



Situation of Lesbian and Trans Women in Ecuador
Shadow Report
International Covenant on Civil and Political Rights

September 2009
Taller de Comunicación Mujer
Natalia Marcos & Tatiana Cordero



Acknowledgments

Carina Vance, Fundación Causana Equipo de Fútbol Guipuzcoa/Saltamonte de Venus.
Judith Salgado, Programa Andino de Derechos Humanos.
Gonzalo Abarca, Fundación Amigos por la Vida.

Executive Summary

With the passing of the new Political Constitution, Ecuador extended protection against discrimination to cover gender identity. Article 11.2 in the current Constitution now protects against discrimination based on sexual orientation and on gender identity. However, human rights violations against lesbian and trans women persist in certain social institutions and in the private and public spheres. Lesbian women continue to be forcibly hospitalized by their families in private “addict rehabilitation” clinics, while trans women continue to be discriminated against and subjected to abuse by school officials, police and in spaces of political participation. None of the human rights violations described in this document have been punished even though they violate existing laws.

1. Introduction

The election of a new president in January 2007 ushered in a new political and institutional period for Ecuador. One of the first measures implemented by the new government was a referendum to call for a National Constituent Assembly. Before the Assembly started its work, the government launched a participatory process in which civil society was invited to submit proposals for the new constitution. A commission of jurists representing the university community and the Ecuadorian Government developed the contents submitted by social and political organizations and interest groups. It is worth noting that the women’s, feminist and sexual diversity movements—like other social and collective movements—submitted several proposals and implemented multiple strategies to advocate for their claims to be incorporated in the new Constitution.¹ It is within this context that the new Ecuadorean Political Constitution was passed by a referendum in October 2008, replacing the Political Constitution of 1998 that incorporated 34 out of 36 proposals submitted by women’s and feminist groups and promoted, for the first time in the country, non-discrimination based on sexual orientation.²

¹Organizations submitting proposals include those who cooperated with the National Council for Women (Luna Creciente, OEML and Foro de la Mujer Ecuatoriana) as well as other submissions by lesbian, transfeminist and autonomous feminist collectives like Casa Feminista Rosa and the Coalition for Decriminalizing Abortion and Against Poverty.

² It is worth noticing that 34 of the 36 proposals submitted by women were incorporated into the 1998 Constitution. The rights to personal integrity and to a life free from violence; to equality before the law and to non-discrimination; to equitable participation of women and men in popular election process, in management and decision-making public spaces, in the justice system, in controlling bodies and political parties; the right to make free and responsible decisions in one’s sexual and reproductive life; to equality and mutual responsibility in the family and support for women heads of household; to non-discriminatory education that promotes gender equity; to co-education; and the State obligation to implement public policies and create a national machinery to advance women’s equality.

Laws passed during that decade include the 1995 *Ley contra la Violencia a la Mujer y a la Familia* or Law against Violence against Women and the Family; la *Ley de Maternidad Gratuita* or Free Maternal Health Care Law; and the 1997 la *Ley de Amparo Laboral* or Work Protection Law, as well as; the Ley de Cuotas Electorale or Electoral Quotas Law. In 1997 the Consejo Nacional de las Mujeres or National Council for Women (CONAMU) was created with the mandate to develop public policies for women and ensure their advancement in society.

Tension marked the 2008 Constituent Assembly process, particularly on issues surrounding the right to decide on one's body, the right to abortion and the right to same-sex unions. At the beginning of his term, the new president stated his position against the recognition of these rights. Alliances between lesbian-feminist and trans women were key, however, for advancing their claims before the Assembly. Their demands included: 1) a system for protection against discrimination; 2) a more detailed and progressive definition of sexual and reproductive rights, as compared to how their description in the 1998 Constitution; 3) recognition of alternative families and gender neutral definition of de facto unions; 4) the inclusion of one article in the section on the right to life that will allow de-criminalization of abortion in secondary legislation; 5) punishment for hate crimes based on gender and sexual diversity; 6) collective rights' entitlement and enforceable nature; 7) wide protections; 8) a non-partisan Constitutional Court and; 9) secular ethics as interpretative principle for the law³.

