

**Submission to the** **Committee on the Elimination of Discrimination against Women Review of Ecuador periodic report for the 80th Session**

***August 2021***

We write in advance of the 80th session of the Committee on the Elimination of Discrimination against Women and its review of Ecuador’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission addresses articles 2,5, 10, 12, and 16 of the Convention.

This submission is based on the 2021 Human Rights Watch report, [“Why Do They Want To Make Me Suffer Again?”: The Impact of Abortion Prosecutions in Ecuador](https://www.hrw.org/report/2021/07/14/why-do-they-want-make-me-suffer-again/impact-abortion-prosecutions-ecuador) and the 2020 report [“It’s a Constant Fight”: School Related Sexual Violence and Young Survivors’ Struggle for Justice in Ecuador"](https://www.hrw.org/report/2020/12/09/its-constant-fight/school-related-sexual-violence-and-young-survivors-struggle).

**Human Rights Implications of Criminalization of Abortion (arts. 2, 5, 12, and 16)**

Abortion is a crime in Ecuador, punishable by up to two years in prison for women, girls or pregnant people who consent to undergo abortions, and from one to three years for health providers who perform an abortion. The only exceptions are when the pregnant person’s life and health is in danger and in all cases of rape, according to a April 2021 Constitutional Court [ruling](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOidiZGE2NDE0YS1jNDI1LTQzMGMtYWViNi1jYjY0ODQ1YTQ2NWUucGRmJ30=). A previous law allowed abortions in cases of rape only if the pregnant person had an intellectual disability. On June 28, 2021, the Ombudsperson’s Office presented a new law to the National Assembly to bring Ecuador’s legal framework into compliance with the court’s ruling, which is now under consideration.

Human Rights Watch found that people face many barriers to accessing legal abortion and post-abortion care in Ecuador. These include criminal prosecution, stigma, mistreatment by health professionals, and a narrow interpretation of the exception that permits abortion to protect the person’s health and life. Ecuador’s current laws and policies create an environment that compels many girls and women to turn to health- and life-threatening procedures.

Human Rights Watch reviewed 148 criminal cases involving women or girls, health providers, or companions charged with seeking or facilitating abortions between 2009 and 2019. Eighty-one percent of these cases were brought against women and girls who received abortions. A disproportionate number of them live in provinces where a large proportion of the population is indigenous or Afro-descendant. Most were living in poverty and 61 percent were young women under 24 years.

Human Rights Watch reviewed nine case files involving girls who were prosecuted for having an abortion. Among these, a 17-year-old girl and a 15-year-old girl were initially charged as adults. The former was sentenced to three months house arrest, which was counted as time served as she had already spent eighteen months under house arrest during trial.[[1]](#footnote-2) The 15-year-old girl was convicted of homicide and spent four years and three months in a juvenile center.[[2]](#footnote-3) The seven remaining cases were resolved through a suspended proceeding (that is, a plea bargaining process) as provided for in the 2014 Children and Youth Code.[[3]](#footnote-4) Judges often imposed psychological therapy and “family support” in these cases.

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. Other rape survivors have been prosecuted when they managed to access abortion.[[4]](#footnote-5) Human Rights Watch reviewed 17 cases prior to the 2021 reform in which women accused of having an abortion introduced evidence in court describing being victims of rape or other forms of gender-based violence. In these cases, the judges did not meaningfully consider this information as exculpatory.[[5]](#footnote-6)

Many allegations, particularly from 2015 onward, of non-consensual abortion include allegations of sexual assault, with a partner forcibly inserting misoprostol pills into the pregnant woman’s vagina or doing so without her knowledge or consent; other cases describe verbal or emotional coercion or pressure by a partner to have an abortion. These cases are not investigated as sexual assault or domestic violence, and women’s allegations and accounts are often summarily disbelieved and discounted in legal proceedings.

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

* Ensure the order of the Constitutional Court is abided by and the National Assembly discusses the Organic Law on Abortion in Cases of Rape presented by the Ombudsperson’s Office within six months.
* Work with relevant authorities to guarantee access to legal abortion for anyone eligible under current law, including all survivors of rape, as per the recent ruling of the Ecuadorian Constitutional Court, and in accordance with Ecuador’s international obligations and current recommendations from 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. Public messaging should 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 Ecuador’s international human rights obligations by allowing pregnant people access to legal, voluntary, and safe abortions in all circumstances;

***Violations of Due Process Rights and Privacy of Health Information (arts. 2, 5, 12, 15)***

Human Rights Watch found that girls and women suspected of having sought abortions encountered barriers to accessing good quality legal representation, and faced 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 improperly obtained evidence involving violations of their right to privacy, medically invalid tests, and interrogations conducted without the presence of counsel, 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 their 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. Although Ecuador’s constitution guarantees confidentiality regarding individuals’ health information, Human Rights Watch found that seventy-three percent of the cases reviewed were initiated after a healthcare provider reported a patient to the police, in violation of medical confidentiality.

