

**ALTERNATIVE REPORT TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE
SITUATION OF SEXUAL AND REPRODUCTIVE HEALTH OF WOMEN IN ECUADOR**

Committee on Economic, Social and Cultural Rights
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland

**Re: Alternative Report on the situation of sexual and reproductive rights and health of women
in Ecuador, for the 49th Session of the Committee on Economic, Social and Cultural Rights,
November 12-30, 2012, Geneva, Switzerland.**

Through the following Alternative Report, the Frente Ecuatoriano por la Defensa de los Derechos Sexuales y Derechos Reproductivos, Coordinadora Juvenil por la Equidad de Género, Organización Ecuatoriana de Mujeres Lesbianas-OEML, Centro Ecuatoriano para la Promoción y Acción de la Mujer-CEPAM Guayaquil, ACDemocracia, Azucena Soledispa, Gayne Villagómez, with support from Planned Parenthood Federation of America and Family Care International are providing the Economic, Social and Cultural Rights Committee with additional information to the Informative letter we presented for the pre-session on December 5 – 9, 2011. In addition, here is a list of other organizations that support and agree to the contents and intention of this report: The International Consortium for Emergency Contraception, Consorcio Latinoamericano contra el Aborto Inseguro, Internacional Planned Parenthood Federation, the Western Hemisphere Office, la Plataforma Nacional por los Derechos de las Mujeres, Red de Experiencias Autónomas de Aborto Seguro, Colectivo Político de Mujeres Luna Creciente, Servicios para un Desarrollo Alternativo del Sur- Sendas, Asociación de Mujeres Municipalistas del Ecuador, Cabildo de las Mujeres del Cantón Cuenca, and the Red Latinoamericana y Caribeña de Jóvenes por los Derechos Sexuales y Reproductivos.

Executive Summary

The organizations that collaborated to develop this Alternative Report on women's sexual and reproductive health and rights in Ecuador have serious concerns about the persistent discrimination, exclusion, and obstacles that women face in the exercise of their right to health in spite of the obligations of the Ecuadorean State to protect their rights. In general, the economic and labor situation in Ecuador is less advantageous for women, which is intensified by the fact that women are disproportionately responsible for most of the child-rearing and caring for children at the home. Therefore, socio-economic factors determine whether women have real access to appropriate information and health services and whether they receive those services with or without prejudice.

This Alternative Report, written by various women's organizations, will expand on our previous report submitted in the pre-session and the report by Ecuadorean State by emphasizing additional information on women's right to health, the right to exercise that right without discrimination based on sex or gender, and the right to enjoy all of the economic, social and cultural rights on equal terms with men as defined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in articles 2, 3 and 12, and General Comment No. 14. This Report will comment on the discrimination that women face with regard to the full enjoyment of the right to health in five key areas: 1) maternal mortality, 2) discrimination against women in their access to reproductive health services, 3) discrimination against women in their access to emergency contraception, 4) the lack of appropriate information and services for adolescents and youth, resulting in high rates of teen pregnancy, and 5) discrimination in health services for lesbian and bisexual women.

Although positive advances were made in the 2008 Ecuadorean Constitution, including the adoption of a human rights framework, the Ecuadorean government must confront the challenges in the five aforementioned areas in order to ensure the effective enjoyment of women's right to access sexual and reproductive health services without discrimination, as part of their right to health.

As an example of the States lack of protection of women's fundamental human right to health and the right to exercise that right without discrimination based on sex or gender, the Correa Administration submitted a proposal in October 2011 for a new Criminal Code to the Ecuadorean National Assembly, which does not take into account the reality of women's sexual and reproductive health. This initial proposal is currently being analyzed by the National Assembly, but women's organizations are already expressing grave concerns related to how sexual and reproductive rights of women will be protected or penalized. The Executive Branch's proposal introduced an article on the "injury to the unborn," which would not only penalize health professionals giving care to pregnant women for any harm that could be done to the "unborn", but would also penalize the pregnant women seeking care. This particular article on the "unborn", if approved, would discourage medical professionals from providing needed care to pregnant women as well as discourage women from seeking needed medical care during their pregnancy, resulting in higher rates of maternal mortality. The legislative proposal infringes on the right to life and health of pregnant women and consequently, that of the fetus, and contradicts the Constitution of the Republic of Ecuador regarding provisions on the right to reproductive health, in particular Article 43, paragraph 3 and Article 363, paragraph 6, in addition to Articles 3 and 12 of the ICESCR, and General Comment No. 16.

Ecuador's Penal Code allows abortion in cases when the woman's life or health is in danger or if the pregnancy results from a rape of a mentally retarded or insane" woman (Art. 447 of the Criminal Code). These grounds for the interruption of a pregnancy in cases of rape, force other raped women (who are not "mentally retarded or insane") to continue with their pregnancies, violating the State's obligation to ensure non-discriminatory access to reproductive health services by only allowing certain women to access abortion services.

