

New York, Bogotá, September 21, 2016

Human Rights Council

Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: Report to the Third Universal Periodic Review (“UPR”) on Ecuador, 27th Session of the UPR Working Group (“Working Group”) of the Human Rights Council (“Council”) (May 2017).

Distinguished members of the Council:

1. The Center for Reproductive Rights (the “Center”) is an independent non-governmental organization that promotes gender equality and the fulfilment of women’s reproductive rights across the world.
2. This letter is presented as follows: first, we set out context of sexual violence in Ecuador; second, we present the legislative background to Ecuador’s criminalization of abortion in cases of rape; third, we set out the consequences of these laws, exacerbated by inadequate policies on sexual violence and reproductive rights; fourth, we explain how these restrictions and policies violate Ecuador’s obligations under international human rights law; fifth, we include a list of suggested questions for the Working Group to ask the State party’s representatives; and finally, we include a list of recommendations that we respectfully propose the Working Group should make to the State.

I. Ecuador Has Failed to Implement Recommendations from the UN Human Rights Council

3. At the Second Cycle of the UPR held during the 13th Session of the Human Rights Council in 2012, participating States made sixty-seven (67) recommendations. In response, Ecuador accepted three (3) recommendations, partially accepted sixty (61), and rejected three (3).¹
4. Two recommendations relating specifically to gender equality and women’s reproductive rights were made during the Second Cycle of the UPR in 2012.² Ecuador responded it would:
 - (a) fully supported a recommendation by Morocco, Djibouti, Iraq, Myanmar and Slovenia to “*continue to combat all forms of discrimination against women (Djibouti); Strengthen legal protection for women and ensure gender equality and non-discrimination (Iraq); Continue efforts to tackle gender discrimination, particularly in the areas of education and employment (Myanmar); Increase public awareness about the prohibition of gender discrimination, in particular in the areas of education and employment (Slovenia)*”.³
 - (b) fully supported a recommendation by Uruguay to “*strengthen measures to address teenage pregnancy, promoting access to reproductive health services including sexual and*

reproductive health education, as well as counselling services and health care adapted to young people (Uruguay). ”⁴

5. As will be explained, Ecuador has failed to implement either of these recommendations.

II. Reproductive rights situation on Ecuador’s legal framework

A. The right to safe and legal abortion for victims of sexual violence

6. According to a survey conducted by the National Institute of Statistics and Census of Ecuador (“INEC” by its acronyms in Spanish) approximately, 379.098 women, between the ages of 15 and up, had been victims of sexual violence in Ecuador.⁵ In accordance by INEC, 557.207 women were victims of sexual violence during their childhood and adolescence. One out of every ten women who have been victims of sexual violence had experienced sexual violence at ages 5 or 6, and their vulnerability increased during puberty, when reaching the age of 13.⁶ Alarmingly, from the 557.270 cases the survey identified, only 83.591 (this is, 15%) were reported to the authorities and only 29.557 (this is, 5.3%) were sanctioned.⁷
7. The situation of sexual violence against girls in Ecuador is even more appalling:
 - (a) By 2010, 3.864 Ecuadorian girls younger than 14 years old were victims of sexual violence resulting in pregnancy.⁸
 - (b) Approximately 2.000 Ecuadorian girls younger than 14 years old get pregnant every year, and sexual violence has been identified as one of the main causes of their pregnancies.⁹
 - (c) Girls younger than 14 years old are the main victims of sexual assault, usually in family or known environments. 40% of girls who were victims of sexual assault did not report the crime to anybody. As a result, only one third of the girls who were victims of sexual assault received any assistance or attention.¹⁰
8. The physical, mental and social consequences for girls younger than 14 years old victims of sexual violence that results in pregnancy, are devastating:
 - (a) Commonly, these girls suffer anemia and infections in their urinary system and during labor. The most common complication and risk is Cephalopelvic Disproportion derived from a fetal growth that is incompatible with the girls’ pelvis.¹¹
 - (b) Girls younger than 16 years old have a risk four times higher in comparison with older women to suffer from maternal death, and in their cases, the neonatal mortality rate is 50% higher.¹²

- (c) In addition, in most cases pregnancy causes them depression and anxiety, and even leads them to suicide attempts.¹³

