Because of this discriminatory legislation, some people have serious difficulties for no reason other than their sexual orientation and gender identity. These include: cases of accessing and keeping a job (for example, the case of E.C.C. against the Guasmo Maternal and Child Hospital); accessing social security benefits (as in the case of J.P., the widow of her female partner T.A., with whom she maintained a common law union, and her claim for a pension and unemployment benefits in 2011); formal studies and housing, among others. This speaks to the legal and de facto systematic discrimination by society and the Ecuadorian state.³
17. The Ecuadorian Constitution is a special case: it contains a principle of non-discrimination on grounds of sexual orientation in Article 11, Section 2, while containing a discriminatory rule on grounds of sexual orientation in Article 68, as it prevents united same sex couples access to the institution of adoption. Arguably, by establishing that marriage is the union between a man and a woman in Article 67, the Constitution discriminates based on sexual orientation. Indeed, in Ecuador, this article is put forward time and again by those opposed to legalizing equal marriage.
18. An example of this situation is the difficult judicial process that Pamela Troya and Gabriela Correa underwent in their struggle for Equal Civil Marriage. In order to demonstrate the institutionalized homophobia of the Ecuadorian state and open the way for approval of same-sex marriage, on August 5, 2013 they began the campaign “Equal Civil Marriage - the same rights with the same names.” The activist couple Pamela Troya and Gabriela Correa went to the Civil Registry of Quito to request a time for their marriage ceremony. The Civil Registry responded to the couple stating that, “prior to attending to the request, you must meet the requirements set out in Article 67 of the Constitution of the Republic and 81 of the Civil Code”, namely that marriage is the union between a man and a woman. Given this response, on August 13, 2013, the couple and their lawyer Dr. Ramiro García Falconi, filed a protective action against the judiciary, and since then the couple has been subjected to a judicial ordeal. First, the case went through delays by the first judge, G.P., who rejected the lawsuit and went on to give his arguments against the case without giving the parties an audience. The Provincial Court assigned to another judge, K.S., who refused to hear the case and was forced to do so by the superior court, however he ruled against the case. His arguments were that the Constitution of Ecuador invokes God in its preamble, and that it responds to the moral, Christian and religious values reflected in a conservative culture. This judge, K.S., ignored the secular nature of the state and made his ruling based on religious prejudice. On April 7th, 2014, the couple appealed the ruling of Judge K.S. On May 26th, 2014, the Provincial Supreme Court dismissed the appeal filed by the plaintiffs, arguing that, “While human beings should be treated equally in terms of fundamental rights, they should not be [treated equally] in all that which is affected by the differences that naturally exist between them.” Again, discrimination arises because the court believes that LGBTI people are different beings who must have different laws. On June 23rd, 2014, the couple filed an extraordinary protective action in the Provincial Court. On December 9th, 2014, the Constitutional Court declared the case’s extraordinary protective action to be admissible in court. The Equal Marriage Civil case has been with the Constitutional Court of Ecuador for almost three years without assigning a judge, without calling a hearing and without a ruling.⁴

³ <http://www.eltiempo.com.ec/noticias-cuenca/119498-la-viuda-homosexual-que-hizo-valer-sus-derechos/>

⁴ <http://www.eluniverso.com/noticias/2014/06/24/nota/3144971/pareja-lesbiana-lleva-pedido-cc>