To date, women in Ecuador do not have full access to emergency contraception; a proven contraceptive method that prevents unwanted pregnancies, violating women's right to access the most effective and advanced medical technologies to protect their health. In fact, we have observed that health providers from the Ministry of Health create obstacles for the delivery of emergency contraception, in particular for adolescents and youth, relying on their moral opinions rather than scientific evidence or medical norms. While emergency contraception is supposed to be available and free of charge in all public health facilities, the availability of emergency contraception is inconsistent, and often unavailable in more rural health posts, and even worse, the State has not implemented programs to inform and educate women about it nor promote the delivery of emergency contraception. According to the Committee, "States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information"¹. Clearly by looking at the alarming rise in teen pregnancy, the Ecuadorean State can do more to implement this recommendation by the Committee.

In addition, Ecuador's policies must address the specific problems faced by adolescents and youth in the country. In Ecuador, teen pregnancy is on the rise. According to the Institute of National Statistics and Census (INEC), in Ecuador 17.2% of women from 15 to 19 years old are already mothers, which is 172 out of every 1,000 young women². Additionally, the poorest women, women with the least education, women who live in rural areas, and indigenous women, have the highest rates of fertility³. There is a strong correlation between levels of poverty, violence and early pregnancy. According to the National Plan for the Prevention of Teen Pregnancy, 30% of Ecuadorean adolescent girls that are at the bottom income quintile are mothers; and according to the same source, adolescent fertility in rural areas is 30% higher than in urban areas (3.9 vs. 2.9).

The Ecuadorean State must offer adolescent friendly services, free of charge, which includes information about contraception and sex education so that teenagers can participate in making responsible decisions about their sexual and reproductive health. The absence of appropriate family planning programs contributes to an increase in teen pregnancy, and then, unfortunately, to unsafe abortion. As stated by the Committee, the "realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services"⁴.

Notwithstanding the positive advances made in the constitutional framework, discrimination and violence against lesbians and bisexual women persist. Only recently did several Lesbian Gay Bisexual

¹ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, para. 34. U.N. Doc. E/C.12/2000/4 (2000, available at [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)) [hereinafter CESCR, *General Comment No.14*].

² Population and Housing Census, INEC 2010. Found on 20 of August, 2012 at http://www.msp.gob.ec/misalud/index.php?option=com_content&view=article&id=668:embarazo-adolescente-y-fecundidad-en-cifras&catid=51:mi-salud-al-dia&Itemid=242

³ *Ibid.*

⁴ CESCR, *General Comment No. 14, supra* note 1, para. 23.

Transgender (LGBT) organizations, together with the Office of the Ombudsman and the Ministry of Justice and Human Rights succeed in abolishing Ministerial Agreement No. 339, issued by the Ministry of Public Health, which called for the “Control of Rehabilitation Centers for People with Addiction.” This agreement directly violates LGBT rights by creating “specialized centers for treatment, (...) [of] adolescents with behavioral disorders and people with disorders in their identity or sexual orientation (...)”. This Report brings to light the unacceptable treatment of lesbians and bisexual women in certain Ecuadorean health care centers, where services continue to be offered from a heterocentric point of view, resulting in a negative impact that is reflected in the deep reluctance among lesbian and bisexual women to visit public health centers for fear of revealing their sexual orientation and being stigmatized or discriminated against.

I. The right to access reproductive health services without discrimination (Articles 2, 3 and 12)

Introduction: gender inequality in the Ecuadorian economy

Ecuador’s economy is the eighth largest in Latin America. In 2011, its Gross Domestic Product (GDP) grew to 7.8%⁵, the highest in the last five years. However, in urban areas, poverty closed in 2011 at 17.36%, while in rural areas, in that same year, it was at 50.9%⁶. This complex income inequality generates serious limitations in access to services, including health services, because it prevents the public health system from providing all medical supplies and medicines.

The shortcomings of the Ecuadorean economy have a direct impact on the levels of social justice and enjoyment by women of their economic and social rights. Women participate less in the traditional labor market than men⁷, have lower positions and their incomes are lower for the same work, which is worsened by sexual harassment and discrimination related to maternity and the number of children they raise.

In the area of non-remunerated work, the opposite occurs; women’s involvement is greater than men’s, and their domestic work and child care is not valued or shared with the other members of the family, the community, nor the State. Thus, the inequality in the enjoyment of resources, decision-making, and the lack of autonomy coupled with low self-esteem prevents women from enjoying other rights, such as the access to timely or high-quality sexual and reproductive health care services, which is necessary to enjoy good health.

Sexual and reproductive rights move between contradictions and polarizations under a government that has adopted many conservative positions concerning women's rights. The ideology and stereotypes of

⁵ Central Bank of Ecuador (2012), macroeconomic statistics presentation, accessed 07/18/2012 <http://www.BCE.fin.EC/docs.php?path=/documentos/Estadisticas/SectorReal/previsiones/IndCoyuntura/EstMacro072012.PDF>

⁶ National Institute of statistics and surveys (2012), recent data, poverty in Ecuador, consulted July 18, 2012 http://www.inec.gob.ec/estadisticas/index.php?option=com_remository&Itemid=&func=startdown&id=1509&lang=en&TB_iframe=true&height=250&width=800. For this report, poor are those whose per capita income is below the poverty line, which was USD 2.47 daily in March of 2012.