B. Ecuador's Criminalization of Abortion in Cases of Rape and Inadequate Healthcare Policies

- 9. Despite the rampant statistics mentioned above, Ecuadorian law continues to criminalize abortion in cases of rape. Indeed, the Ecuadorian Criminal Code currently in force (“COIP” for its Spanish acronym¹⁴) criminalizes abortion when:
 - (a) *“the means used to perform an abortion cause the death of the woman, with or without her consent;*
 - (b) *a person causes the abortion of a woman who did not consent to it, [even] if the means used did not have effect;*
 - (c) *a person makes a woman have an abortion to which she has given her consent; and*
 - (d) *a woman causes her own abortion or allows someone else to cause it”.* ¹⁵
- 10. In accordance with article 150 of the COIP, abortion in Ecuador is legally permitted when performed by a medical doctor, or other health professional duly qualified, with the consent of the woman, her spouse, partner, close relatives or her legal representative, when she is unable to give her consent, and in the following cases:
 - a) If it has been performed with the purpose of avoiding a risk to the life or health of the pregnant woman and if, the risk may not be avoided by other means.
 - b) If the pregnancy is the consequence of the rape of a woman with mental disability.
- 11. In August 2014 the COIP was amended. Some of the changes introduced to the new law included reducing some of the terms of imprisonment for crimes related to abortion, and replaced the outdated expression “*demented or idiotic woman*” for the expression “*woman with mental disability*” in the article that establishes the two cases in which abortion is not punishable. The COIP however, “*did not approve changes that would allow all pregnant victims of rape or women and girls with unviable pregnancies to get abortions without fear of prosecution.*”¹⁶ Despite of the above changes in the law, Ecuadorian women that have been victims of sexual violence continue not being able to access safe and legal abortion.
- 12. Ecuador is currently taking positive steps toward improving access to abortion in cases of rape through a Bill introduced by the General’s Ombudsman Office in July 2016 to reform the Criminal Code.¹⁷ Decriminalizing abortion in this case would represent a significant step in the right direction toward

allowing women the right to choose after being victims of sexual violence. However the change of law is still a plan and not a reality.

C. The Consequences of the Criminalization of Abortion in Ecuador

Obstacles to obtaining legal abortion

13. The main impacts of the criminalization of abortion in Ecuador, including in cases of rape (except in cases where the victim is a mentally disabled woman) are the following:
 - (a) It prevents medical professionals and authorities from detecting and adequately addressing the issue of high rates of sexual violence and other forms of gender-based violence in Ecuador.¹⁸
 - (b) It forces women and girls to seek unsafe, clandestine and illegal abortions, or to perform self-induced abortions by inserting objects, or by taking inappropriate and lethal medication or substances.¹⁹
14. Ecuadorian criminal law disincentives women from seeking post-abortion medical care as women fear being reported by the doctors to the authorities.²⁰ In addition, in many cases, medical professionals prefer abstaining from questioning these patients on the circumstances that lead to their pregnancies, as well as on the conditions and means to get the abortions, since they do not want their patients (mainly young girls) face criminal prosecution.²¹
15. Similarly, these women and girls even fail to provide the medical staff with full information about their health situation, preventing medical staff to provide them with the adequate medical assistance required for each case.²² In some cases, doctors deny comprehensive post-abortion care to rape survivors as young as 12 years old because the criminal law prohibits them from providing any abortion services.²³

Health risks from unsafe abortions

16. Unwanted pregnancies pose health risks such as anemia, malaria, HIV and other sexually transmitted infections, postpartum hemorrhage, and mental illness.²⁴ The World Health Organization (the “WHO”) reports that adolescent pregnancies pose significant physical health risks, including death.²⁵ Complications from pregnancy and childbirth are the second-most prevalent cause of death for 15 to 19-year-old girls globally,²⁶ and the risk of death from pregnancy-related complications is even greater for girls below age 15.²⁷
17. As indicated in the INEC Yearbook of Vital Statistics: Births and Deaths of 2013, postpartum hemorrhaging, puerperal infections (which are commonly caused by abortions) and non-specified abortions, constitute 20.65% of maternal mortality in Ecuador.²⁸ Additionally, pregnant adolescents

and girls are more likely to seek illegal and clandestine abortions, which cause them lasting health problems and even death²⁹: “*Ecuador estimates that in 2011, there were 258 cases of abortion-related morbidity in girls ages 10 to 14, and over 4.000 cases in girls and women ages 15 to 19*”.³⁰

