



October 15, 2010

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

Re: Supplementary Information on Ecuador, scheduled for review by the U.N. Committee against Torture during its 45<sup>th</sup> session (November 2010)

Honorable Committee Members:

This letter is intended to supplement the periodic report submitted by Ecuador, which is scheduled for review by the U.N. Committee against Torture (“the Committee”) during its 45<sup>th</sup> session in November 2010. The Center for Reproductive Rights (“the Center”), an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). This letter highlights the systemic problem of sexual violence against girls in schools in Ecuador and the impact of limited or no access to sexual and reproductive healthcare services for adolescent survivors of such violence.

Protection from sexual violence and the guarantee of sexual and reproductive rights are fundamental to girls’ and women’s right to be free from torture and cruel, inhuman and degrading treatment (“CIDT”) as well as the right to an effective remedy and redress, as recognized by the CAT. These rights are non-derogable, and thus the obligation of States parties to uphold and ensure them deserves serious attention. This submission begins by discussing the situation of sexual violence against girls in Ecuador’s schools as well as the barriers that survivors of such violence face in accessing essential sexual and reproductive healthcare. It goes on to examine Ecuador’s obligations under its Constitution and international human rights law, particularly the CAT. It concludes that, in order to be in compliance with its Constitution and international treaty obligations, Ecuador must implement effective laws and policies to eradicate sexual violence and abuse against girls in schools. Additionally, the State must guarantee survivors of such violence timely access to comprehensive sexual and reproductive healthcare services. We hope the Committee will urge the State to prioritize these issues as central to the complete enjoyment and full exercise of human rights for girls and women living in Ecuador, as articulated in the CAT.

## **I. Sexual Violence against Girls in Schools in Ecuador**

### ***The situation of sexual violence in Ecuador's schools***

In Ecuador, girls face significant threats of sexual violence and abuse from both teachers and students in public and private education institutions.<sup>1</sup> According to non-governmental organization (“NGO”) estimates, the number of Ecuadorian girls reporting sexual violence in schools ranges from twenty-two<sup>2</sup> to sixty-three<sup>3</sup> percent. One study found that one in four female students had experienced sexual abuse and that thirty-seven percent of students identified male teachers as the aggressors.<sup>4</sup> Some girls reported that they were coerced into sexual acts in exchange for passing grades, and many girls viewed sexual violence in the school setting as inevitable because administrative authorities do not act to prevent it or are themselves the perpetrators.<sup>5</sup> For these reasons, as well as fear of retaliation and/or psychological trauma caused by sexual violence, it is assumed the majority of such cases go unreported.<sup>6</sup>

Sexual violence against girls in the educational setting is an issue of great concern, particularly when that violence is perpetrated by teachers or administrators who abuse their position of authority to intimidate and instill fear in the very persons they are responsible to protect and whose lives they are responsible to enrich. The consequences are often devastating. Survivors of sexual violence may experience unwanted pregnancies or contract sexually transmitted infections, particularly if sexual and reproductive healthcare services and information are not available, accessible and of good quality. Sexual violence is also linked to poor school performance,<sup>7</sup> high drop-out rates,<sup>8</sup> and psychological trauma.<sup>9</sup> The abuse itself causes negative physical, emotional, and developmental consequences that affect girls’ academic performance or keep them away from school altogether. The inability to complete their education hinders their future employment and life prospects and further compounds the physical and mental suffering they endure due to the violence.<sup>10</sup> The Ecuadorian State itself has recognized that the psychological harm caused by sexual violence against children and adolescents may at times lead survivors to commit suicide.<sup>11</sup>

In the case of *Paola Guzmán v. Ecuador*, currently pending before the Inter-American Commission on Human Rights,<sup>12</sup> the consequences of the State’s failure to prevent sexual violence in schools were fatal. For two years, Paola Guzmán was sexually harassed and systematically raped by the vice-principal of her school, who offered to provide her with academic assistance on the condition that she engage in sexual intercourse with him. At age sixteen, she became pregnant as a result of this abuse. The vice-principal solicited a school doctor to perform an abortion, but the doctor made this conditional on Paola agreeing to have sexual relations with him, too. Ultimately, Paola ingested white phosphorus to commit suicide, and died in December 2002. In Paola’s case, no person or institution has yet been held accountable for her sexual abuse and mistreatment at school, her death has not been adequately investigated and her family has not received an adequate redress.<sup>13</sup>

### ***The failure of government policies to address sexual violence in schools***

The government of Ecuador has enacted a series of policies to address sexual violence in schools, but the policies are not adequately implemented or monitored for efficacy. In 2002, the Ministry of Education, Culture, Sports, and Recreation issued Agreement 4794, a detailed statement of procedures for dealing with sexual offenses in the educational system,<sup>14</sup> yet in the Paola Guzmán case, none of these procedures were followed. Between 2006 and 2008 at least four decrees were issued<sup>15</sup> dealing with gender discrimination and sexual violence in educational settings, but the State has not provided evidence of

having assessed the impact of these policies in any of its recent periodic reports to U.N. Treaty Monitoring Bodies.<sup>16</sup> Additionally, both the U.N. Human Rights Committee and the CEDAW Committee have recently expressed concern at the continuing high rates of sexual abuse and harassment of girls in schools,<sup>17</sup> with the CEDAW Committee expressing particular concern about “gaps in coverage and limitations in resources” for programs to protect women victims of violence.<sup>18</sup> These committees urged Ecuador to take measures to ensure that existing legislation is appropriately enforced; to develop, implement and fund a comprehensive plan to address violence against women; to redouble efforts to address violence in schools; and to ensure that protection, assistance and access to justice for survivors of sexual violence is strengthened.<sup>19</sup>

One of Ecuador’s key policies, the National Plan on Eradication of Sexual Offenses in the Educational System, established in 2006 and institutionalized by the Ministry of Education in 2008,<sup>20</sup> exemplifies the problems identified by the CEDAW and Human Rights Committees. The policy is vague and lacks important details; for example, the policy refers to teacher training, but it does not specify whether this training should be mandatory. Furthermore, it does not designate a government official in charge of prevention and investigation of sexual offences in schools, and while it does list the ministries and agencies responsible for policy implementation, it does not include a budget or describe funding sources.<sup>21</sup> According to Amnesty International, national plans to address school-related violence against girls should include many of the elements missing from Ecuador’s policy, namely: “guidelines for schools, compulsory training for teachers and students, the designation of a government official responsible for preventing and investigating incidents of violence and adequate public funding to address the problem.”<sup>22</sup>

Despite the numerous policies introduced to address sexual abuse in schools, there appears to be relative impunity for perpetrators of such violence. Data collected by the Public Prosecutor’s Office indicate that the number of child and adolescent sexual abuse and rape cases investigated by the authorities have increased between 2003 and 2007. However, the number of recorded convictions remains startlingly low: Between 2003 and 2007, 114 rape cases made it to probable cause proceedings but only two convictions were obtained.<sup>23</sup> Additionally, these data are not further disaggregated and thus there is no information in the Public Prosecutor’s report on the number of cases involving sexual violence in schools. In its recent concluding observations to Ecuador, the CEDAW Committee instructed the State to provide detailed data on the different forms of violence experienced by women in Ecuador as well as survivors’ access to justice, including the number of trials and convictions obtained, in its next periodic report.<sup>24</sup>

Additionally, the government of Ecuador has failed to collect essential data on sexual violence in schools, making it difficult to plan appropriate interventions and to track the State’s progress in addressing this issue. For example, the government has not maintained a national registry of cases on sexual abuse of children and adolescents.<sup>25</sup> As this Committee has noted, the collection of disaggregated data by gender, age and other factors is an essential part of identifying and remedying discriminatory treatment that contributes to the perpetuation of torture and CIDT.<sup>26</sup>

## II. Access to Reproductive and Sexual Healthcare Services for Survivors of Sexual Violence

Access to sexual and reproductive healthcare information and services is essential to protect the health of survivors of sexual violence, including preventing unwanted pregnancies. Forced and early sexual activity can also have severe health implications for adolescents and girls,<sup>27</sup> including “fistula, pelvic inflammatory disease and other gynecological disorders,”<sup>28</sup> sexually transmitted infections, including HIV/AIDS, sexual dysfunction, chronic pelvic pain<sup>29</sup> and gastrointestinal disorders.<sup>30</sup> The trauma caused by the experience of sexual violence may only be multiplied when a survivor is unable to access the healthcare services needed to protect her health and life.