⁷ According to data from the Employment Survey of 2008- 2009, global participation rates show that women have not yet reached levels of participation as men in the labor market, they have between 47 and 50% against men that have been close to 70% participation.

the decision-makers are interfering with the development, orientation and implementation of secondary regulations, policies, and in the decision-making process itself because of the collision between their positions, the constitutional provisions and social demands, especially when it comes to women's rights.

A study by the Latin American Consortium against Unsafe Abortion (CLACAI) showed that "32.6% of Ecuadorian women have undergone some type of abortion"⁸. This statistic indicates that Ecuador has the fifth largest percentage of women who have had an abortion in Latin America. This figure that cannot be refuted, due to the enormous under reporting and lack of coordination among official Ecuadorian agencies for statistics and monitoring of maternal death, particularly relating to abortion".

It is of great concern to the women's organizations that the Criminal code proposal does not take Ecuador's high abortion rate into account, consequences from the poor delivery of information on sexual health and reproductive health and rights and of the limited access to the benefits from scientific progress, both of which address unwanted pregnancies and improve health care delivery, particularly with regard to abortion services in hospitals. Furthermore, the Executive Branch, which is a co-legislator, has not taken into account that unsafe abortion, and sexual assault and violence, threatens the lives and integrity of women in Ecuador, intensified by the ineffective legislation that criminalizes abortion. What we know is that abortion rates will never drop in Ecuador, while abortion remains criminalized. This has been true since in Ecuador since 1938, when the first criminal code criminalized abortion.

Discrimination against women in the enjoyment of the right to health

The right to maternal and child health is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), in Article 12 (2) (a)⁹, which the Committee has interpreted to include reproductive health, which includes "the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth. ..."¹⁰.

Articles 2 (2) and 3 of the ICESCR guarantee the "equal right to the enjoyment of all economic, social and cultural rights", without discrimination, particularly on grounds of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".¹¹ "This Committee

⁸ CLACAI (Latin American consortium against unsafe abortion) in a report issued October 13, 2010. (International Consortium for Medical Abortion)(ICMA). *Ecuador is the country with more abortions in Latin America*.

⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), available at <http://www2.ohchr.org/english/law/cescr.htm>. art. 12 (2) a. "The steps to be taken by State Parties to the Covenant to achieve the full realization of this right shall include those necessary for: (a) the provision of the reduction of the still birth-rate and of infant mortality and for the healthy development of the child".

¹⁰ CESCR, *General Comment No. 14*, paragraph 14, *supra* note 12.

¹¹ ICESCR, *supra* note 10, Arts. 2(2) and 3.

has affirmed that sex is a prohibitive ground for discrimination"¹²—and calls on the State to exercise special surveillance to prevent discrimination against women's right to health, emphasizing "the equality of access to health care and health services"¹³.

This Committee has also stated that State Parties to the ICESCR have the positive obligation to protect maternal and child health, as well as sexual and reproductive health, including access to family planning, emergency obstetric care, and information¹⁴. The Committee recognizes the importance of the link between the principle of non-discrimination and women's right to health, including reproductive health: "The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health"¹⁵.

The principles of non-discrimination and equality are essential to the fulfillment of the right to health, which requires State Parties to take measures to enforce it. Obstetric care, legal abortion services and the availability of family planning services, including emergency contraception, are all services required only for women. The denial of high-quality, timely or appropriate health services that only women need, constitutes an act of discrimination that violates international obligations acquired by the Ecuadorean State under the Covenant.

The Committee has characterized the duty of State Parties to prevent discrimination in the exercise of the right to health and access to health services as a "special obligation"¹⁶; "States have a special obligation... to prevent any discrimination on internationally prohibited grounds . . . especially with respect to the core obligations of the right to health"¹⁷. General Comment No. 14 reaffirms the State's obligations to ensure "the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups"¹⁸.

II. Five areas of particular concern to the women's organizations that subscribe to the Alternative Report

1. Maternal mortality and the proposal for a new criminal code

According to data from the National Institute of Statistics and Censuses (INEC), confirmed by the Ministry of Public Health of Ecuador and the Pan American Health Organization¹⁹, between 2007 and

¹² Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20 Non discrimination and economic, social and cultural rights.* (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009), <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

¹³ CESCR, *General Comment No. 14, supra* note 1, para. 19.

¹⁴ *Ibid.* para. 14

¹⁵ *Ibid.* para. 21

¹⁶ *Ibid.* para. 19

¹⁷ *Ibid.* Para. 19

¹⁸ *Ibid.* para. 43

¹⁹ Ministry of Public Health of Ecuador, National Institute of Statistics and Censuses and Pan American Health Organization. n/d. *Basic health indicators Ecuador 2011*. Consulted June 27, 2012, Pan American Health Organization-Ecuador: http://new.paho.org/ecu/index.php?option=com_content&task=view&id=25&Itemid=135, p. 17.