The overall framework of the new Ecuadorean Political Constitution defines the State as constitutional, rights and justice-based, social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular⁴. It is based on respect for sovereignty and self-determination in terms of economy, political life, finances, food, culture and environment that sprang from respect and enforcement of Human and People's Rights. From a sexual diversity viewpoint, the great step ahead that the Constitution implies is the need to broaden the scope of its non-discrimination and equality components to include gender identity. The historical vulnerability of all those who do not fit into the stereotypes of biological women or men, female or male gender, or who do not conform to the heteronormative, patriarchal model is thus addressed⁵. The challenge that Ecuador country now faces is how to translate and apply the constitutional norm in secondary laws, rights protection mechanisms and strategies that allow for punishing and transforming discriminatory and violent practices.

It is worth noting that the current National Assembly amended the Penal Code references to "hate crimes." According to the Penal Code amendments published in the

³ Interview with Elizabeth Vásquez; see: Colectivos las Vehmementes/Taller de Comunicación Mujer, "Cuerpo, Autonomía y Democracia: el país que queremos", Debate nacional, 2008.

⁴ Article 1, Ecuadorean Political Constitution (Constitución Política del Ecuador) URL: http://constitucion2008.asambleaconstituyente.gov.ec/index.php?option=com_content&task=view&id=16175&Itemid=92

⁵ Article 11.2 of the Constitution states that "All persons are equal and will enjoy the same rights, duties and opportunities. Nobody can be discriminated against on the basis of her or his ethnicity, birthplace, age, sex, **gender identity**, cultural identity, marital status, language, religion, ideology, political affiliation, judicial records, socio-economic status, migratory status, **sexual orientation**, health status, HIV status, disability, physical difference, or any other personal or collective, temporary or permanent distinction, that aims at or results in a detriment or nullification of the recognition, enjoyment or exercise of rights. The law will punish all forms of discrimination. The State will adopt affirmative action measures to promote substantive equality in favor of those right bears that are placed in an unequal situation (Bold added).

Official Gazette Supplement No. 578, March 24 2009, hate crimes are defined in Article 212.4 as follows:

Whoever incites to hatred, disdain, or any form of psychological or physical violence against one or more persons on the basis of their skin colour, race, sex, religion, national or ethnic origin, sexual orientation or sexual identity⁶, age, marital status or disability, in public or through any channel suitable for public circulation, will be punished with six months to three years of prison. If any person is harmed (as a result) the penalty will be increased to two to five years of prison, and to twelve to sixteen if the outcome of those violent acts would be the death of a person.”

Article 212. 6 reads as follows:

“Whoever, in the course of his or her professional, commercial or business activities, denies service to a person who is entitled to it, excludes a person, deprives, violates or restricts her or his constitutionally protected rights, on the basis of her or his skin colour, race, sex, religion, national or ethnic origin, sexual orientation or sexual identity, age, marital status or disability, will be punished with one to three years of prison.” The same punishment will fall on a public officer engaging in any of those acts or behaviours, or who denies or delays a procedure or service. Also, Article 212.7 ends with the following reference: *“... In these cases, the public officer will be disqualified for any kind of public employment for a period no longer than the length of the prison term imposed on her/him.”*

In this context, lesbian organizations and collectives as a whole are vigilant and alert in their observation and monitoring of the implementation of these new penal laws and the institutional changes required to guarantee the rights protected by the new Constitution and secondary laws.

Through Executive Decree No. 1733 (Official Gazette No. 601, May 29, 2009) the current government has also set up a Transitional Commission towards a National Council for Women and Gender Equality to define the public institution whose mandate will be to guarantee equality between women and men and also between individuals of different sexual preferences and gender identities.

This transitional process includes transforming the structure of the former National Council for Women (CONAMU) according to the guidelines set by Articles 156 and 157 and the Sixth Transitional Disposition of the Constitution. This transformation includes addressing inequalities between men and women and those based on sexual orientation and gender identity within the infrastructure of the Council's itself. The women's, lesbian, and feminist organizations demand that the National Council for Gender Equality protects their rights, becomes an equitable and non-discriminatory space open for participation, and develops public policies that are inclusive of sexual orientation and gender identity as mandated by the new Ecuadorean Political Constitution and those international treaties signed and ratified by Ecuador.