The World Health Organization’s (WHO) Guidelines for the Medico-Legal Care for Victims of Sexual Violence identify access to comprehensive, gender-sensitive health services as essential for survivors of sexual violence to “cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event.”<sup>31</sup> These services include pregnancy testing, pregnancy prevention (including access to emergency contraception), access to abortion services where legal, STI testing and/or prophylaxis, treatment of injuries and psychosocial counseling.<sup>32</sup>

In Ecuador, the medical protocol in place for physicians and health professionals treating victims of sexual violence does not meet the standards set out by the WHO. According to the State’s recent report to the Human Rights Committee, the protocol merely requires physicians and health professionals to inform the victim of the *availability* of emergency contraception (EC) and the possibility of having contracted a sexually transmitted infection. It does not necessarily require physicians and health professionals to screen for pregnancy, sexually transmitted infections or HIV, or to provide EC upon the patient’s request.<sup>33</sup>

Access to EC is particularly important for survivors of sexual violence as an unwanted pregnancy may serve to reinforce the trauma of the violation itself and/or have additional consequences for the woman’s life and health. Unfortunately, access to EC, while legal in Ecuador, is also under challenge. In 2006, the Constitutional Court of Ecuador suspended the registration of Postinor-2,<sup>34</sup> a Levonorgestrel-based form of EC, for the market based on provisions in Ecuador’s Constitution that guarantee life from the moment of conception.<sup>35</sup> The Court made this decision despite consensus within the international medical community that Levonorgestrel-based EC is not an abortifacient.<sup>36</sup> While the States reports that other forms of EC are still available in Ecuador, the Constitutional Court’s decision sets a troubling precedent for women’s access to EC and essential reproductive healthcare services generally.<sup>37</sup>

Aside from EC, rape victims in Ecuador have few options for preventing unwanted pregnancies as access to legal abortion is extremely limited. Under the country’s Penal Code, abortion is illegal except when it is the only means available to preserve a woman’s life or health.<sup>38</sup> If a woman is raped, she may only procure a legal abortion if she is *mentally-ill* or *developmentally delayed*.<sup>39</sup> Without access to safe and legal abortion, women and girls may be forced to seek unsafe clandestine services with serious consequences for their lives and health: The CEDAW Committee has noted that unsafe abortion is the second leading cause of maternal mortality in Ecuador.<sup>40</sup> In some cases, the trauma of being forced to carry an unwanted pregnancy to term may drive survivors to commit suicide, as in the case of Paola Guzmán.

Survivors of sexual violence must also have access to reproductive healthcare services to screen for and treat sexually transmitted infections (STIs) and HIV/AIDS as well as to address any other reproductive health issues that may arise as a result of the violence. Biologically, women are more vulnerable to HIV transmission than men, and their vulnerability significantly increases in cases of sexual violence where there is likely to be tearing of vaginal tissues and condoms might not be used.<sup>41</sup> For these reasons, the administration of post-exposure prophylaxis (PEP) to minimize the chance of HIV transmission as well as counseling, screening and treatment of HIV/AIDS and STIs are important parts of any medical protocol for sexual violence survivors. Unfortunately, adolescents in Ecuador have limited knowledge about prevention of HIV transmission: According to UNAIDS, only 29 percent of young people between the ages of 15 and 24 can correctly identify two ways of preventing the sexual transmission of HIV and can reject two misconceptions about HIV transmission.<sup>42</sup> Lack of knowledge about HIV transmission, coupled with the stigma associated with sexual abuse and/or STIs, can make survivors of sexual violence less willing to seek critical reproductive healthcare, thus further jeopardizing their lives and violating their human rights.<sup>43</sup> In a country such as Ecuador, where sexual violence against girls is pervasive, it is even more important to increase access to sexuality education and the nonjudgmental and sensitive provision of reproductive and sexual healthcare services.

National policy measures aimed at improving access to sexual and reproductive healthcare are falling short of guaranteeing Ecuadorian girls their human rights.<sup>44</sup> In 2005, the National Plan on Health and Sexual and Reproductive Rights (“National Plan”) was developed for the prevention of early and unwanted pregnancies in Ecuador.<sup>45</sup> The National Plan describes some of the issues faced by adolescents when accessing available sexual and reproductive healthcare services, including the limitations and inadequacies in access to services, the lack of information and sexuality education, a gap in knowledge about and use of methods of contraception, the inconsistencies in the delivery of sexual health information and services in schools and public hospitals, and the lack of confidentiality in health services.<sup>46</sup> However, Ecuador has systematically failed to report on how it monitors and tracks progress on this policy in its recent periodic reports to U.N. Treaty Monitoring Bodies. Additionally, both the CEDAW Committee and the Committee on the Rights of the Child have noted the continued high rates of teenage pregnancy in Ecuador since the introduction of the plan.<sup>47</sup> The Committee on the Rights of the Child has expressed concern that adolescents receive insufficient education on sexual and reproductive health as well as insufficient information on and access to contraceptives<sup>48</sup> and called on the State to strengthen its measures to promote access to reproductive health services for all adolescents in all parts of the country”.<sup>49</sup> As discussed further below, Ecuador must work to ensure that sexual and reproductive health information and services are available and accessible, particularly for survivors of sexual violence, in order to be in compliance with its international human rights obligations.

### **III. The Legal Framework**

#### ***Ecuador’s Constitution***

Ecuador’s new Constitution, enacted in 2008, establishes the duty of Ecuador to affirmatively protect women and girls from sexual violence, as well as to investigate, punish and to redress those violations. It also establishes the obligation to provide girls and women with sexual and reproductive healthcare.

Article 3 of the Constitution establishes that the State has the responsibility to provide all persons “without any discrimination, the effective enjoyment of rights under the Constitution and international instruments, including . . . health . . . .”<sup>50</sup> This guarantee is reinforced by Article 11, which prohibits discrimination on the basis of sex, age, gender or other status, and it obligates the State to take positive measures to ensure the protection of groups of persons historically treated unequally.<sup>51</sup>

The Constitution also guarantees special protection for children and adolescents in Article 39. It establishes the child’s best interests as the guiding criterion in public and private areas.<sup>52</sup> Articles 45 and 46 explicitly recognize the rights of children to physical and mental integrity and require the State to take necessary steps to ensure that children are protected from abuse and violence “or against negligence causing such situations.”<sup>53</sup> It also establishes the obligation, by law, for the State to create special procedures to expedite the trial and punishment of crimes of sexual violence, particularly those committed against children and youth.<sup>54</sup>

Ecuador’s Constitution guarantees the right to education for all persons throughout their lives and charges the State with the duty of making access to education a “priority of public policy and government investment.”<sup>55</sup> It elaborates on the importance of universal access to education without discrimination and the promotion of gender equity, and orders that “education is essential to understanding [rights] and to the exercise of rights.”<sup>56</sup> The Constitution establishes that the State must “eradicate all forms of violence in the education system and ensure the physical, psychological and sexual integrity of female students . . . .”<sup>57</sup>

Article 32 recognizes the right to health, and specifically, the right to sexual and reproductive health,<sup>58</sup> and Article 66 further delineates the right to make free, responsible and informed decisions regarding reproductive health and to decide the number and spacing of children.<sup>59</sup> It also expressly links the realization of the right to health to the exercise of the right to education.<sup>60</sup> The Constitution further declares that children who suffer sexual violence will receive priority attention and the State will provide “special protection” to people with the status of double vulnerability.<sup>61</sup>

Today, Ecuador has a strong legislative and policy framework to address issues of sexual violence and access to reproductive and sexual healthcare services. But it is not enough to merely enact legislation and policies to address these issues: To be in compliance with its Constitution, the CAT and other international treaties, Ecuador must prioritize the implementation of programs that ensure girls live free from sexual violence and have access to essential sexual and reproductive healthcare.