19. It is necessary to draw attention to the need for recognition of integrated same-sex families. Establishing differential access to institutions that offer economic and legal security to people is symbolic discrimination with serious consequences in the social life of the excluded group. The National Assembly lost two historic opportunities to allow that Article 67 of the Constitution, which recognizes families in their various types, to become a reality through secondary legislation. This would have allowed the legal reality of double maternal affiliation, allowing children conceived by assisted contraception within the home of two women to bear the surname of both mothers and have the legal connection with their case. These two occasions were the amendments to the Civil Code, which was finally approved in April of 2015, and reforms to the Civil Registration Act approved by the National Assembly in December of 2015.
 20. After the reforms and their subsequent entry into effect through the Official Register, the legal bodies previously named do not legally protect same sex couples who recognize their common sons and daughters. In this Act, the decision of a homosexual couple to plan and concretize a family is legally irrelevant. This lack of respect for the dignity of people in an environment as intimate as the family is simply unacceptable these days. Additionally, this situation leads to the defenselessness of the child that faced with the separation of the couple cannot claim what any son or daughter should require from their parents - basic child support - which would be left to the good will of that mother. Worse still, in the case of death of the biological mother, the State will come to decide the life of the child and can place it under the protection of a relative of the deceased (if any) or put it up for adoption (if they don't have family nearby). In practice, same sex families would be forced to incur the additional costs of legal advice and notary procedures to protect their offspring, unlike any other couple with children in this country. The double maternal affiliation is not adoption, which is not allowed for same-sex couples, as stipulated in Article 68 of the Constitution. This does not have to do with legal bonds between a parent and a child conceived by another couple and subsequently abandoned, but rather the conception of a child between a female couple, where the decision has been agreed upon and subsequently carried out by assisted means such as insemination or in-vitro fertilization. The responsibility for this decision is upon the woman who undergoes this treatment as much as the other woman who is part of the process.
 21. This is the specific case of the damage caused to S.B.R, the daughter of N.R and H.B. - a couple of lesbian mothers that planned their daughter within their common law union which they've maintained for many years – however, the Ecuadorian Civil Registry refused to register this girl as the daughter of two mothers. If this girl had been the daughter of a heterosexual couple united in a common law union that requested this registration, the Civil Registry official would have no problem registering her without bothering to inquire about her biological filiation. First, because it would not have occurred to them to ask the question. Secondly, because the legal presumption of filiation establishes that the girl is the daughter of the couple in a common law union according to Articles 24 and 222 of the Civil Code. Lastly, because Article 69, Section 7 of the Constitution – in order to protect the rights of integrated family members – states that a declaration of filiation shall not be requested at the time of the registry of a birth and that no identity document will
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makes such a reference. This case has stagnated in the courts since 2012 and there still has not been a sentence reached to solve the legal status of the girl or of her lesbian mothers.⁵

22. In Ecuador, greater efforts should be made to understand that freedom cannot be denigrated for reasons of prejudice, tradition, or personal or denominational moral principles. Freedom is for all, without exception. The torture centers where gay, lesbian or transgender people are secluded, not only impede freedom as a diverse being and hinder personal development in this regard; it is a crime that involves isolation, confinement, kidnapping, physical and mental torture, rape and sometimes even death. At least thirty people are being prosecuted for such cases in the country. Some of those involved are public health and justice officials. This shocking reality about torture centers for LGBTI people demonstrates the degree of homophobia in Ecuadorian society. However, it also highlights that it is an extremely permissive society regarding the violation of the rights of fully capable adults. While the concept of freedom is found in the Constitution, laws and regulations, in practice the law authorities and citizens in general fail to understand their true meaning.⁶
23. In Ecuador, the 2008 Constitution provides a comprehensive legal framework to guarantee rights to equality, freedom and a dignified life for the LGBTI population. However, it is not enough to have an inclusive legal framework. It is also imperative that public officials and justice agents implement these standards in practice to ensure true equality and to eradicate discrimination. Ignorance of the law by the civil society is another major obstacle in achieving the full realization of rights for LGBTI group. Ignorance of the law by the civil society is another major obstacle in achieving the full realization of rights for the LGBTI population.
24. Public officials are required to know and defend the fundamental principles of the constitutional norms regarding inclusion, material and formal equality and non-discrimination. However, there are judges who justify their sentences with Bible verses or references to God and Civil Registry officials that violate constitutional norms claiming a lack of reform in laws and regulations. Such was the unusual case of the Chairman of the Committee on Residence Qualification and Control, who consulted the State Attorney General via an official memorandum about the existence of legal recognition of common law unions between two people of the same sex in Ecuador. In that particular case, this absurd consultation was the reason that the process was prolonged unnecessarily.
25. Most of the violations of human rights of the LGBTI minority that occur in these cases could have been detected earlier if the State officials involved in these cases were really committed to the necessary compliance to constitutional provisions that address inclusion, equality and non-discrimination. Such was the case of employment discrimination of E.C.C. in his 2003 case against the Guasmo Maternal and Child Hospital where he was removed from his position for transsexual gender identity. After more than 10 years, E.C.C. is still waiting to be reinstated to his job site. In this particular case, there was a lack of effective judicial protection.

