



Violations of Human Rights of cis, trans, heterosexual, lesbian, bisexual and intersex Women in Ecuador

List of suggested issues presented to the Working Group on Ecuador's Report

Committee on the Elimination of Discrimination against Women

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Report submitted by:

- **CPM – Taller de Comunicación Mujer**
- **Akahatá – Equipo de trabajo en sexualidades y géneros**
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CPM/Taller de Comunicación Mujer; Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia - Initiatives for Human Rights; and the SRI – Sexual Rights Initiative, are honored to submit the following list of issues to the Committee on the Elimination of Discrimination against Women with the aim of assisting the Committee in the formulation of the List of Issues to follow up the implementation of the Convention on the Elimination of All Forms of Discrimination against Women by the State of Ecuador.

Institutional and normative framework

1. In 2014, the Organic Comprehensive Penal Code (COIP, by its Spanish acronym) came into force in Ecuador. It includes femicide as a statutory offence, as well as acts of hate and torture¹, including motivations arising from gender identity and sexual orientation of victims.
2. In February 2014, the presidential commitment N° 21525 created the Inter-Institutional LGBTI Table². The main objective of this table was to build comprehensive policies for the inclusion and restoration of rights for the LGBTI population. That work was supposed to include strategizing for legal, psychological and social assistance of LGBTI people. The table was dissolved and although it did design a policy that was to be executed during 2016-2017, it was never approved nor implemented³.
3. In November 2017, an Organic Law to Prevent and Eradicate Violence against Women was passed⁴.
4. The Regulation for the Control of Rehabilitation Centers for Persons with Addictions (Ministerial Agreement 767, May 2012) forbids those centers to perform “therapies to reverse homosexuality”. Since more than a decade ago, such “therapies” have been being imposed particularly on lesbian women, but also on bisexual, transgender and intersex women (from now on, LGBTI women).
5. The Organic Health Law⁵ and the Organic Health Code do not still include the prohibition of treatments aimed at modifying sexual orientation and gender identity. The issue is under legislative reform, but even the Regulation for the Control of Rehabilitation Centers for Persons with Addictions –which, as already mentioned, prohibits treatments to revert homosexuality– remains still to be applied.
6. Executive Decree N° 491 started a process of institutional rearrangement and budget adjustment, which led to the creation of the Department of Human Rights (Decree 560, November

¹ Article 141.- Femicide, Article 177.- Hate acts, Article 151.- Torture, Organic Comprehensive Penal Code.

² The table was composed by the following institutions: Ministry of Public Health, Ministry of Education, Ministry of Economic and Social Inclusion, Ministry of Urban Development and Housing, Ministry of Justice, Human Rights and Religious Cults, Ministry of Interior, Ministry of Foreign Affairs, Coordinating Ministry of Social Development, Ministry for Labor Relationships, National Council for Gender Equality, Office of the Ombudsperson, Judiciary Council, Office of the State Attorney General, National Department for Policy Management, National Department for Planning and Development and the Civil Registry. Source: Ministerio de Justicia presente en socialización de la Política Pública para la población LGBTI. <http://www.justicia.gob.ec/ministerio-de-justicia-presente-en-socializacion-de-la-politica-publica-para-la-poblacion-lgbti/>

³ Paula, Christian (2017). Breve Repaso sobre los Derechos de la Población LGBTI en Ecuador (2008-2017). Fundación PAKTA, p.11

⁴ Organic Law to Prevent and Eradicate Violence against Women, Official Registry N° 175. See: <https://www.igualdadgenero.gob.ec/wp-content/uploads/2018/02/REGISTRO-OFICIAL-LEY-ORGA%CC%81NICA-INTEGRAL-PARA-PREVENIR-Y-ERRADICAR-LA-VIOLENCIA-CONTRA-LAS-MUJERES.pdf>

⁵ Law 67, Supplement of the Official Registry 423, December 22, 2006.