#### **IV. State’s Non-compliance of its Human Rights Obligations under the CAT**

The situation of sexual violence and abuse against girls in schools, as exemplified by the case of Paola Guzmán, indicates the State’s failure to take effective measures to prevent acts of torture (Article 2)<sup>62</sup> and cruel and inhuman treatment (Article 16)<sup>63</sup> and to ensure the rights of survivors to obtain an effective remedy and appropriate redress and compensation (Articles 13 and 14).<sup>64</sup> These rights are also implicated in the State’s failure to guarantee access to timely, comprehensive reproductive and sexual healthcare services for survivors of sexual violence.

## **1. Sexual Violence and the Right not to be Subject to Torture and CIDT**

### ***Sexual violence in schools as a form of torture and CIDT***

International and regional human rights bodies have increasingly recognized sexual violence, particularly rape, as a form of torture and CIDT, at least under certain circumstances.<sup>65</sup> This Committee has repeatedly expressed concern about sexual violence against women and framed the issue in the context of torture and CIDT.<sup>66</sup>

Under Article 1 of the CAT, four threshold requirements must be met to demonstrate torture: 1) intentional infliction of 2) pain and suffering (physical or mental) 3) for a specific purpose, such as discrimination and 4) involving a public official or person acting in an official capacity.<sup>67</sup> It is clear that sexual violence inflicts physical and mental pain and suffering on the survivor. In terms of the third element, the Special Rapporteur on Torture has confirmed that the “purpose element [for torture] is always fulfilled, if the acts can be shown to be gender-specific”, in line with the explicit reference in Article 1 of the CAT to discrimination.<sup>68</sup> Furthermore, the Special Rapporteur has defined gender-specific violence as any violence that is “aimed at ‘correcting’ behavior perceived as non-consonant with gender roles and stereotypes or at asserting or perpetuating male domination over women.”<sup>69</sup> Once it is shown that the act has a specific purpose, the Special Rapporteur has stated that intent can be implied.<sup>70</sup> Finally, this Committee in its General Comment 2 has recognized that women are particularly vulnerable to torture or ill-treatment in a range of settings, including by private actors in communities and homes, and that they may be subject to violations of the Convention on the basis of their “actual or perceived non-conformity with socially determined gender roles.”<sup>71</sup> Thus, sexual violence can meet the four threshold requirements to demonstrate torture.

Articles 2 and 16 of the CAT require States parties to take measures to prevent torture and CIDT in territories under their jurisdiction. These include undertaking “effective legislative, administrative, judicial or other measures”<sup>72</sup> to address acts committed “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.<sup>73</sup> The Committee has made it clear, however, that States parties also bear responsibility for acts of torture or ill-treatment committed by non-state or private actors when State authorities or others acting in an official capacity know or have reasonable grounds to believe that these acts are taking place and do not exercise due diligence to “prevent, investigate, prosecute and punish” these acts.<sup>74</sup>

Sexual violence in educational institutions can clearly constitute torture and CIDT under the CAT whether the violence is inflicted by administrators or teachers in public or private institutions. The Committee emphasizes this in its General Comment No. 2, where it states that States have an obligation to “prohibit, prevent and redress torture and ill-treatment in all contexts of custody and control”, including schools and other institutions that provide care to children.<sup>75</sup> States are also obligated to address torture and ill-treatment in “other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm”.<sup>76</sup> The Committee has also emphasized that States must protect minority or marginalized groups that are especially vulnerable to torture and CIDT and has recognized that gender can be a key element of vulnerability.<sup>77</sup> Children and adolescents are particularly vulnerable to torture and ill-treatment in educational institutions given gender constructions and stereotypes, their status as minors and the custodial role that teachers and administrators

play in relation to them. Given the intersecting vulnerabilities of this population, it is particularly important for States to ensure their protection, including “prosecuting and punishing all acts of violence and abuse against these individuals”, and “ensuring implementation of other positive measures of prevention and protection”.<sup>78</sup>

The failure of Ecuador to adequately implement legislation and policies to address the situation of sexual violence against girls in schools, as outlined in Part I, clearly indicates the State’s failure to meet its obligations under Articles 2, 13, 14 and 16 of the CAT. This is exemplified by the case of Paola Guzmán: For two years, she was intentionally subject to sexual harassment and abuse by the vice-principal of her school, who as a public employee was acting in an official capacity and within a context of control over Paola. The sexual violence enacted on Paola was gender-specific and served to reinforce the dynamic of power between her and her abuser. Additionally, the vice-principal, through his actions, inflicted severe physical and mental pain and suffering on Paola: The years of violence, combined with an unwanted pregnancy, the threat of further abuse from the school physician and her inability to obtain redress for the rape ultimately led to her suicide.

### ***Denial of reproductive healthcare services as a form of torture and CIDT***

As discussed in Part II, adolescents in Ecuador have limited access to appropriate reproductive and sexual healthcare, particularly in cases of rape and other forms of sexual violence and abuse. This situation has significant consequences for adolescents’ lives and health. In the case of sexual violence survivors, the lack of access to essential sexual and reproductive healthcare can itself constitute a form of torture and cruel and inhuman treatment.

Access to comprehensive sexual and reproductive healthcare is an essential part of respecting, protecting and fulfilling a range of internationally-protected human rights.<sup>79</sup> International human rights bodies have recognized that, for survivors of sexual violence and abuse, the denial of the full range of healthcare services can have particularly devastating consequences. This Committee, for example, has expressed concern that survivors of rape or incest may be forced to carry pregnancies that are the direct result of gender violence, stating that:

For the woman in question [survivors of gender violence unable to access legal abortion], this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression...(art. 16).<sup>80</sup>

International human rights bodies have recognized that access to emergency contraception (EC) is vital to preventing unwanted pregnancies after rape or other forms of sexual abuse. In its recent concluding observations to Egypt, for example, the CEDAW Committee expressed concern that EC was not generally provided.<sup>81</sup> The CEDAW Committee recommended that the Ministry of Health promote and raise awareness of EC among women of all ages, “highlighting their benefits in protection against unwanted pregnancies in cases of rape.”<sup>82</sup> Despite the recognized importance of EC for limiting continued harm to survivors of sexual violence, legal access to EC is under challenge in Ecuador, as discussed in Part II of this letter. The decision of the Constitutional Court to strip Postinor-2 of its registration based on the erroneous understanding that it is an abortifacient has the potential to limit women’s access to other forms

of EC on the market and opens the door to further restrictions on EC's distribution and use. In its most recent periodic report the CEDAW Committee, Ecuador noted that other forms of contraception, including EC, continue to be available, yet it does not provide a detailed assessment of the impact of the removal of Postinor-2 on women's access to EC.<sup>83</sup>