In 99 of the cases reviewed, the police interrogated the women at the hospital without a lawyer present, in violation of national law, while she was experiencing or recovering from a medical emergency, sometimes a life-threatening one. These interrogations also risked further compromising the women’s health by interrupting their treatment and interfering with their medical care and their relationship with their doctor.

Judicial conduct and decisions often reflected gender stereotypes and religious considerations. In several cases women were sentenced to community service in orphanages or therapy intended to make them “good mothers”.

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

* Introduce legislation reinforcing the constitutional requirement of medical confidentiality and specifying that in cases of obstetric emergencies related to abortions there is no duty to report.
* 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;
* Prohibit arrests or interviewing of women or girls while they are receiving emergency treatment or are in a healthcare facility in connection with alleged consensual abortions.
* Train staff in the Attorney General’s office and the Judiciary Council on gender sensitivity, including about gender-based violence;
* Ensure that allegations of gender-based violence arising in an abortion case are investigated and, as appropriate, prosecuted;
* Regularly report the number of prosecutions for abortion, disaggregated by age.

*Maternal Mortality and Morbidity*

Ecuador has high rates of maternal mortality and morbidity, including among girls.[[6]](#footnote-7) Ecuador’s maternal mortality rate in 2018 was reported to be 41.1 per 100,000 births.[[7]](#footnote-8) 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.[[8]](#footnote-9) Inequalities persisted among poorer girls and women, and in rural areas.[[9]](#footnote-10)

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 grant access to a legal abortion, contrary to what the Clinical Practice Guidelines for Therapeutic Abortion state.[[10]](#footnote-11)

Despite the official approval of these guidelines in December 2014,[[11]](#footnote-12) health providers interviewed by Human Rights Watch said the guidelines have not been systematically implemented. The government has not provided any timeline for when they 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:*

* Establish an effective system to inform patients of their right to confidentiality and to report violations of these rights, and their right to access legal abortion and other sexual and reproductive health care services.

**School-Related Sexual Violence, including Digital Sexual Violence (arts. 2, 5, 10, and 12)**

Sexual violence is a long-standing, pervasive problem in Ecuador’s education institutions.[[12]](#footnote-13) Ecuador still faces serious challenges in how schools, education officials, and judicial institutions respond to sexual violence in educational institutions. Their response continues to fall short of the government’s international human rights obligations.

Human Rights Watch conducted research on school-related sexual violence between February 2019 and September 2020. Our research and data analysis reflects the situation in schools prior to the government’s decision to order nationwide school-closures in March 2020, due to the Covid-19 pandemic. Schools have now remained closed or partially open, in a minority of locations, for over a year, impacting more than 5 million students.[[13]](#footnote-14) Many students still lack internet access or adequate equipment to learn online.[[14]](#footnote-15)

Sixteen out of 38 cases of school-related sexual violence 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.[[15]](#footnote-16)

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.[[16]](#footnote-17) 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.[[17]](#footnote-18)

Human Rights Watch found survivors were not only deeply affected by sexual violence, but they sometimes also faced harassment, bullying and intimidation after they reported the abuses. Cases documented by Human Rights Watch show that reporting—which is mandatory for all school staff—is still tied to the willingness of school staff to apply and follow all government protocols. Private schools do not appear to follow government protocols in a uniform way. Young survivors face re-traumatization in schools and in judicial institutions.[[18]](#footnote-19)

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

Ecuador has not invested consistently in tackling school-related sexual and gender-based violence.[[19]](#footnote-20) 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.[[20]](#footnote-21) 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.[[21]](#footnote-22)

*Lack of Compulsory Comprehensive Sexuality Education (CSE)*

Historically, Ecuador’s focus on sexuality education has been piecemeal, and tied to the government’s effort to curb teenage pregnancies.[[22]](#footnote-23)

In 2018, the government took some steps to tackle previous regressive policies, including by adopting a strategy and new guidance to prevent teenage pregnancies.[[23]](#footnote-24) It also published guidance to tackle violence and discrimination against lesbian, gay, bisexual, and transgender (LGBT) and gender non-conforming students.[[24]](#footnote-25) 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.[[25]](#footnote-26) Yet, at present, existing content is not framed through a human rights lens.