2018). The Department now encompasses the directive office for the Organic Law to Prevent and Eradicate Violence against Women and the former Ministry for Justice, Human Rights and Religious Cults. Some specialized services to support violence victims, such as Shelters and Assistance Centers, as well as many social organizations, are currently in a sort of administrative limbus as a result of them being moved from one administrative body to another. In all this institutional rearrangement it is not clear whether there will be any institutional space devoted to issues affecting historically marginalized populations, such as LGBTI women.

7. The proposed budget for 2019 has reduced in more than its 90% the funds allocated to the National System for the Prevention and Eradication of Violence against Women. On December 5, 2018, the State was questioned about that topic during the Thematic hearing about femicides in Ecuador before the Inter-American Commission of Human Rights⁶. The State representative answered that the budget reduction was no obstacle to the struggle against gender violence, because the current expenditure was not to be reduced compared to the one already implemented.

II. List of issues and questions suggested to the Committee

Discrimination against women for reasons of gender identity and sexual orientation in law

Article 2

General Recommendation 28

8. In November 2017, as already mentioned, the Organic Law to Prevent and Eradicate Violence against Women⁷ was passed. The Regulation⁸ for its application was registered in the Official Registry in June 2018 through Executive Decree 397, but there are still very serious difficulties preventing the effective implementation of the law – among other things, the open discriminatory and women stigmatizing actions exerted by the justice system combined with cultural patterns tending to naturalize gender-based violence.

9. The Organic Law to Prevent and Eradicate Violence against Women lacks an intersectional approach and it ignores any consideration of sexual orientation and gender identity or expression. It was written from a binary and “naturalist” point of view, limited in scope, protecting only women whose gender identity and sexuality match the heteronormative standards. Such characteristics foster impunity when treating cases of violence based on gender identity or sexual orientation.

10. On the other hand, the Comprehensive Penal Code (2014) establishes femicide as a statutory offence and grants protection to women by the sole fact of being one or because of her gender condition, opening up to a wider notion of protection. It is of concern that the State does not comply by the principle of progressiveness in legislation but, on the contrary, it reduces protection and recognition of rights in urgent and critical issues such as eradication of violence against women.

⁶ OAS, Inter-American Commission of Human Rights, 170^o ordinary session period, Washington, December 5, 2018.

⁷ Op.Cit.

⁸ General Regulation for the Organic Law to Prevent and Eradicate Violence against Women, Decree 397, Official Registry 254, June 2018. See:

http://www.patronato.quito.gob.ec/textos_normativa/TRANSPARENCIA_2018/DOCUMENTOS/Actualizacion/Reglamento%20Ley%20Prevenir%20y%20Erradicar%20la%20violencia%20contra%20las%20mujeres.pdf

11. This restriction upon the Organic Law to Prevent and Eradicate Violence against Women is due, to a great extent, to political pressures put by conservative and fundamentalist⁹ groups which, in addition to promoting the campaign “Con mis hijos no te metas” (Don’t mess with my children), were successful in erasing any mention to sexual orientation and gender identity from the text of the law, taking advantage of the gross inaccuracies propagated by their deceptive and unfounded rhetoric about “gender ideology”.

Questions to the State

12. Which institutional mechanisms and within which time frame does the State plan to use to adjust its normative and public policies to international standards regarding equality and non-discrimination in issues of sexual orientation and gender identity?

13. Which measures are going to be adopted by the State to make effective the implementation of the Organic Law to Prevent and Eradicate Violence against Women and to support it by proper public policies to comprehensively address gender-based violence?

14. How will the State guarantee that the laws will be applied and the public policies executed abiding by the secular principles enshrined in its Constitution?

15. How and within which time frame does the State plan to implement measures –including affirmative actions– aimed at reducing the impact on LGBTI women of hate speech and hate practices motivated by sexual orientation and gender identity spread through the media and the internet?