Furthermore, in cases where EC fails to prevent unwanted pregnancy or when women and girls' cannot access it, they may require access to safe and legal abortion. Yet in countries with restrictive abortion laws like Ecuador, survivors may be denied legal abortions with grave consequences for their lives and physical and mental health. This Committee has expressed concern regarding the consequences of restrictive abortion laws on women's lives and health, particularly for survivors of sexual violence, as well as laws that impose criminal sanctions on women who undergo abortions.<sup>84</sup> This Committee has framed these concerns in reference to Articles 2 and 16 of the Convention, which require the State to undertake effective measures to prevent torture and CIDT.<sup>85</sup> Furthermore, in the case *K.L. v. Peru*, the Human Rights Committee found that the denial of an abortion that endangers a woman's physical and mental health can be deemed a violation of her right to be free from CIDT, as recognized by the International Covenant on Civil and Political Rights (ICCPR).<sup>86</sup> Additionally, the U.N. Special Rapporteur on Violence against Women has stated that "acts deliberately restraining women" from having an abortion constitute violence against women.<sup>87</sup>

This Committee has recommended that States undertake various measures to address the harms caused by restrictive abortion laws for survivors of sexual violence. These recommendations include reviewing restrictive legislation on abortion and considering the possibility of providing exceptions to allow therapeutic abortions or abortions in cases where the pregnancy has resulted from rape or incest.<sup>88</sup> The Committee has specifically expressed concern about sexual violence against minors in El Salvador and their inability under El Salvador's laws to legally obtain an abortion when their pregnancy resulted from rape. In order to address this situation, the Committee recommended that the State "take whatever legal or other measures are necessary to effectively prevent, investigate and punish crimes and all acts that put the health of women and girls at grave risk" including by providing the "required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents."<sup>89</sup> Notably, the Committee framed this concluding observation in reference to its General Comment 2 interpreting Article 2 of the Convention, which calls for states parties to take "effective legislative, administrative, judicial or other measures to prevent acts of torture."<sup>90</sup> These concluding observations demonstrate this Committee's recognition that access to comprehensive reproductive healthcare information and services is a crucial part of preventing and addressing gendered forms of torture and CIDT such as sexual violence. Thus, in order to be in compliance with its obligations under the CAT, Ecuador must address both the legal restrictions on access to abortion and adolescents' limited access to reproductive health information and services.

## **2. Sexual Violence and the Right to Remedy and Redress under the CAT**

Under Articles 13 and 14 of the CAT, State parties are obligated to ensure that a victim of torture or CIDT obtains access to justice and legal redress that includes "fair and adequate compensation, including the means for as full rehabilitation as possible".<sup>91</sup> In Ecuador, girls who experience sexual violence in schools face numerous barriers to obtaining such redress and compensation.

The CAT guarantees any individual who alleges to have been subject to torture or CIDT the right to complain to the authorities and to have his or her case “promptly and impartially examined” (Article 13).<sup>92</sup> The CAT requires, in these cases, that steps be taken to ensure the protection of the complainant and witnesses “against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”<sup>93</sup> In Ecuador, however, policies have not been adequately implemented to ensure a safe environment for survivors of sexual violence in schools to report their abuse. As discussed in Part I, very few cases of sexual violence in schools in Ecuador have been presented to the Public Prosecutor. Evidence suggests that many cases are not reported due to fear of reprisal by the perpetrators, who as school officials or teachers exercise a great deal of control over the students. Even when cases are reported, investigations and prosecutions often proceed slowly or not at all, as has been the case with Paola Guzmán. Nearly eight years after Paola’s death, no individual or institution has been held responsible for the sexual abuse she suffered.

In addition to legal redress, the CAT guarantees survivors of torture the “means for as full rehabilitation as possible” (Article 14). In its previous concluding observations to China, this Committee expressed concern regarding the limited means of rehabilitation provided by the State for survivors of sexual violence and ill-treatment and stated that appropriate rehabilitation should include access to medical and psychosocial services.<sup>94</sup> For survivors of sexual violence, these services must include access to safe and legal abortion as well as other essential sexual and reproductive health services. The U.N. Special Rapporteur on Torture has emphasized that a gender-inclusive approach to torture requires torture to be perceived as a process, with the traumatic impact of the event continuing after the act itself is completed.<sup>95</sup> Access to the means for full rehabilitation, then, requires States to respond to the continuing impact of the sexual violation and its consequences, including a pregnancy that the survivor may or may not wish to carry to term.

Several U.N. Treaty Monitoring Bodies, including this Committee, have recognized the impact that being denied an abortion and being forced to carry an unwanted pregnancy to term have on survivors of sexual violence. As discussed above, this Committee found, in its concluding observations to Nicaragua in 2009 that denial of safe and legal abortion for survivors of sexual violence can cause the survivor to continue to experience the trauma of the violation and thus risks causing long term psychological problems.<sup>96</sup> The Human Rights Committee has also linked the high number of suicides among young women in Ecuador to the prohibition on abortion and criticized Ecuador for its “failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives.”<sup>97</sup> The Human Rights Committee also stated that such situations are incompatible with the provisions of the ICCPR, including Article 3 (right to equality), Article 6 (right to life), Article 7 (prohibition of torture and CIDT) and Article 24 (protection of minors).<sup>98</sup>

In Ecuador, survivors of sexual violence in schools face significant barriers to both legal redress and the sexual and reproductive healthcare services that are an essential part of their full rehabilitation. By failing to adequately address these issues, Ecuador is in violation of its obligations under Articles 13 and 14 of the CAT. The right to compensation – of which rehabilitation is a part under the CAT – is an enforceable right and thus requires the State to take action to ensure that survivors of sexual violence have access to justice as well as comprehensive sexual and reproductive healthcare services.

## **VI. Questions and Recommendations for Ecuador**

In failing to protect girls from sexual violence and abuse in the school setting and in failing to make reproductive and sexual healthcare provisions accessible to all survivors of such violence, Ecuador continues to violate the human rights to be free from torture and cruel, inhuman and degrading treatment as well as the right to an effective remedy and redress for survivors of torture. These rights are recognized by the CAT and other international human rights treaties to which Ecuador is a State party. We respectfully ask the Committee to reaffirm that sexual violence in the school setting and the denial of essential reproductive healthcare to survivors of such violence are forms of torture and CIDT, and to recommend to Ecuador to adopt and prioritize all necessary legislative and policy measures to guarantee the human rights of adolescent girls.

In addition, we respectfully submit the following questions and recommendations to be considered by this Honorable Committee during Ecuador's periodic review:

### **Questions:**

1. What measures have been implemented to identify and effectively punish the perpetrators of sexual violence in schools? What measures have been implemented to protect victims of sexual violence and ensure that they are not deterred from reporting these abuses?
2. How many cases of sexual violence in schools have been reported to the police each year since the adoption of the National Plan for Eradication of Sexual Offenses in Education? How many cases have gone to court and how many convictions have been obtained and what kind of redress has been granted to the survivors?
3. How has the Constitutional Court's decision on Postinor-2 affected the availability and accessibility of emergency contraception for women and girls throughout the country? Is EC available and accessible at police stations, hospitals and other facilities where survivors of sexual violence seek assistance? Are EC and other reproductive healthcare services available for free for survivors of sexual violence?
4. Is there a mechanism to monitor the National Plan for Eradication of Sexual Offenses in Education or the National Plan on Health and Sexual and Reproductive Rights? If so, what progress has been identified? What are the indicators of success?
5. What are the quantitative and qualitative results of the plans, programs and policies established by the State to combat and prevent sexual violence in schools and to guarantee access to reproductive and sexual health care services for survivors? What was the budget allocated to implement them? For how long are they intended to exist?

### **Recommendations:**

That the State:

1. Act with due diligence in the investigation and punishment of all cases of sexual violence in schools; guarantee a proper redress for the victims, and establish effective prevention mechanisms.