2010, the maternal mortality rate in the Ecuador actually increased. In 2007, it was 62.0 per 100,000 live births, in 2008, 78.6, in 2009, 96.3 and in 2010, it was 92.6. With 203 maternal deaths reported in 2010, Ecuador has one of the highest maternal mortality rates in Latin America. The same source²⁰ stated that among the main causes of maternal deaths in 2010 were: gestational hypertension, eclampsia, and hemorrhage, postpartum and puerperal sepsis; all of which could have been prevented.

In spite of these statistics, the Executive branch submitted an article that criminalizes and punishes anyone who causes "injury to the unborn."²¹ As we mentioned previously, this law would criminalize both health professionals giving care to pregnant women, as well as the pregnant women. This is extremely dangerous because it implies that pregnant women who have a special health condition such as diabetes, a sexually transmitted infection, HIV, or other bacterial or viral infections could potentially be deprived of attention - and therefore forced to endanger their health – because of the fear of the healthcare professional to provide treatment that could ultimately harm the fetus, resulting in prosecution and imprisonment.

The Executive Branch's proposal, which would leave women with no alternatives for safe health care, would force more women to seek out clandestine or underground health care providers for basic treatment, and certainly for abortion services. Any limitation on women's access to appropriate health care would contribute to an already high maternal mortality rate. On several occasions, this Committee has reiterated the connection between illegal and unsafe abortions and high rates of maternal mortality²². Harm to the health of the mother is a violation of the State party to Articles 3 and 12 of the ICESCR, as was stated by the Committee in its General Comment No. 16, which prohibits State parties to implement legal obstacles that impede equal access to public health services, including legal restrictions on reproductive health²³.

In addition, the Executive's proposal on the injury to the unborn law contradicts the provisions of the Constitution of the Republic of Ecuador regarding reproductive health and rights, in particular article 43, paragraph 3 which states that "the State shall guarantee pregnant and breastfeeding women" the right to "priority protection and care of their integral health and life during pregnancy, childbirth and postpartum period." It is also in violation to Art. 363(6), which states that it is the State's responsibility

²⁰ Ibid. p. 16

²¹ The text of the article says: "article 75.-injury to the un born. Those who cause an injury or illness that seriously impairs their normal development or causes a serious physical or mental disability to an unborn shall be punished with imprisonment of three to five years and special disqualification for twice the time of the sentence." Original draft available at: <http://www.asambleanacional.gov.ec/tramite-de-las-leyes.html>, code 2011-097.

²² Standing Committee on economic, social and cultural rights concluding observations: Benin, U.N. Doc. CESCR E/C.12/1/Add.78 (2002); Brazil, U.N. Doc. CESCR E/C.12/1/Add.87 (2003); Cameroon, U.N. Doc. CESCR E/C.12/1/Add.40 (1999); Republic of Mauritius, U.N. Doc. E/C.12/1994/8 (1994); Mexico, U.N. Doc. E/C.12/1/Add.41 (1999); U.N. Doc. E/C.12/MEX/CO/4 (2006); Nepal, U.N. Doc. E/C.12/1/Add.66 (2001); Panama, U.N. Doc. E/C.12/1/Add.64 (2001); Paraguay, U.N. Doc. E/C.12/PRY/CO/3 (2008); Poland, U.N. Doc. E/C.12/1/Add.26 (1998); Federation Russian, U.N. Doc. E/C.12/1/Add.94 (2003); Senegal, U.N. Doc. E/C.12/1/Add.62 (2001)

²³ CESCR, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, para. 29. U.N. Doc. E/C.12/2005/4 (2005), available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7c6dc1dee6268e32c125708f0050dbf6/\\$FILE/G0543539.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7c6dc1dee6268e32c125708f0050dbf6/$FILE/G0543539.pdf)

to "guarantee sexual and reproductive health actions and services to ensure the integral health and life of women, especially during pregnancy, delivery and postpartum."

This initiative to punish anyone who injures the "unborn" goes as far as endangering the life and health of the pregnant woman herself, but also that of the fetus as well, which certainly cannot grow and thrive appropriately if the woman has an ailment and cannot receive treatment. It should be pointed out that, although the National Assembly's Justice Commission removed this article in a preliminary version, it could be re-introduced and eventually adopted by the National Assembly at several points during the official procedure. The concern of the women's organizations is that this dangerously vague and harmful law will be added again during the next discussion period in the National Assembly, or when it is delivered to the President, who must approve the final version.

2. Discrimination against women in their access to reproductive health services: sexual assaults and unsafe abortion

Ecuadorian legislation allows abortion only in cases where a woman's life or health is in danger or if a woman who is mentally disabled – "is mentally retarded or insane" and became pregnant as a result of a rape (art. 447 of the current Criminal Code). This last ground means that the rest of the women who are raped are forced to continue their pregnancies, which is a breach of the obligation of the State to provide non-discriminatory access of all women to reproductive health in cases of pregnancies as a result of rape. The United Nations Human Rights Committee has recognized that there is a connection between the guarantee of equal rights between men and women and the denial of access to abortion in cases of rape or when women are forced to undergo abortions, which are illegal or dangerous²⁴. In Ecuador, the criminalization of abortion has not prevented or dissuaded women from having an abortion, since women continue to turn to clandestine abortion services when faced with unwanted pregnancies. Therefore, abortion must be regulated as a public health problem and not addressed as a criminal offense. Given these circumstances and the statements made by the Human Rights Committee, Ecuador is discriminating against women when they are denied access to safe abortion in cases of sexual violation.