Discrimination and harmful practices based on gender identity and sexual orientation Discrimination by the justice system as an obstacle to the access to justice

Article 2 and Article 15

Concluding Observation 12, 13¹⁰

Concluding Observation 19 (c)

16. For more than a decade now, claiming alleged addictions, LGBTI women have been confined without consent in rehabilitation clinics which perform “therapies to revert homosexuality” in a clandestine way. Such practices, constituting serious human rights violations, are permitted by the State. Research and follow up of cases allow us to affirm that forced internment¹¹, threats of confinement¹², counselling and religious guidance aimed at modifying sexual orientation and gender identity of LGBTI women still take place. In those centers for addiction treatment and therapies, in addition to committing hate crimes, the systematic administration of psychotropic drugs without consent has been demonstrated, as well as acts of torture, humiliating and degrading treatment and

⁹ During 2017, the international campaign “Con mis hijos no te metas” arrived to Ecuador and promoted rallies. The consequences are so big in magnitude that they have gathered enough political power to influence human rights normative in Ecuador and in the region.

¹⁰ CEDAW/C/ECU/CO/8-9, 60 Session period, February 16 to March 6, 2015. All Concluding Observations mentioned in this report are taken from this document.

¹¹ CPM/Taller de Comunicación Mujer, 2017. Retratos del Encierro, sobrevivientes de las clínicas de deshomosexualización. Quito-Ecuador. It narrates four testimonies of cases that took place during 2016. See: http://tcmujer.org/dct/tmp_adjuntos/noEn/000/000/RetratosEncierro_Final.pdf

¹² Guayaquil, 2018. Two cases of force confinement threats were reported by Colectivo Valientes de Corazón and the feminist lawyer Silvia Buendía.

other atrocities. On January 10, 2019, a fire was started by people confined in one of those centers, operating in Guayaquil with expired licenses¹³.

17. Forced confinement, along with other practices linked to “reverting homosexuality”, have been reported many times. However, those reports were dismissed by justice system officers acting within biased and stereotyped frames, discriminating against and stigmatizing LGBTI women and preventing them from enjoying their rights, including the right to access to justice.

18. When an LGBTI woman is missing or suspected to be forcibly confined, her lovers and friends report the situation. There are a lot of those reports, but the testimonies are dismissed by the justice system. Usually, justice officers do not file the reports and therefore no investigation is conducted. That was the case for Ana¹⁴, who was drugged by her mother and sister when she was visiting them, to take her to one of those centers to cure homosexuality. The prosecutor assigned to the case rejected to conduct any investigation for he considered the testimony of Ana’s girlfriend to be false and, according to his opinion, Ana’s confinement could be taken as a demonstration of the interest her family had in helping her to amend her homosexuality.

19. There is no official record of cases, the ones discovered during regulatory and control procedures have not been reported *ex officio*, there are not known cases processed under charges of torture or hate acts, something allowed by the Organic Comprehensive Penal Code. None of these centers has been closed down¹⁵ as an exemplary measure to discourage these practices, even when some of them have violated Articles 2 and 20 of the Ministerial Agreement 767¹⁶. Until now, no information is available about victims rescued through the work of local and national inter-institutional commissions, which were created specifically for that purpose¹⁷.

20. The scarcity of processed cases and of sentences against¹⁸ the rehabilitation centers, constitutes an obstacle to the development and application of measures that make effective the right to reparations for victims, as would be the case for lesbian, bisexual, trans and intersex women subjected to forced “normalization” and “sexual re-orientation” therapies.

21. These cases have been reported and presented before several international bodies¹⁹ by civil society organizations. In many occasions, those international bodies have recommended the State to immediately put a halt to those practices. However, the State of Ecuador has failed to adopt any concrete actions to eradicate such crimes.