2. Create specific long and short term goals for both the National Plan for the Eradication of Sexual Offenses in Education and the National Plan on Health and Sexual and Reproductive Rights, and delegate specific responsibilities to the State agency that will monitor the program operating directly under it. Allocate adequate resources for these policies as well as other plans, policies and programs to address sexual violence in schools and promote reproductive health. Establish monitoring mechanisms, including indicators of progress, and report back to the Committee on these indicators.
3. Ensure emergency contraception (EC) is available, accessible, affordable and of good quality for all women and girls in Ecuador. Take steps to ensure the survivors of sexual violence are able to access EC free of charge in police stations, hospitals, health clinics and other institutions where survivors seek assistance. Revise the protocol for treating survivors of sexual violence to require physicians and health professionals to screen for pregnancy, sexually transmitted infections or HIV, and to provide EC upon the patient's request
4. Review legislation on abortion and provide exceptions to allow abortion in all cases of pregnancy resulting from rape or incest.
5. Guarantee access to quality and confidential sexual and reproductive healthcare services, including access to family planning information and services and evidence-based sexuality education, for all adolescents.

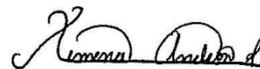
There is a significant gap between the rights protected in the CAT and the reality of girls' and women's lives in Ecuador. We applaud the Committee for its commitment to the rights of girls and women, and the strong Concluding Observations and recommendations the Committee has issued to governments in the past, which stress the need to enact, implement, and monitor policies geared toward ensuring that women and girls can lead lives free from violence.

We hope this information is useful during the Committee's review of Ecuador's report. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,



Lilian Sepúlveda  
Deputy Director of International Legal  
Program and Regional Manager for Latin  
America and the Caribbean  
Center for Reproductive Rights



Ximena Andión Ibañez  
International Advocacy Director  
Center for Reproductive Rights

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<sup>1</sup> See TATIANA CORDERO & GLORIA MAIRA, A MÍ TAMBIÉN: ACOSO Y ABUSO SEXUAL EN COLEGIOS DEL ECUADOR: DISCURSOS OPUESTOS Y PRÁCTICAS DISCRIMINATORIAS, CONSEJO NACIONAL DE LAS MUJERES (CONAMU) TALLER DE COMUNICACIÓN MUJER, 36 (Quito, Ecuador, 2001) [hereinafter CORDERO & MAIRA].

<sup>2</sup> See CORDERO & MAIRA, *supra* note 1; see also MARIA CORREIA & BERNICE VAN BRONKHORST, WORLD BANK ECUADOR GENDER REVIEW: ISSUES AND RECOMMENDATIONS 23 (Washington D.C., 2000) (citing GUADALUPE LEÓN, DEL ENCUBRIMIENTO A LA IMPUNIDAD, DIAGNÓSTICO SOBRE VIOLENCIA DE GÉNERO, ECUADOR, 1989-1995 (1995)).

<sup>3</sup> A survey of 1,000 young people conducted in five Ecuadorian cities found that 63 percent of girls – as compared to 37 percent of boys – reported having been sexually assaulted. In 2003, the National Directorate for Women, Children and Adolescents received 81 reports of sexual harassment by teachers in both public and private schools. Girls are the preferred victims of educators who objectify their bodies through lewd jokes, offensive stares, rude comments and unwanted flirtatious remarks. CEPAM GUAYAQUIL, FINAL REPORT TO THE REGIONAL WOMEN'S TRIBUNAL ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 2 (Feb. 2005) [hereinafter CEPAM GUAYAQUIL].

<sup>4</sup> See CORDERO & MAIRA, *supra* note 1; see also CLADEM-ECUADOR ET AL., ALTERNATIVE REPORT TO THE CONVENTION ON CHILDREN'S RIGHTS: PERIOD: 1996 – 2002 11, available at [http://www.crin.org/docs/resources/treaties/crc.39/Ecuador\\_CLADEM\\_ngo\\_report\(E\).pdf](http://www.crin.org/docs/resources/treaties/crc.39/Ecuador_CLADEM_ngo_report(E).pdf).

<sup>5</sup> One report concerning sexual violence against girls in Ecuador documented that of 680 students of public and private schools, 226 had experienced some form of sexual abuse, and their teachers were identified as third in the list of most frequent offenders. See CORDERO & MAIRA, *supra* note 1; see also CEPAM GUAYAQUIL, *supra* note 3.

<sup>6</sup> See AMNESTY INTERNATIONAL, SAFE SCHOOLS: EVERY GIRL'S RIGHT 46 (2008), available at <http://www.amnesty.org/en/library/asset/ACT77/001/2008/en/c3fb8b67-db24-11dc-b4a6-0fa73a85cd41/act770012008eng.pdf> [hereinafter SAFE SCHOOLS]; see also Ministerio de Educación y Cultura, Plan Nacional para La Erradicación de los Delitos Sexuales en el Ambito Educativo (Ministry of Education and Culture, National Plan on the Eradication of Sexual Offenses in the Educational System), June 2006, at 13, available at [http://www.cnaa.gov.ec/\\_upload/plan\\_erradicacion\\_delitos\\_sexuales\\_v04.pdf](http://www.cnaa.gov.ec/_upload/plan_erradicacion_delitos_sexuales_v04.pdf) [hereinafter National Plan on the Eradication of Sexual Offenses] (“En este caso existe una relación de poder donde las situaciones de abuso van acompañadas de amenazas que inhiben a las víctimas a denunciar a los agresores o agresoras.”); CLADEM-ECUADOR, INFORME ALTERNATIVO DE DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES DE LAS MUJERES 2004 (CLADEM-ECUADOR, ALTERNATIVE REPORT ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF WOMEN 2004 8 (2004), available at <http://www.upr-info.org/IMG/pdf/CLADEMadd3.pdf> [hereinafter CLADEM-ECUADOR, ALTERNATIVE REPORT ON ESCR] (“El acoso sexual, perpetrado en las relaciones laborales y educativas... es uno de los delitos sexuales que mayor dificultad ha tenido en ser procesado y sancionado. Por un lado, está el temor a sufrir represalias, sean éstas agresiones físicas, psicológicas y/o sexuales, pero además está el miedo a perder el ingreso económico, que en la mayor parte de casos, constituye la única fuente de sustento. En el año 2002, se presentaron ante la Fiscalía, quince casos de acoso sexual, tanto en el ámbito educativo como en el laboral, y solamente uno llegó a la sentencia. La propia Ministra Fiscal, reconoce que existen muchos casos más, pero que no llegan a conocimiento del Ministerio público, ‘porque las personas que son víctimas no denuncian por temor a represalias de sus victimarios’.”).

<sup>7</sup> See NAN STEIN, CLASSROOMS AND COURTROOMS: FACING SEXUAL HARASSMENT IN K-12 SCHOOLS 25-26 (1999) [hereinafter STEIN]; see also MICHELE A. PALUDI & RICHARD BARICKMAN, SEXUAL HARASSMENT, WORK, AND EDUCATION: A RESOURCE MANUAL FOR PREVENTION 120 (1998) [hereinafter PALUDI & BARICKMAN] (results from studies show that sexual harassment of girls affects their feelings toward and performance in school negatively).

<sup>8</sup> *Id.*

<sup>9</sup> See SAFE SCHOOLS, *supra* note 6, at 21.

<sup>10</sup> See STEIN, *supra* note 7, at 25-26 (1999); see also PALUDI & BARICKMAN, *supra* note 7, at 119-120.

<sup>11</sup> National Plan on the Eradication of Sexual Offenses, *supra* note 6, para. 2.2.2, available at [http://www.cnaa.gov.ec/\\_upload/plan\\_erradicacion\\_delitos\\_sexuales\\_v04.pdf](http://www.cnaa.gov.ec/_upload/plan_erradicacion_delitos_sexuales_v04.pdf).