From the perspective of the right to comprehensive health care of a victim of a sexual assault who is pregnant as a result of the rape, it is a serious transgression to her dignity, by not allowing her to decide if and when to have a child. Without access to health care services that would allow for safe and legal abortion, and being forced to carry an unwanted pregnancy, women are being coerced to take risks against their own reproductive, sexual, and mental health. Many of these women become deeply depressed²⁵ or anxious, or suffer post-traumatic stress disorder. The emotional and physical exhaustion can also lead to suicide due to the lack of alternatives.

"Gender-based violence imposes a huge financial burden that creates poverty for the individual, the family, the community and the country, involving a range of costs such as the incapacity of the victim

²⁴ UNHRC, *General Comment No. 28*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000) para. 10.

²⁵ Constitutional Court of Colombia. T388/09-statement. Consulted August 14, 2012. <http://www.corteconstitucional.gov.co/relatoria/2009/T-388-09.htm>.

survivors to contribute productively to the household because of their physical and/or psychological state "²⁶.

In the Special Rapporteur Report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, dated August 3, 2011, Mr. Anand Grover points out that:

“Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women’s right to health and must be eliminated. These laws infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfill the right to health.”²⁷

The current discussion on the new Ecuadorean Criminal code is the appropriate moment for the National Assembly to revise the restrictions imposed on women’s right to reproductive health. Article 66, paragraph 10, of the Ecuadorean Constitution establishes the right to "make free, responsible and informed decisions on health and reproductive life and to decide when and how many children to have". Consequently, if the new criminal legislation seeks to complement the constitutional rights, article 447 that restricts abortion should at least permit the free exercise of reproductive rights when a pregnancy results from rape and sexual assault, in which case it must be the victim’s decision and not a criminal enforcement.

3. Discrimination against women in their access to reproductive health services: Emergency Contraception

Due to the intervention of non-governmental organizations and women’s and youth organizations that work to promote and defend women’s rights, the State has approved emergency contraception (EC) as an alternative contraceptive, not only for cases of sexual violence, but also for unprotected sex under any circumstance.

Nevertheless, it is important to point out that access to EC and its availability through the public health system, remains a challenge in Ecuador. To date, women cannot access EC in an easy and timely fashion, either due to administrative obstacles or to the lack of contraceptive supplies in both public and private health care facilities. In practice, the Ministry of Health has imposed obstacles to the delivery of EC, especially for adolescents and youth. Among them are the following requirements that impede access to EC:

²⁶ National plan for the eradication of the domestic violence towards children, adolescents and women. n/d. Coordination of the Plan. p. 13. PDF version.

²⁷ A/66/254. Human Rights Committee (HRC), p. 9, 21.

- Must solicit an official appointment in order to receive emergency care
- the existence of a prior medical history on file
- must present photo identification²⁸

Apart from these administrative restrictions, we know from direct sources²⁹ that public health centers have not completely distributed the available contraceptives that were in their possession. The same sources reported that a large amount of unused contraceptives expired, since they were not distributed in a timely manner.

The availability of EC in the public health system is inconsistent throughout the country. The District Attorney's Office of Quito has EC available for women who are victims of sexual violence, while the Police's own medical services that also carry out exams and report on sexual violence cases, does not supply it.

This Committee's General Comment No. 14 dictates that the state is under the obligation to respect, protect and fulfill every aspect of the right to health. The Committee placed a clear emphasis on the obligation to comply, which includes the obligation "to protect, provide and to promote"³⁰. In this case, the Ecuadorean State has not implemented programs to promote the free distribution of EC. Therefore, women, including adolescents and youth, remain unaware of their right to request EC at public health centers. This information was obtained through a monitoring project carried out by Fundación Desafío in 2012, in which staff visited randomly selected primary level health care centers in Quito. The study found that there was no visible information about the availability of EC in those centers, nor was there any specific counseling offered on that method³¹.

In addition, EC continues to be a contraceptive that generates controversy in Ecuador. It is erroneously associated with abortion, and the State has done little to counteract the disinformation and false conceptions³². The focus groups and interviews carried out during the study "Diagnostic of the situation of the supply and demand of Emergency Contraception in Loja, Guayas, Pichincha, Esmeraldas and Chimborazo," showed that even now these anti-technical views are held by State healthcare personnel.