¹³ <https://www.eluniverso.com/noticias/2019/01/12/nota/7134176/mueren-asfixiados-17-jovenes-local-desintoxicacion>
<https://www.elcomercio.com/actualidad/victimas-clinica-rehabilitacion-guayaquil-heridos.html>

¹⁴ Report of the procedure on the Centro de Rehabilitación de adicciones “Los Girasoles”, Ministry of Public Health, 2012.

¹⁵ According to data in the minutes N° MSP-VGVS-2016-0407-O sent by the Ministry of Public Health to Taller Comunicación Mujer, June 2016. See Appendix, Note 3.

¹⁶ Ministerial Agreement 767. Arts. 24 and 25. http://www.prevenciondrogas.gob.ec/descargas/Acuerdo_0767.pdf

¹⁷ Between 2013 -201, many regulation and control procedures were conducted over several addiction treatment centers. They were carried out by the local and national Inter-Institutional Commissions (CTIN and CTIL), formed by the Office of the State Attorney General, the Judiciary Council, the Ministry of Health, and other public entities, and created to regulate practices that violate human rights in those centers.

¹⁸ The report produced by the Judiciary Council about sentences against health centers providing services for the treatment of persons with problematic use of alcohol and other drugs, which have also incurred in so-called therapies to revert homosexuality, within the period of 2012-2018, includes only one case about a victim: identified as NO. 15251-2013-0076, it dictates a condemning sentence of 10 days of correctional prison and a fee of six dollars.

¹⁹ Among others, the CEDAW Committee, CEDAW/C/ECU/CO/8-9, 60 Session period, February 16 to March 6, 2015.

22. Analyzing both the 2016 and 2017²⁰ legal causes for femicide and the causes related to the so-called clinics for the reversion of homosexuality, a serious resistance on the part of justice officers, judges and prosecutors to adopt a gender approach, act with due diligence, and to correctly applied the statutory offences is clearly evident. An example of this is the ongoing calling into question of testimonies and claims by women, especially LGBTI, in legal procedures or when protection measures are required.

23. Women, especially those who are part of the LGBTI population, experience true torture situations when they get in touch with the justice system. Stereotypes and biases on the part of justice officers prevents them from properly accessing justice. This attitude conveys a message of impunity, fostering mistrust on the part of women and thus strengthening a cycle of repeated violations which amount to institutional violence and structural impunity.

Questions to the State

24. Through which mechanisms does the State plan to make gender perspective a cross-cutting approach in all its normative and public policies, as recommended by international standards, with the objective of eradicating discrimination based on gender, gender identity and sexual orientation and so to have an impact in the eradication of social and cultural barriers and biases that prevent women from exercising their rights, including LGBTI women?

25. How and within which time frame does the State plan to implement awareness and intensive training programs on gender and sexual diversity topics for members of the justice system as to eradicate discriminatory and biased actions by justice officers, judges and prosecutors?

26. How and within which time frame does the State plan to implement a comprehensive and efficient strategy to put an end to human rights violations perpetrated in drug addiction rehabilitation centers and specially to criminalize the “therapies” to revert homosexuality practiced in those centers, offering reparations to the victims, in accordance with the current laws and the recommendations made by the CEDAW Committee?

27. Which measures are going to be adopted by State to guarantee that cases of violence and discrimination based on sexual orientation and gender identity will be thoroughly investigated, according to due process, guaranteeing that the perpetrators will be taken to trial and, if found guilty, will receive proper sentences for specific motives of discrimination and that the victims will receive a proper and sufficient reparation?

Lack of official, trustworthy and updated information and statistics about violence based on gender, gender identity and sexual orientation

Article 2

Recommendation 19 – Violence against women Concluding Observations 20 (f) and 21 (a)²¹

²⁰CPM/Taller de Comunicación Mujer, CEDHU, La Respuesta Judicial del Femicidio en Ecuador. Vol. I. Análisis de Sentencias Judiciales Relativas a Muertes Violentas de Mujeres Ocurredas en el 2015

CPM/Taller de Comunicación Mujer, CEDHU, La Respuesta Judicial del Femicidio en Ecuador. Vol. II. Análisis de Sentencias Judiciales Relativas a Muertes Violentas de Mujeres Ocurredas en el 2016

²¹ CEDAW, 60 Session Period, Op. Cit.