Zika virus and reproductive rights

18. In 2015, the Health Ministry of Ecuador reported 24 cases of Zika virus on pregnant women, 3 patients with gestational age of less than 12 weeks, 15 cases with gestational age of more than 12 weeks and 6 cases with gestational age of more than 28 weeks. To date, 4 newborns from patients with Zika virus have been reported with good health.³¹ Nevertheless, the Health Ministry of Ecuador warns that getting Zika during pregnancy increases health complications in newborns, such as microcephaly.
19. Ecuador’s (in)actions in relation to the Zika virus contravene the World Health Organization’s official interim guidance of 18 February 2016, which states that women at risk of being infected with the Zika virus should have “*ready access to emergency contraceptive services and counseling*”,³² including access to abortion. Ecuador’s inactions in relation to the Zika Virus also contravenes the U.N. High Commissioner for Human Rights statement who indicated that “*holding women’s human rights is essential if the response to the Zika health emergency is to be effective*.”³³

III. Ecuador’s Failure to Guarantee Reproductive Rights Violates International Human Rights Law

20. In recommendations by the CEDAW Committee³⁴ and CESCR Committee³⁵, both Committees have recommended Ecuador to decriminalize abortion in cases of rape, incest and severe fetal impairment; ensure respect for the obligation of confidentiality in the health-care system, and adopt protocols and develop human rights training for health providers on their obligation to respect the privacy and confidentiality of women who use sexual and reproductive health services. Despite the numerous calls by treaty bodies to the country, Ecuador’s discriminatory abortion laws remain in place.

IV. Questions for Ecuador

21. We respectfully suggest that the Working Group ask Ecuador the following questions:
 - a) Please report on whether reforms to Ecuador’s anti-abortion legislation are being planned, particularly in light of the outbreak of the Zika virus.
 - b) Please report on the steps taken to reduce sexual violence against women and girls in Ecuador. In particular, please report on:
 - i. The measures being taken to provide reproductive healthcare, psychological care, and legal assistance to women and girls victims of sexual violence.

- c) Please report on the steps being taken to provide women – particularly poor and young women, rural women and women victims of sexual violence– with access to adequate family planning information to enable them to have full capacity to exercise their reproductive rights.
- d) Please report on the steps being taken to reform laws and policies so that women can access free contraception, counselling, and sex education programs, and on the steps being taken to address the stigma around abortion, contraception and reproductive rights.

V. Recommendations

22. We respectfully request the Working Group address the following recommendation to Ecuador:

- a) Urgently amend its Criminal Code in order to permit exceptions to the criminalization of abortion when: (a) Pregnancy is the result of rape or sexual violence to all women, and (b) Where the fetus is unviable, as indicated in the Bill introduced by the General Ombudsman Office in July 2016 to reform the Ecuadorian Criminal Code.

23. We appreciate this Council's longstanding commitment to reproductive rights and to the eradication of discrimination in the provision of reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Respectfully,



Catalina Martínez Coral

Regional Director for Latin America and the Caribbean, Global Legal Program
Center for Reproductive Rights
Cmartinez@reprorights.org
Carrera 6 No. 26-85, Piso 9.
Bogotá, Colombia



Sebastián Rodríguez Alarcón

Program Manager for Latin America and the Caribbean, Global Legal Program
Center for Reproductive Rights
Srodriguez@reprorights.org
199 Water St. 22nd Floor
New York, NY, 10038

¹ Human Rights Council, *Report of the Working Group for the Universal Periodic Review Second Cycle – Ecuador, A/HRC/21/4* (May 21, 2012).

² *Ibid.*

³ Recommendation 135.14 accepted at Human Rights Council, *Report of the Working Group on the Universal Periodic Review Second Cycle: Ecuador – Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* (A/HRC/21/4), 21 May, 2012, p.15; Human Rights Council, *Ecuador's View on conclusions and/or other recommendations, voluntary commitments and replies* (A/HRC/21/4), ¶ 135 (July 2012) [hereinafter Ecuador's Response (2012)]

⁴ *Ecuador's Response* (2012), supra note 3 at ¶ 27.

⁵ See, NATIONAL COUNCIL FOR GENDER EQUALITY, NATIONAL INSTITUTE OF STATISTICS AND CENSUS, MINISTRY OF THE INTERIOR, *Gender Violence against Women in Ecuador: analysis of the results of the National Survey on Family Relations and Gender Violence against Women*, ¶ 76 (2014) (CRR unofficial translation).

⁶ *Ibid.* ¶ 91.

⁷ *Ibid.* ¶ 96.

⁸ COALICIÓN NACIONAL DE MUJERES DEL ECUADOR. *Stolen Lives: Between Omission and Premeditation. Situation of forced maternity of girls in Ecuador*, ¶ 8 (2016) (CRR unofficial translation).

⁹ *Ibid.* ¶ 12.