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<sup>12</sup> The factual allegations are taken from the admissibility report No. 76/08 of Apr. 20, 2009 by the Center for Reproductive Rights (CRR) in the matter of CIDH, Caso 12.678, *Paola del Rosario Guzmán Albarracín y familia v. Ecuador*, submitted to the Inter-American Commission on Human Rights by CRR and the Centro Ecuatoriano Para la Promoción y Acción de la Mujer-Guayaquil (CEPAM-GUAYAQUIL).

<sup>13</sup> *Id.*

<sup>14</sup> El Ministro de Educación, Cultura, Deportes, y Recreo, Reglamento Especial de Procedimientos y Mecanismos sobre Delitos Sexuales en el Sistema Educativo: Acuerdo No. 4794, Dec. 13, 2002 (Minister of Education, Culture, Sports, and Recreation, Special Regulation of Procedures and Mechanisms regarding Sexual Offenses in the Educational System: Agreement No. 4794).

<sup>15</sup> In 2006, after the National Plan on the Eradication of Sexual Offenses (*supra* note 6) was issued, Agreement No. 403 purported to institutionalize sexual education in the form of the National Plan for Education on Sexuality and Love (PRONESA). (Minister of Education, Agreement No. 403, Sept. 10, 2006). Subsequently, in Mar. 2007, Agreement No. 089 was issued on the prohibition of discrimination against pregnant students and again on the implementation of sexual education (Minister of Education, Agreement No. 089, Mar. 8, 2007). Next, in May 2007, Agreement No. 196 again reformed the procedures and mechanisms on the knowledge and treatment of sexual offenses in schools (Ministry of Education, Agreement No. 196, May 30, 2007), *available at* <http://www.educacion.gov.ec/acuerdos/documentos/normassisedu/acuerdo%20196.pdf>). Most recently, in Feb. 2008, Agreement No. 062 was issued, again on the institutionalization of the National Plan on the Eradication of Sexual Offenses and PRONESA (Minister of Education, Agreement No. 062, Feb. 26, 2008), *available at* <http://www.educacion.gov.ec/php/codigo/acuerdos/documentos/ACUERDO%20062.pdf>.

<sup>16</sup> See Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Fourth, fifth and sixth periodic reports (Ecuador)*, para. 159, U.N. Doc. CAT/C/ECU/4-6 (28 Jan. 2010) (statistics from the Public Prosecutor's office on sexual offences do not provide data specifically on cases involving sexual violence in schools and the statistics only include cases from 2001-2003); *see also* Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention: Fourth periodic reports of States Parties due in 2007 (Ecuador)*, paras. 583(e) & 583(h)-583(k), U.N. Doc. CRC/C/ECU/4 (10 July 2009) (outlines the States' policies to address sexual exploitation and abuse of children and adolescents in schools but provides no data on the outcomes of these policies) [hereinafter Children's Rights Committee, *Fourth periodic report (Ecuador)*]; Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined sixth and seventh periodic reports of States parties (Ecuador)*, paras. 170-71, U.N. Doc. CEDAW/C/ECU/7 (2 Mar. 2007) (the section on "Elimination of sexual offences in the schools" provides no information evaluating the success of the States' policies and programs in this area) [hereinafter CEDAW Committee, *Sixth and seventh periodic reports: Ecuador*]; Human Rights Committee, *Consideration of reports submitted by States parties under Article 40 of the Covenant: Fifth periodic report (Ecuador)*, paras. 154-159, U.N. Doc. CCPR/C/ECU/5 (26 May 2008) (the section on "Ill-treatment of children and adolescents" notes that there are criminal and administrative penalties for any form of sexual assault in educational establishments, but the following section on teacher treatment of children does not address sexual violence in schools) [hereinafter Human Rights Committee, *Fifth periodic report (Ecuador)*].

<sup>17</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Ecuador*, para. 20-21, U.N. Doc. CEDAW/C/ECU/CO/7 (2008) [hereinafter CEDAW Committee, *Concluding Observations: Ecuador*]; Human Rights Committee, *Concluding Observations: Ecuador*, para. 9, U.N. Doc. CCPR/C/ECU/CO/5 (2009).

<sup>18</sup> CEDAW Committee, *Concluding Observations: Ecuador*, *supra* note 17, para. 20.

<sup>19</sup> *Id.* at para. 20-21; Human Rights Committee, *Concluding Observations: Ecuador*, *supra* note 17, para. 9.

<sup>20</sup> National Plan on the Eradication of Sexual Offenses, *supra* note 6.

<sup>21</sup> *Id.* at 20-27.

<sup>22</sup> SAFE SCHOOLS, *supra* note 6, at 61.

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- <sup>23</sup> Children’s Rights Committee, *Fourth periodic report (Ecuador)*, *supra* note 16, para. 574.
- <sup>24</sup> CEDAW Committee, *Concluding Observations: Ecuador*, *supra* note 17, para. 21.
- <sup>25</sup> Children’s Rights Committee, *Fourth periodic report (Ecuador)*, *supra* note 16, para. 529.
- <sup>26</sup> Committee Against Torture, *General Comment 2: Implementation of article 2 by States Parties*, (44<sup>th</sup> Sess., 1992), para. 23, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007) [hereinafter CAT – General Comment 2].
- <sup>27</sup> See U.N. General Assembly, *In-Depth study on all forms of violence against women: In-depth study of the Secretary General*, (61st Sess.), paras. 159-163, U.N. Doc. A/61/122/Add.1 (2006).
- <sup>28</sup> See SAFE SCHOOLS, *supra* note 6, at 18-19.
- <sup>29</sup> *Id.* at 18 (citing J. MIRSKY, BEYOND VICTIMS AND VILLAINS: ADDRESSING SEXUAL VIOLENCE IN THE EDUCATION SECTOR 27-29 (PANOS: 2003), available at <http://www.panos.org.uk/?lid=250>).
- <sup>30</sup> SAFE SCHOOLS, *supra* note 6, at 14.
- <sup>31</sup> WORLD HEALTH ORGANIZATION, GUIDELINES FOR MEDICO-LEGAL CARE FOR VICTIMS OF SEXUAL VIOLENCE 2 (2003), available at <http://whqlibdoc.who.int/publications/2004/924154628X.pdf>.
- <sup>32</sup> *Id.*
- <sup>33</sup> Human Rights Committee, *Fifth periodic report (Ecuador)*, *supra* note 16, para. 78.
- <sup>34</sup> Resolution [S.] No. 0014-2005-RA, 26 May 2006. Constitutional Court of Ecuador.
- <sup>35</sup> See ECUADOR CONST. (2008), art. 45 (“Las niñas, niños y adolescentes gozarán de los derechos comunes del ser humano, además de los específicos de su edad. El Estado reconocerá y garantizará la vida, incluido el cuidado y protección desde la concepción.”).
- <sup>36</sup> See World Health Organization (WHO), *Levonorgestrel for Emergency Contraception (Fact Sheet)* (Mar. 2005), available at [http://www.cecinfo.org/what/pdf/WHO\\_EC\\_factsheet\\_English.pdf](http://www.cecinfo.org/what/pdf/WHO_EC_factsheet_English.pdf).
- <sup>37</sup> CEDAW Committee, *Sixth and seventh periodic reports: Ecuador*, *supra* note 16, para. 346.
- <sup>38</sup> ECUADOR PENAL CODE (1983), art. 447(1).
- <sup>39</sup> ECUADOR PENAL CODE (1983), art. 447 (2) (“El aborto...no será punible: ...Si el embarazo proviene de una violación o estupro cometido en una mujer idiota o demente. En este caso, para el aborto se requerirá el consentimiento del representante legal de la mujer.”).
- <sup>40</sup> CEDAW Committee, *Concluding Observations: Ecuador*, *supra* note 17, para. 38.
- <sup>41</sup> See PAN-AMERICAN HEALTH ORGANIZATION/WORLD HEALTH ORGANIZATION, THE UNGASS, GENDER AND WOMEN’S VULNERABILITY TO HIV/AIDS IN LATIN AMERICA AND THE CARIBBEAN (WOMEN HEALTH AND DEVELOPMENT PROGRAM), 8-9 (Dec. 2002), available at <http://www.paho.org/English/ad/ge/GenderandHIV-revised0904.pdf>.
- <sup>42</sup> UNAIDS et al., EPIDEMIOLOGICAL FACT SHEET ON HIV AND AIDS: CORE DATA ON EPIDEMIOLOGY AND RESPONSE (ECUADOR), 12 (Dec. 2008), available at [http://apps.who.int/globalatlas/predefinedReports/EFS2008/full/EFS2008\\_EC.pdf](http://apps.who.int/globalatlas/predefinedReports/EFS2008/full/EFS2008_EC.pdf).
- <sup>43</sup> See SAFE SCHOOLS, *supra* note 6, at 14.
- <sup>44</sup> The Ministry of Education, the Ministry of Health, the Economic and Social Welfare Council, the National Council for Women, the National Council for Children and Adolescents, and Project Ecuador are among the State agencies responsible for creating and implementing programs that address adolescent health, especially with regard to sexual health and pregnancy.
- <sup>45</sup> Human Rights Committee, *Fifth periodic report (Ecuador)*, *supra* note 16, para. 79.
- <sup>46</sup> PLAN NACIONAL DE PREVENCIÓN DEL EMBARAZO EN ECUADOR 4, para. 1.2 (2007).
- <sup>47</sup> CEDAW Committee, *Concluding Observations: Ecuador*, *supra* note 17, para. 38; see also Committee on the Rights of the Child, *Concluding Observations: Ecuador*, para. 60, U.N. Doc. CRC/C/ECU/CO/4 (2 Mar. 2010) [hereinafter Children’s Rights Committee, *Concluding Observations: Ecuador*].
- <sup>48</sup> Children’s Rights Committee, *Concluding Observations: Ecuador*, *supra* note 47, para. 60.
- <sup>49</sup> *Id.* para. 61.