28. The State of Ecuador, so far, has failed to develop a responsible management of statistical information about human rights violations suffered by women. It does not have any system allowing to produce trustworthy and updated statistics about violence against women based on gender, gender identity or sexual orientation.

29. Regarding femicide, different State institutions have numbers that do not match between them nor with the numbers collected by civil society. According to the National Institute for Statistics and Census²² –which gathers data from the Ministry of the Interior, the Office of the State Attorney General and the National Traffic Agency– 95 femicides were perpetrated during 2017 and 54 during 2018. However, the numbers are higher for the alliance of civil society organizations that map femicide²³: 153 femicides cases for 2017 and 88 for 2018. These numbers arise from the follow up and correlation of data from the mass media, the Ecuadorian Automatic System of Legal Procedures (SATJE²⁴, for its Spanish acronym) and from the cases recorded by the Shelters Network of the country.

30. The State has an Inter-Institutional Commission for Security Statistics²⁵, which apparently would have developed a review and homologation procedure for variables in order to establish an inter-institutional database on the crime of femicide. However, the periodic reports produced by this entity are not made public in any way. The parameters used to qualify the crime in each case are not known, neither.

31. Taller de Comunicación Mujer has repeatedly asked for information to the Office of the State Attorney General about cases and sentences on crimes included in the Organic Code COIP, related to violence against women or members of the nuclear family (article 151), crimes of discrimination (article 176) and hate crimes (article 177). In addition to that, information was asked about the implementation of an official system or mechanism for collecting data related to violence against LGBTI women, but until now it was not provided.

32. There is concern about the conditions of preservation and transfer of the information arising from the procedures carried out in the rehabilitation centers for problematic use of alcohol and other drugs (ESTAD, for its Spanish acronym) in which the “therapies” for reversion of homosexuality have also been practiced. This information was gathered inside the justice system for the 2012-2018 period, including actions by the Inter-Institutional Technical Commissions –the national one, CTIN, and the local ones, CTIL– composed by the Office of the Attorney General, the Judiciary and the Ministry of Health, among other public institutions. None of these institutions have yet provided information about the results and consequences of those procedures and, therefore, they have not provided either any information about the situation of the rescued victims nor about the criminal processes that should have been started against the centers involved.

Questions to the State

33. How has the State produced statistics and systematically followed up the human rights violations perpetrated against LGBTI women who were discriminated against based on their sexual

²² INEC, Statistics on Integral Security in Crimes of major psychosocial impact. November 2018. See: <http://www.ecuadorenifras.gob.ec/justicia-y-crimen/>

²³ A civil society initiative undertaken by Taller de Comunicación Mujer, ALDEA, the Shelters Network and Comisión Ecuémica de Derechos Humanos. <https://masinformacionmenosviolencia.com/index.php/descargas>

²⁴ Information system of the Judiciary Council.

²⁵ This Council is composed of the Ministry of Justice, Human Rights and Religious Cults, the National Institute for Statistics and Census, the National Department for Planning and Development, the Office of the State Attorney General, the Judiciary Council and the Ministry of Interior.

orientation and gender identity and where is the information about the State actions in these cases recorded?

34. Through which mechanisms and within which time frame does the State plan to implement a unified system for statistical data on violence against women, disaggregated by age, kind of violence, and with a variable reflecting sexual orientation and gender identity? Which system will be used to make the results public, in order to allow free access for civil society?

35. Does the State plan to use trustworthy, updated statistic data arising from an official and unified system of data on violence, in the implementation of efficient programs for preventing and eradicating violence and discrimination against women, specially LGBTI women, across its national territory?