The lack of CSE makes children and adolescents vulnerable to sexual violence, including on line. 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.[[26]](#footnote-27) The Prosecutor’s Office has registered complaints and conducted investigations involving children for rape, sexual abuse, and distribution of pornographic material to other students.[[27]](#footnote-28) 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.[[28]](#footnote-29) During the pandemic, many more children and adolescents are using online platforms for learning and communicating with peers– this has increased their risk of experiencing online sexual exploitation, bullying and other cyber-related crimes.[[29]](#footnote-30)

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 as a contraceptive method or to “regulate irregular menstrual periods.”[[30]](#footnote-31) Others said they had asked in a pharmacy, or asked friends, for a pill “so that my period would come.”[[31]](#footnote-32)

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

* Ensure implementation of the Inter-American Court of Human Rights’ decision in the case of *Paola Guzmán Albarracín v Ecuador*, including by establishing a coordination mechanism among the Ministry of Education, the Ministry of Social Inclusion, Secretary of Human Rights and Attorney General’s Office, and:
  + Regularly collecting data on school-related cases of sexual violence, teenage pregnancy, and abortion and publishing it on the websites of the Ministries of Education and Health.
  + Adopting age-appropriate comprehensive sexuality education and ensure it is a mandatory subject that is accessible to all students.
* Allocate adequate resources to prevent and tackle school-related sexual violence, including digital or tech-enabled sexual violence.

1. This is a case of the 148 cases analyzed by Human Rights Watch. This case is from 2014. [↑](#footnote-ref-2)
2. This is a case of the 148 cases analyzed by Human Rights Watch. This case is from 2015. [↑](#footnote-ref-3)
3. 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. [↑](#footnote-ref-4)
4. INEC, “National Survey on Family Relations and Gender Violence Against Women” (“Mujeres que han vivido violencia psicologica, fiscia, sexual y patrimonial”), 2012, www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas\_Sociales/sitio\_violencia/presentacion.pdf (accessed June 9, 2021). [↑](#footnote-ref-5)
5. Human Rights Watch, “Why They Want Me To Suffer Again”, pp. 55-59, [The Impact of Abortion Prosecutions in Ecuador | HRW](https://www.hrw.org/report/2021/07/14/why-do-they-want-make-me-suffer-again/impact-abortion-prosecutions-ecuador) [↑](#footnote-ref-6)
6. 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). [↑](#footnote-ref-7)
7. 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 (accessed August 31, 2020), p. 1. [↑](#footnote-ref-8)
8. 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. [↑](#footnote-ref-9)
9. Ibid., para. 41. [↑](#footnote-ref-10)
10. 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. [↑](#footnote-ref-11)
11. 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). [↑](#footnote-ref-12)
12. See also Human Rights Watch Submission to the Committee on the Rights of the Child Review of Ecuador, 90th Pre-Session, July 2021, https://www.hrw.org/news/2021/07/13/submission-committee-rights-child-review-ecuador [↑](#footnote-ref-13)
13. Insights for Education, Country tracker for Ecuador, <https://infographic.education.org/insights/en/> (accessed August 4, 2021). [↑](#footnote-ref-14)
14. Unicef, “Los Los niños no pueden seguir sin ir a la escuela, afirma UNICEF, February 9, 2021, <https://www.unicef.org/ecuador/comunicados-prensa/los-ni%C3%B1os-no-pueden-seguir-sin-ir-la-escuela-afirma-unicef> (accessed August 4, 2021). [↑](#footnote-ref-15)
15. Human Rights Watch, “It’s a Constant Fight”: School-Related Sexual Violence and Young Survivors’ Struggle for Justice in Ecuador. [↑](#footnote-ref-16)
16. 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. [↑](#footnote-ref-17)
17. See, Human Rights Watch, “It’s a Constant Fight,” pp. 30 – 33. [↑](#footnote-ref-18)
18. See, Human Rights Watch, “It’s a Constant Fight,” pp. 56 – 69. [↑](#footnote-ref-19)
19. 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. [↑](#footnote-ref-20)
20. 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). [↑](#footnote-ref-21)
21. See, Human Rights Watch, “It’s a Constant Fight,” p. 51. [↑](#footnote-ref-22)
22. 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). [↑](#footnote-ref-23)
23. 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 (accessed July 15, 2020). [↑](#footnote-ref-24)
24. 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 (accessed October 10, 2020). [↑](#footnote-ref-25)
25. 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). [↑](#footnote-ref-26)
26. Human Rights Watch analysis of Ministry of Education data from 2014 to September 2020. [↑](#footnote-ref-27)
27. 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, Human Rights Watch, “It’s a Constant Fight,” section “Government Data Shows Very High Levels of School-Related Sexual Violence” for further information, pp. 31 – 34. [↑](#footnote-ref-28)
28. Ibid. [↑](#footnote-ref-29)
29. See, UNICEF, COVID-19 and its implications for protecting children online, April 2020, <https://www.unicef.org/media/67396/file/COVID-19%20and%20Its%20Implications%20for%20Protecting%20Children%20Online.pdf> (accessed August 4, 2021). [↑](#footnote-ref-30)
30. See, *“Why Do They Want to Make Me Suffer Again?” The Impact of Abortion Prosecutions in Ecuador*, July 2021, pp 75. [↑](#footnote-ref-31)
31. Ibid. [↑](#footnote-ref-32)