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<sup>50</sup> ECUADOR CONST. (2008), art. 3: “Son deberes primordiales del Estado: 1. Garantizar sin discriminación alguna el efectivo goce de los derechos establecidos en la Constitución y en los instrumentos internacionales, en particular la educación, la salud, la alimentación, la seguridad social y el agua para sus habitantes”.

<sup>51</sup> ECUADOR CONST. (2008), art. 11, para. 2: “Todas las personas son iguales y gozarán de los mismos derechos, deberes y oportunidades. Nadie podrá ser discriminado por razones de etnia, lugar de nacimiento, edad, sexo, identidad de género, identidad cultural, estado civil, idioma, religión, ideología, filiación política, pasado judicial, condición socio-económica, condición migratoria, orientación sexual, estado de salud, portar VIH, discapacidad, diferencia física; ni por cualquier otra distinción, personal o colectiva, temporal o permanente, que tenga por objeto o resultado menoscabar o anular el reconocimiento, goce o ejercicio de los derechos. La ley sancionará toda forma de discriminación. El Estado adoptará medidas de acción afirmativa que promuevan la igualdad real en favor de los titulares de derechos que se encuentren en situación de desigualdad.”

<sup>52</sup> ECUADOR CONST. (2008), ch. 3, art. 44: “El Estado, la sociedad y la familia promoverán de forma prioritaria el desarrollo integral de las niñas, niños y adolescentes, y asegurarán el ejercicio pleno de sus derechos; se atenderá al principio de su interés superior y sus derechos prevalecerán sobre los de las demás personas. Las niñas, niños y adolescentes tendrán derecho a su desarrollo integral, entendido como proceso de crecimiento, maduración y despliegue de su intelecto y de sus capacidades, potencialidades y aspiraciones, en un entorno familiar, escolar, social y comunitario de afectividad y seguridad. Este entorno permitirá la satisfacción de sus necesidades sociales, afectivo-emocionales y culturales, con el apoyo de políticas intersectoriales nacionales y locales.”

<sup>53</sup> ECUADOR CONST. (2008), art. 45: “Las niñas, niños y adolescentes gozarán de los derechos comunes del ser humano, además de los específicos de su edad. . . . Las niñas, niños y adolescentes tienen derecho a la integridad física y psíquica; a su identidad, nombre y ciudadanía; a la salud integral y nutrición; a la educación y cultura, al deporte y recreación; a la seguridad social; a tener una familia y disfrutar de la convivencia familiar y comunitaria; a la participación social; al respeto de su libertad y dignidad; a ser consultados en los asuntos que les afecten; a educarse de manera prioritaria en su idioma y en los contextos culturales propios de sus pueblos y nacionalidades; y a recibir información acerca de sus progenitores o familiares ausentes, salvo que fuera perjudicial para su bienestar. El Estado garantizará su libertad de expresión y asociación, el funcionamiento libre de los consejos estudiantiles y demás formas asociativas. Art. 46 - El Estado adoptará, entre otras, las siguientes medidas que aseguren a las niñas, niños y adolescentes: 4. Protección y atención contra todo tipo de violencia, maltrato, explotación sexual o de cualquier otra índole, o contra la negligencia que provoque tales situaciones”.

<sup>54</sup> ECUADOR CONST. (2008), art. 81: « La ley establecerá procedimientos especiales y expeditos para el juzgamiento y sanción de los delitos de violencia intrafamiliar, sexual, crímenes de odio y los que se cometan contra niñas, niños, adolescentes, jóvenes, personas con discapacidad, adultas mayores y personas que, por sus particularidades, requieren una mayor protección. Se nombrarán fiscales y defensoras o defensores especializados para el tratamiento de estas causas, de acuerdo con la ley”.

<sup>55</sup> ECUADOR CONST. (2008), art. 26: “La educación es un derecho de las personas a lo largo de su vida y un deber ineludible e inexcusable del Estado. Constituye un área prioritaria de la política pública y de la inversión estatal, garantía de la igualdad e inclusión social y condición indispensable para el buen vivir. Las personas, las familias y la sociedad tienen el derecho y la responsabilidad de participar en el proceso educativo”.

<sup>56</sup> ECUADOR CONST. (2008), art. 27: “La educación se centrará en el ser humano y garantizará su desarrollo holístico, en el marco del respeto a los derechos humanos, al medio ambiente sustentable y a la democracia; será participativa, obligatoria, intercultural, democrática, incluyente y diversa, de calidad y calidez; impulsará la equidad de género, la justicia, la solidaridad y la paz; estimulará el sentido crítico, el arte y la cultura física, la iniciativa individual y comunitaria, y el desarrollo de competencias y capacidades para crear y trabajar. La educación es indispensable para el conocimiento, el ejercicio de los derechos y la construcción de un país soberano, y constituye un eje estratégico para el desarrollo nacional”. Art. 28 – “La educación responderá al interés público y no estará al servicio de intereses individuales y corporativos. Se garantizará el acceso universal, permanencia, movilidad y egreso sin discriminación alguna y la obligatoriedad en el nivel inicial, básico y bachillerato o su equivalente”.

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<sup>57</sup> ECUADOR CONST. (2008), art. 347, para. 4: “Asegurar que todas las entidades educativas impartan una educación en ciudadanía, sexualidad y ambiente, desde el enfoque de derechos.”; ECUADOR CONST. (2008), art. 347, para. 6: “Erradicar todas las formas de violencia en el sistema educativo y velar por la integridad física, psicológica y sexual de las estudiantes y los estudiantes.”