Emergency Contraception is sold by private pharmacies only if a doctor's prescription is provided, which constitutes an obstacle for its acquisition since not all women are able to pay for a medical consultation just to request a prescription while also having the money to purchase the EC, which costs 7.00 dollars, in a country with a minimum wage of 260.00 dollars a month and access to work for youth, and especially women, is limited. Additionally, accessing EC is even more difficult in rural areas, since women there may not have access to objective and scientific information, and disproportionately do not

²⁸ Fundación Desafío and Coordinadora Juvenil por la Equidad de Género. Diagnostic of the situation of the supply and demand of Emergency Contraception in Loja, Guayas, Pichincha, Esmeraldas and Chimborazo. Quito, January 2010.

²⁹ *Ibid.*

³⁰ CESCR, *General Comment No. 14*, *supra* note 1, para. 33.

³¹ Fundación Desafío, Component of Youth Oversight Study of health services and administration of Justice, Project "Youth against machista violence," with support from Medicus Mundi-Gipuzcoa, Quito- 2012

³² Fundación Desafío and Coordinadora Juvenil por la Equidad de Género. Diagnostic of the situation of the supply and demand of Emergency Contraception in Loja, Guayas, Pichincha, Esmeraldas and Chimborazo. Quito, January 2010.

have the financial resources to buy EC from a private pharmacy if the public health services do not supply it³³.

This Committee has emphasized under its General Comment No. 14 the obligation of the States to “adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties.”³⁴ In spite of this recommendation, the governing body of health public policies in Ecuador has failed to address the issue with the two most important pharmacy chains in the country that currently refuse to sell EC³⁵. This represents a violation of women’s right to health when women are not able to acquire a crucial product for their reproductive health because the State does not regulate the administration of medicines by third parties.

Emergency contraception constitutes an opportunity for women to exercise their fundamental right to enjoy the highest possible level of mental and physical health, by limiting access to an important family planning method, in addition to a woman’s right to and the right to decide when and how many children to have as guaranteed in the Ecuadorian Constitution. Full access and availability of EC demonstrates the right to enjoy the benefits of scientific progress and its applications. Given the need for EC to protect reproductive and sexual rights, the Ecuadorean healthcare system should remove barriers to its access, ensuring specific access for adolescents and youth, in addition to implementing broad programs that inform the public about EC. Furthermore, the State should provide EC free of charge, as it has committed to do with all other family planning methods within the public health system and should regulate the supply and sale of EC in private pharmacies in order to ensure uniform access to the method and limit discrimination.

4. Teen pregnancy: A growing problem

In its Third Periodic Report for Ecuador regarding articles 1 to 15 of the Convention (E/C.12/ECU/3), the Committee expressed its concern with the high rates of teen pregnancy in relation to access to sexual and reproductive health services. The Committee also recognized that pregnancy can interfere with the ability of a young woman to complete her education³⁶ which can further restrict a young woman’s income level. And as we know, there is a correlation between levels of poverty, violence and early pregnancy.

³³ Fundación Desafío and Coordinadora Juvenil por la Equidad de Género. Focus Groups and Interviews for the study: Diagnostic of the situation of the supply and demand of Emergency Contraception in Loja, Guayas, Pichincha, Esmeraldas and Chimborazo. Quito, January 2010.

³⁴ CESCR, *General Comment No. 14*, *supra* note 1, para 35.

³⁵ Fundación Desafío and Coordinadora Juvenil por la Equidad de Género. Strategy of clients in study: Diagnostic of the situation of the supply and demand of Emergency Contraception in Loja, Guayas, Pichincha, Esmeraldas and Chimborazo. Quito, January 2010, and Component of Youth Oversight Study of health services and administration of Justice, Project “Youth against machista violence,” with support from Medicus Mundi-Gipuzcoa, Quito, 2012.

³⁶ United Nations. E/C.12/ECU/3, December 21, 2011. para.14

According to the *Andean Plan on the Prevention of Pregnancy Among Adolescents*, Ecuador, together with Colombia and Venezuela, has the highest rate of teen pregnancy in the Andean region³⁷. According to the Institute of National Statistics and Census, 17.2% of women from 15 to 19 years old are already mothers, which is 172 out of every 1,000 young women³⁸. Additionally, some women suffer disproportionately from higher rates of fertility among them: the poorest women, women with the least education, women living in rural areas, and indigenous women.³⁹ To demonstrate this even further, 30% of adolescents who are in the lowest quintile of income are already mothers and fertility among adolescents in rural areas is 30% higher than in urban areas (3.9 versus 2.9).⁴⁰ Other data that helps demonstrate this dire issue shows that 43% of the young, illiterate women get pregnant during their adolescence, while only 11% of young women with some education get pregnant during adolescence.⁴¹

According to the *National Survey on Family Relationships and Gender Violence against Women* from 2012, teen pregnancy rates among 12 to 14 year olds rose an alarming 75% from 2011 leaving 3,684 girls to be mothers⁴². According to the same survey, 12% of disabled girls between 15 and 19 are already mothers. This is a shocking statistic since all of those pregnancies among disabled girls from 10 to 14 years old are legally considered a sexual assault⁴³. Even more shocking, 1 out of every 2 girls, boys and teens in Ecuador have suffered some type of violence⁴⁴. Many unwanted pregnancies among adolescents are a result of sexual violence, and the majority of sexual violence is perpetrated by someone inside their home, likely a family member and 40% of the cases of violence against teens occurred before they turned 17 years old⁴⁵.