⁵ <https://es.globalvoices.org/2016/04/05/ecuador-reconoce-las-uniones-entre-homosexuales-pero-que-pasa-con-sus-hijos/>

⁶ <http://www.eluniverso.com/noticias/2013/06/15/nota/1028066/asi-quisieron-curar-lesbianismo-zulema>

26. There are conflicting dynamics related to the merger of political ideologies and sexual rights in the neoliberal policies of Ecuador. There has been a collision of political interests by certain LGBT groups to promote their interests and gain political power, which fuels the interest of the Correa government to build an image of sexual modernity. The inconsistency of LGBT rights in Ecuador indicates a broader global trend, where LGBT rights are manipulated to portray political modernity. In other words, heteronormative states are adjusting to LGBT politics worldwide. They may be involved in the normalization of "trans" identities, while at the same time promoting traditional agendas to accommodate religious movements that impose heterosexual norms. Conflicting agendas indicate that LGBT rights are caught in the middle of this political maneuvering, which is sufficient reason to carefully evaluate legal reforms.
27. President Correa has bluntly attacked what he describes as the "gender ideology".⁷ During his weekly address to the nation ("activity report of the week", delivered every Saturday), the president has condemned sexual rights, reiterating his opinion against equal marriage and adoption. In fact, during his visit to Pope Francisco, in April 2015, the media reported that President Correa assured the Pope that in Ecuador marriage is the union between a man and a woman and that in his personal opinion the traditional family consists of a father, a mother and children. The ambivalent approach of the Ecuadorian state to LGBT issues has resulted in the loyalty of some LGBTI activists to the government – especially transgender – increasing dependence on the state, while at the same time fragmenting LGBT groups. The Ecuadorian government's attack on many fundamental gender and sexual rights is based on this broad concept of "gender ideology".⁸
28. The term "gender ideology" is used to discredit gender studies, calling the field "gender ideology subject to any academic analysis". When President Correa introduced the term to the public, he also attacked reproductive rights, particularly the right to abortion (including for rape victims) and reiterated his opinion against equal marriage, arguing that the LGBT community would not gain additional rights through marriage that they did not already have through civil unions.

RECOMMENDATIONS TO THE STATE OF ECUADOR

The 2008 Ecuadorian Constitution created a comprehensive legal framework to guarantee the rights to equality, freedom and dignified lives for the LGBTI population. However, it is not enough to have an inclusive legal framework, given that in practice the human rights of the LGBTI population continue to be violated. If we consider the figures presented by INEC, we can establish that these cases represent only the tip of the iceberg. It is enough to read the news to learn about situations of violence, hate crimes, intolerance, exclusion, marginalization, aggression, forced internment and discrimination that arise due to homophobia.

⁷ Presidential Address 354, December 28, 2013.

⁸ (<http://www.larepublica.ec/blog/politica/2015/04/29/correa-tras-reunion-con-el-papa-la-familia-es-la-familia-tradicional-la-mama-el-papa-y-los-hijos/>).

Therefore, it is necessary to make recommendations to the Ecuadorian State, some general and others specific, but all urgent.