<sup>58</sup> ECUADOR CONST. (2008), art. 32: “La salud es un derecho que garantiza el Estado, cuya realización se vincula al ejercicio de otros derechos, entre ellos el derecho al agua, la alimentación, la educación, la cultura física, el trabajo, la seguridad social, los ambientes sanos y otros que sustentan el buen vivir.”

<sup>59</sup> ECUADOR CONST. (2008), art. 66: “El derecho a tomar decisiones libres, responsables e informadas sobre su salud y vida reproductiva y a decidir cuándo y cuántas hijas e hijos tener.”

<sup>60</sup> *Id.*

<sup>61</sup> ECUADOR CONST. (2008), art. 35.

<sup>62</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, art. 2, G.A. Res. 39/46, UN GAOR, 39<sup>th</sup> Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987) [hereinafter CAT].

<sup>63</sup> *Id.* art. 16.

<sup>64</sup> *Id.* arts. 13 & 14.

<sup>65</sup> See e.g. *Raquel Martí de Mejía v. Perú*, Case 10.970, Inter-Am. C.H.R., Report No. 5/96, OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996) [finding a violation of Article 5 (right to humane treatment) of the American Convention on Human Rights]; see also *Aydin v. Turkey*, 57/1996/676/866, Council of Europe: European Court of Human Rights, 25 Sept. 1997 [finding a violation of Article 3 (prohibition of torture) of the European Convention on Human Rights]; *V.L. v. Switzerland*, CAT/C/37/D/262/2005, UN Committee Against Torture (CAT), 20 Nov. 2006, available at: <http://www.unhcr.org/refworld/docid/47975afd21.html> [finding that sexual abuse by the police constituted torture even though it was perpetrated outside of formal detention facilities].

<sup>66</sup> See Committee against Torture, *Concluding Observations: Albania*, U.N. Doc. CAT/C/CR/34/ALB, para. 8(o) (2005); *Bosnia and Herzegovina*, U.N. Doc. CAT/C/BIH/CO/1, paras. 10(d) and (e) (2005); *Burundi*, U.N. Doc. CAT/C/BDI/CO/1, para. 11 (2006); *China*, U.N. Doc. CAT/C/CHN/CO/4, paras. 28 and 30 (2008); *Chile*, U.N. Doc. CAT/C/CR/32/5, para. 7(k) (2004); *Chile*, U.N. Doc. CAT/C/CHL/CO/5, para. 18, (2009) *Colombia*, U.N. Doc. CAT/C/CR/31/1, paras. (9(d)(ii) and 10(f) (2003); *Indonesia*, U.N. Doc. CAT/C/IDN/CO/2, para. 16 (2008); *Japan*, U.N. Doc. CAT/C/JPN/CO/1, para. 25 (2007); *Mexico*, U.N. Doc. CAT/C/MEX/CO/4, para. 19 (2006); *Nepal*, U.N. Doc. CAT/C/NPL/CO/2, para. 27 (2005); *Sri Lanka*, U.N. Doc. CAT/C/LKA/CO/2, para. 13 (2005); *Zambia*, U.N. Doc. CAT/C/ZMB/CO/2, para. 23 (2008).

<sup>67</sup> CAT, *supra* note 62, art. 1.

<sup>68</sup> Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, (7<sup>th</sup> Sess.), para. 30, U.N. Doc. A/HRC/7/3 (2008) [hereinafter *Special Rapporteur on Torture – Promotion and Protection of All Human Rights 2008*].

<sup>69</sup> *Id.* para. 30.

<sup>70</sup> *Id.* para. 30.

<sup>71</sup> CAT – General Comment 2, *supra* note 26, para. 22.

<sup>72</sup> CAT, *supra* note 62, art. 2.

<sup>73</sup> *Id.* art. 16.

<sup>74</sup> CAT – General Comment 2, *supra* note 26, para. 18 (“Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission.”)

<sup>75</sup> CAT – General Comment 2, *supra* note 26, para. 15.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* paras. 21-22.

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<sup>78</sup> *Id.* para. 21.

<sup>79</sup> See e.g., Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health*, (20th Sess.) paras. 29 & 31, U.N. Doc. A/54/38 (1999) (noting that a national plan to promote women's health must include universal access for all women to a full range of high-quality and affordable healthcare, including sexual and reproductive health services and recommending that States remove all barriers to women's access to health services, education and information); see also Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, (22<sup>nd</sup> Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 90, U.N. Doc. HRI/GEN/1/Rev.5 (2001) (underscoring the need for states parties to provide the full range of high-quality and affordable healthcare, including sexual and reproductive services, such as family planning and recommends that States remove all barriers to women's access to health services, education, and information, including in the area of sexual and reproductive health).

<sup>80</sup> Committee against Torture, *Concluding Observations: Nicaragua*, (42<sup>nd</sup> Sess.) para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009) [hereinafter CAT, *Concluding Observations: Nicaragua*].

<sup>81</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Egypt*, (45<sup>th</sup> Sess.) para. 39, U.N. Doc. CEDAW/C/EGY/CO/7 (2010).

<sup>82</sup> *Id.* para. 40.

<sup>83</sup> CEDAW Committee, *Sixth and seventh periodic reports: Ecuador*, *supra* note 16, at para. 346.

<sup>84</sup> See Committee against Torture, *Concluding Observations: Peru*, (36<sup>th</sup> Sess.) para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006) [hereinafter CAT, *Concluding Observations: Peru*]: (“Current legislation severely restricts access to voluntary abortion, even in cases of rape, leading to grave consequences, including the unnecessary deaths of women. According to reports received, the State party has failed to take steps to prevent acts that put women's physical and mental health at grave risk and that constitute cruel and inhuman treatment.”); see also Committee against Torture, *Concluding Observations: El Salvador*, (43<sup>rd</sup> Sess.) para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009) [hereinafter CAT, *Concluding Observations: El Salvador*]; CAT, *Concluding Observations: Nicaragua*, *supra* note 79, para. 16.

<sup>85</sup> See CAT, *Concluding Observations: Nicaragua*, *supra* note 79, para. 16; see also CAT, *Concluding Observations: El Salvador*, *supra* note 83, para. 23.

<sup>86</sup> *K.L. v. Peru*, Comm. No. 1153/2003, Judgment of 24 Oct. 2005, U.N. Doc. CCPR/C/85/D/1153/2003.

<sup>87</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences: Addendum: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55<sup>th</sup> Sess.) para. 57, UN Doc E/CN.4/1999/68/Add.4, (21 Jan. 1999).

<sup>88</sup> See CAT, *Concluding Observations: Nicaragua*, *supra* note 79, para. 16.

<sup>89</sup> CAT, *Concluding Observations: El Salvador*, *supra* note 83, para. 23.

<sup>90</sup> CAT, *supra* note 62, art. 2(1).

<sup>91</sup> *Id.* art. 14.

<sup>92</sup> *Id.* art. 13 (Art. 13 refers specifically to victims of torture, but art. 16 extends the obligations contained in art. 13 to victims of CIDT as well.).

<sup>93</sup> *Id.*

<sup>94</sup> Committee against Torture, *Concluding Observations: China*, (41<sup>st</sup> Sess.) U.N. Doc. CAT/C/CHN/CO/4, para. 30 (2008).

<sup>95</sup> *Special Rapporteur on Torture – Promotion and Protection of All Human Rights 2008*, *supra* note 68, para. 70.

<sup>96</sup> CAT, *Concluding Observations: Nicaragua*, *supra* note 79; see also CAT, *Concluding Observations: Peru*, *supra* note 83, para. 23.

<sup>97</sup> Human Rights Committee, *Concluding Observations: Ecuador*, (63<sup>rd</sup> Sess.) para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998).

<sup>98</sup> *Id.*