In its General Comment No. 14, this Committee has defined the rights of adolescents to include the “the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counseling and to negotiate the health-behavior choices they make” and that “States parties should provide a safe and supportive environment for adolescents.”⁴⁶ The Committee also instructed that adolescents are under special protection with regard to their right to health and emphasized that this protection includes their sexual and reproductive health⁴⁷.

New policies and regulations in Ecuador should take into account the context and obstacles adolescents encounter every day in Ecuador. Offering free, adolescent-friendly public health services that provide

³⁷ Sub-regional Committee on the Prevention of Teen Pregnancy. 2008. Teen pregnancy in the Andean Sub-region. Pag.12.

³⁸ Censo de Población y Vivienda, INEC 2010. Consultado el 20 de agosto, 2012.

http://www.msp.gob.ec/misalud/index.php?option=com_content&view=article&id=668:embarazo-adolescente-y-fecundidad-en-cifras&catid=51:mi-salud-al-dia&Itemid=242

³⁹ Censo de Población y Vivienda, INEC 2010. Consulted 20 of August, 2012.

⁴⁰ National Plan on the Prevention of Pregnancy among Adolescents

http://www.msp.gob.ec/misalud/index.php?option=com_content&view=article&id=668:embarazo-adolescente-y-fecundidad-en-cifras&catid=51:mi-salud-al-dia&Itemid=242

⁴¹ Plan Nacional de Prevención del Embarazo en Adolescentes, p. 6

⁴² INEC, National Survey on Family Relationships and Gender Violence against Women, 2012

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ CESCR, *General Comment No. 14, supra* note 1, para. 23.

⁴⁷ *Ibid.*

accurate and appropriate sexual and reproductive health information for teens is necessary in order to empower youth to make important health decisions. If the State does not take appropriate measures that protect the sexual and reproductive health of these youth, many will turn to unsafe abortion as the only alternative for the Ecuadorean youth with an unwanted pregnancy.

5. Discrimination in Access to Women's Health Services for Lesbian and Bisexual Women

Among other rights, Ecuador's constitution (Art. 3, Number 1) establishes as the duty of the state the fulfillment of the right to health and seeking equal rights for everyone and the attainment of those rights, duties and opportunities without distinction (Art. 11, numeral 2); it emphasizes "permanent and timely access without exclusion to programs, activities, promotional services, comprehensive health care and sexual and reproductive health care", it stipulates that "the provision of health services will follow principles of equity, universality (...) with both a gender and generational focus." (Art. 32)

Despite this constitutional mandate, conditions of discrimination and violence against lesbian and bisexual women persist. In September 2010, when the Ministry of Health issued Ministerial Agreement # 339 to regulate rehabilitation centers for the treatment of drug addicts. This agreement stated in article 9 stated that it would "foster the creation of specialized treatment centers, (...) for adolescents with behavioral disorders and people with identity and sexual orientation disorders". Several LGBTI organizations in conjunction with the Office of the Ombudsman and the Ministry of Justice and Human Rights took the necessary measures to abolish this article.

Article 12, letter c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) obligates states to protect promote and guarantee the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in addition to the prevention, treatment and control of epidemic, endemic, occupational and other diseases".⁴⁸ In addition, General Comments No. 14 and 15, this Committee in General Comment No. 20 made references of the duties of State Parties to "ensure that a person's sexual orientation is not a barrier to realizing [article 2.2 of the] Covenant"⁴⁹. Despite this, in Ecuador the treatment lesbian and bisexual women receive when accessing health care services is based on a heterocentric view, based on a lack of understanding of lesbian and bisexual issues. This discrimination suffered by the lesbian and bisexual community has a negative impact on people seeking services which is reflected in the profound reticence to seek out health care services for fear of someone discovering their sexual orientation⁵⁰ when visiting health care centers.

The majority of the sexual and reproductive health campaigns such as those for sexually transmitted infection campaigns, HIV /AIDS prevention promoted by the Ministry of Public Health and even by civil society organizations have uniformly excluded lesbian and bisexual women, making them invisible and delegitimizing their sexual practices, further strengthening the old conception that Ecuador is solely a heterosexual society. This limited heterosexual view, in addition to discriminating against the Lesbian and bisexual community, possibly contributes to increased rates of breast cancer (due to widespread

⁴⁸ ICESCR, *supra* note 10, Art. 12 (c).

⁴⁹ CESCR, *General Comment No. 20, supra* note 13, para. 32.

⁵⁰ ILGA. 2007. Health of lesbian and bisexual women. Local issues, common concerns. Consulted August 20, 2012. www.ilga.org.

disinformation or lack of information on self examination techniques), cervical cancer (from lack of periodic exams such as Pap smears), and Human Papiloma Virus (due to a lack information on how the virus is transmitted, for example through woman to woman transmission possibly through oral sex)⁵¹.