¹⁰ *Ibid.*

¹¹ *Ibid.* ¶ 20, 21.

¹² *Ibid.* ¶ 22.

¹³ *Ibid.* ¶ 22, 23.

¹⁴ The COIP entered into force on February 10, 2014. It was the result of the amendment of the previous criminal code and was discussed in the Congress of Ecuador for over two years.

¹⁵ SERIE JUSTICIA Y DERECHOS HUMANOS [CRIMINAL CODE] 2014, art. 147-149 (Ecuador)

¹⁶ See, Human Rights Watch, *Ecuador: Adopt UN Recommendations on Abortion Law. Decriminalize Abortion for Rape, Incest, and Severe Fetal Impairment*. ¶ 5 (2015) [hereinafter Adopt UN Recommendations on Abortion Law (2015)], available at <https://www.hrw.org/news/2015/04/22/ecuador-adopt-un-recommendations-abortion-law>

¹⁷ DEFENSORÍA PÚBLICA DEL ECUADOR, Proyecto de Ley Orgánica Reformatoria al Código Orgánico Integral Penal (2016)

¹⁸ See, Human Rights Watch, *Rape Victims as Criminals. Illegal abortion after rape in Ecuador* ¶ 7-8 (2013)

[hereinafter Rape Victims as Criminals (2013)], available at <https://www.hrw.org/report/2013/08/23/rape-victims-criminals/illegal-abortion-after-rape-ecuador>

¹⁹ See, David A. Grimes, Janie Benson, Susheela Singh, Mariana Romero, Bela Ganatra, Friday E. Okonofua, Iqbal H. Shah. *Unsafe abortion: the preventable pandemic*, WORLD HEALTH ORGANIZATION JOURNAL PAPER, SEXUAL AND REPRODUCTIVE HEALTH, 3 (2006).

²⁰ *Ibid.* ¶8.

²¹ *Ibid.* ¶9-11.

²² *Ibid.* ¶17.

²³ Adopt UN Recommendations on Abortion Law (2015), supra note 21 at ¶6.

²⁴ WORLD HEALTH ORGANIZATION (WHO), ADOLESCENT PREGNANCY: FACT SHEET NO. 364 (Sept. 2014) [hereinafter Fact Sheet: Adolescent Pregnancy (2014)], quoted in: WHO *Pregnant Adolescents: Delivering on Global Promises of Hope*, 10 (2006) [hereinafter Pregnant Adolescents (2006)], available at http://apps.who.int/iris/bitstream/10665/43368/1/9241593784_eng.pdf

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Pregnant Adolescents* (2006), supra note 28 at ¶4.

²⁸ See, NATIONAL INSTITUTE OF STATISTICS AND CENSUS OF ECUADOR (INEC) *Yearbook of Vital Statistics: Births and Deaths* (2013).

²⁹ *Fact Sheet: Adolescent Pregnancy* (2014), supra note 28, quoted in: *Rape Victims as Criminals* (2013), supra note 22. Op. Cit. ¶14.

³⁰ See, NATIONAL INSTITUTE OF STATISTICS AND CENSUS OF ECUADOR (INEC) *Yearbook of Hospital Statistics: Beds and Discharges* (2011) quoted in *Rape Victims as Criminals*, supra note 22. Op. Cit. ¶14.

³¹ UNDER SECRETARY OF PUBLIC HEALTH SURVEILLANCE, EPIDEMIOLOGIC VECTOR-BORNE DISEASES: CONFIRMED CASES OF ZIKA VIRUS IN ECUADOR (June 2016) (CRR unofficial translation).

³² World Health Organization, Prevention of Potential Sexual Transmission of Zika Virus: Interim Guidance (WHO/SIKV/MOC/16.1), Feb. 2016; OHCHR, Upholding Women's Human Rights Essential to Zika Response, Feb. 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E>.

³³ OHCHR, *Upholding Women's Human Rights Essential to Zika Response* Zeid (February 5, 2016), available at <http://www.ohchr.org/EN/NewsEve>



[nts/Pages/DisplayNews.aspx?NewsID=17014&LangID=E](#) (last accessed March 30, 2016).

³⁴ United Nations Committee on the Elimination of Discrimination against Women, Concluding Observations (CEDAW/C/ECU/CO/8-9), Mar. 11, 2015, ¶33.

³⁵ Committee on Economic, Social, and Cultural Rights (CESCR), *Concluding Observation: Ecuador*, para. 29, U.N. Doc. E/C.12/ECU/CO/3 (2012).