General recommendations:

29. Ensure that the authorities and institutions comply with the constitutional rules whose foundations guarantee citizens equality, freedom, as well as the right to a dignified life and to not to be discriminated against for any reason.
30. Take all appropriate measures to prevent, investigate and punish manifestations of violence, intolerance and discrimination that violate the human rights of LGBTI collective.
31. To act promptly and with due diligence when harmful conduct against the LGBTI population has already occurred.
32. Establish the necessary judicial and administrative mechanisms to ensure that any lesbian, gay, bisexual, transgender or intersexual victim of violence and discrimination has effective access to restitution, compensation for damage or other fair, expeditious and effective compensation.
33. Ensure, through appropriate means, that the principle of equality and non-discrimination is fulfilled in practice and ensure through the courts that that effective protection is provided to people from the LGBTI population that have been discriminated.
34. Implement training programs for those that Implement training programs for those who administer justice so they receive sufficient information on the human rights of the LGBTI population.
35. Promote awareness and observance of human rights of LGBTI people in society. This should be done at the level of elementary schools and high schools through sex education that emphasizes the diversity and complexity of human sexuality.
36. Change socio-cultural patterns of conduct to eradicate structural homophobia. This is also achieved through education on rights to counteract and eliminate ingrained prejudices, customs and practices that base their premise on inferiority, unworthiness or the abnormality of persons belonging to the LGBTI collective.

Specific recommendations:

37. Reform the Organic Law on the Ombudsman Office, so that it is not just an observer of due process, but also has the power to punish according to the case. Thus, it would not only give greater force to a figure that ensures respect for human rights in the country, but this would greatly ease the procedural burden of the judiciary.
38. After the enactment of the Law of Identity and Civil Data or Civil Registration Act, we see disappointment that several issues were again waiting to be addressed and solved by modern legislation that reflects the provisions established in the Constitution. It is urgent that Ecuador reform the Civil Registration Act according to what LGBTI groups and organizations requested. So that it complies with the established provisions of the Constitution regarding transgender people, families formed by marriage should have exactly the same rights as families formed by common law unions and protection of the rights of those members from families that are not formed in the traditional way. Above all, it is necessary to provide

protection of all those teenagers and children who are children of same sex couples, but who cannot count on the protection and legal representation of both parents.

39. All that has achieved is that the common law marriages have been elevated to a civil status and that trans people can now include a note of their gender identity on their identification cards. However, to do the latter - as it will still cause discrimination - double identity documents have been created in which only transgender people have in their gender identity information included and not their sex. This distinction violates the fundamental rights enshrined in the Constitution and violates the agreements and commitments in the Inter-American Convention against All Forms of Discrimination and Intolerance signed by Ecuador in June 2013.
40. It should be stipulated in the law that the identity of transsexuals reflects their reality and respect and recognize their gender identity. The identity card is intended for identification, not as a violation of privacy, nor to create targets for discrimination. These reforms require transgender people to bring two witnesses to testify that the person who wants to change the gender on their identity card has spent at least two years being trans, which violates the principle of self-determination as reflected in the presidential veto that was accepted by the National Assembly.
41. For the sake of equality, freedom, access to a dignified life and the eradication of all kinds of discrimination, it is necessary for same-sex couples to have access to marriage. It is not even necessary to change the Constitution for this to happen, but rather to interpret the provisions of Article 427 in an integral manner, not by one or two items, and always searching for the meaning that is most favorable to the full exercise of rights and that best respects the will of the constituent. As Article 424 states, the Constitution and the international human rights treaties ratified by the State that recognize more favorable rights than those within the Constitution shall prevail over any other law or act of public authority.
42. Education, a priority area of public policy, must comply with the provisions of Article 26 of the Constitution and be an effective guarantee of equality and social inclusion as is essential for good living conditions. Children and adolescents should be scientifically informed about human sexuality. We should do away with notions that explain sexuality from heteronormative and reductionist points of view. Only then will prejudice and discrimination against sexually diverse people be eradicated – starting from the younger generations.