The following is a list of factors that negatively affect the overall health of lesbian and bisexual women that are not taken into account by the health care system⁵²:

- Intense social pressure that prohibits self acceptance and empowerment.
- Effects on the psycho-social health of lesbian and bisexual women linked to depression, isolation, and high stress levels that lead to suicide attempts and in some cases death.
- Erroneous myths and a lack of knowledge about sexual practices among non-heterosexual women, reflected on the void of specific health care policies and protocols, including attitudes of homophobia by health care services providers.

Currently the Ministry of Public Health is participating in the National Guide on Norms and Attention Procedures for LGTBI persons,⁵³ it is worth noting that petitions from the Ecuadorean Organization of Lesbian Women (OEML), submitted on the vulnerability of non-heterosexual women confronting the HIV/AIDS pandemic and other STIs, received little attention or recognition by the current authorities in the health care system.

In conclusion, the information presented in this Report demonstrates Ecuador’s failure to comply with its obligations under ICSECR, particularly with regard to the right to health without discrimination. Taking into account this information, as well as Ecuador’s State Report, we humbly submit the following list of recommendations to the Committee in hopes that it will address these issues with the Ecuadorean Government.

RECOMMENDATIONS:

With regard to the discrimination against women in relation to their access to reproductive and sexual health services, including access to safe and legal abortion services in cases of rape encountered in Ecuador:

1. Because Ecuador’s National Assembly is currently debating the country’s new Criminal Code, we would recommend that the National Assembly and the Executive Branch, remove the discriminatory language found in Article 447 of the Criminal Code, which only allows “mentally retarded or demented” women who have been raped to have access to a legal abortion. Access to a legal and safe abortion care is a right that should be enjoyed by all women, without discrimination, particularly if the woman was the victim of a sexual crime which resulted in an unwanted pregnancy. We would recommend that the National Assembly amend the Criminal Code so that abortion in cases of rape is not criminalized.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Document that is currently under review by authorities of the State and organizations/foundations from the non-heterosexual community.

2. We would recommend that the Ecuadorean State take adequate measures, including drafting and approving protocols and regulations, to ensure that all medical personnel in public and private health facilities are adequately sensitized and trained to provide appropriate counseling, information and services for women in need of legal abortion care.
3. The State should approve protocols and regulations that provide orientation and guidance for medical professionals on the provision of legal abortion care, within a human rights framework, respecting the personal decisions of women requesting the service, with the goal of improving the quality of care received and eliminating the discrimination against women who need important health services.

With regard to the reduction of maternal mortality:

4. The State should fulfill its obligations as a signatory to the International Convention on Economic, Social and Cultural Rights by taking measures to guarantee the prevention and treatment of health conditions specific to women, particularly during pregnancy, birth, and post partum, and that these women benefit from the most recent advances in science and their applications. For example, misoprostol is listed on the essential medicines list of the World Health Organization as well as the Ecuadorean Essential Medicines List for gynecological reasons, and therefore should be made available at all public health facilities in order to help reduce maternal mortality related to post partum Hemorrhage.
5. Designate adequate funding in order to implement measures and public policies focused on reducing maternal mortality, for example: training providers on misoprostol to prevent post partum hemorrhage and on manual vacuum aspiration for post abortion care which will prevent maternal deaths and improve hygienic and sanitary conditions in public facilities.

With regard to emergency contraception:

6. Due to the increasing rates of teen pregnancy in Ecuador that could be reduced by improving access to emergency contraception, we recommend that the Ministry of Health develop an informational and educational campaign regarding the appropriate use of emergency contraception, and ensure a consistent supply and make it available free of charge at all public health facilities.
7. We recommend that the Ministry of Health - the public authority that regulates pharmacies - ensures that emergency contraception is available at private pharmacies, and it is available over the counter and without a prescription.

With regard to teen pregnancy:

8. We recommend that the State implement informational and educational campaigns focused on the prevention of unwanted or unplanned pregnancies within a human rights and gender based framework that includes information that empowers women, youth and men to make informed decisions about

their reproductive health, and allows men to question negative behaviors that are based on negative stereotypes and control over women's bodies.

9. Ensure that every public health facility offers specialized adolescent-friendly health services, where medical staff are trained and sensitized on topics such as gender, ethnicity, sexual orientation, and cultural diversity.

With regard to discrimination in the public health services against lesbians and bisexuals:

10. The State should approve protocols and guidelines that demystify sexuality as well as promote and protect lesbian, gay, bisexual and transgender people's rights. In addition, the State should ensure that public health officials and authorities as well as medical professionals have adequate training around this issue in order to reduce homophobia, lesbophobia and biphobia in public health facilities.
11. The State, under its obligations to protect, promote and guarantee the right to health, should design massive public media campaigns on the prevention of sexual transmitted infections, HIV/AIDS, and sexual and reproductive health, but that also include information for lesbian, bisexual and transgender people, in order increase awareness and information about discrimination based on sexual orientation, which is guaranteed in the Constitution.