⁶ This concept refers to gender identity.

In spite of the progress achieved in human rights terms at the international level⁷, through the new Ecuadorean Political Constitution and the Penal Code that now defines hate crimes, human rights violations against lesbian women persist. Cases of torture in private “rehabilitation” facilities created to de-homosexualize women have been recurring since 2002⁸. Ecuador was asked about this situation during the first round of the Universal Periodic Review (UPR)⁹. The Ecuadorean State accepted the observations made in that context and committed itself to investigate and guarantee the rights of LGBTI individuals as consecrated by the new Constitution. Discrimination, abuse and torture against lesbian and trans women, however, continues, affecting their *buenvivir*¹⁰.

Substantial violations to the International Covenant on Civil and Political Rights

2. Arbitrary deprivation of liberty, torture, cruel, inhuman and degrading treatment of lesbian women (Articles 2,7, 9, 17 and 26 of the Covenant)

Lesbian feminist collectives are gravely concerned about the cases of illegal and illegitimate hospitalization of lesbian women in private “de-homosexualization” clinics.¹¹ As the testimonies gathered confirm, in many of those facilities—most of which are operating illegally—the “cure” for homosexuality includes kidnapping, torture, cruel, inhumane and degrading treatment. This violence is perpetrated against both lesbian and trans women.

These cases of torture and mistreatment were first documented in 2002, through the Regional Tribunal for Women’s Economic, Social and Cultural Rights.¹² A paradigmatic case illustrating human rights violations against a lesbian woman was

⁷ At the regional level there are some precedents that show how the situation of lesbian and transgender women has started to become visible and exposed. Among the most relevant is the historical OAS Resolution (AG/RES-2435 (XXXVIII-O/08), “Human Rights, Sexual Orientation and Gender Identity” in which the concepts of sexual orientation and gender identity are mentioned in a consensus document agreed to by the 34 OAS countries. This resolution acknowledges the serious situation faced by individuals who suffer human rights violations based on their sexual orientation and gender identity. This achievement is the outcome of a collective process started in late 2006 by Global Rights, Mulabi - Espacio Latinoamericano de Sexualidades y Derechos and IGLHRC-Latin America, aimed at strengthening the participation of the regional LGBTTI movement as a civil society actor in the OAS processes.

⁸ Taller de Comunicación Mujer, Tribunal por los Derechos Económicos, sociales y culturales, 2003-2005

⁹ A new mechanism to review the human rights situation in all UN Member States. The review of each country will take place every four years.

¹⁰ Indigenous concept included in the new Constitution as a paradigm of dignity and a basis for the Constitution’s understanding of human rights and its integrality. It literally means “to live well”.

¹¹ *Taller de Comunicación Mujer* has contacted the Justice and Human Rights Ministry, as well as the Foreign Affairs Ministry, to report several cases of forced hospitalization of lesbian and trans women in “de-homosexualization clinics” in Ecuador.

¹² The cases of lesbian women who have been forcibly hospitalized were presented in this Regional Tribunal, in Quito, Ecuador and Lima, Peru.

presented to the Tribunal, and the victim testified publicly about the physical violence perpetrated by her family and the medical facility where she was hospitalized.¹³

“It was the first time that lesbian women became present in public with a political stance, against a historical tradition of invisibility.”¹⁴ Similar cases were also exposed in the media¹⁵ and through national human rights institutions.¹⁶ But after four years of advocacy at the national and international level, these violations have not ceased.

In Manta, Manabí province, “Yolanda” a 30 year old professional woman, was locked for three months (April-July 2009) in a “clinic,” while “Soraya,” the partner of a 19 year old woman, reported that her partner is hospitalized in the same institution.¹⁷ According to their testimonies, the clinics treat homosexuality as “behavioural disorders” and “addictions”.

“They write that you have a behavioural disorder and also that you are an alcoholic because, in their view, anybody who drinks is an alcoholic. They identified me as an alcoholic... Because that was what they said to us. How often do you drink? I think at the most I drink twice a year... and then they said, ‘you are an alcoholic, you have to define yourself as an alcoholic with behavioural disorder.’” (Yolanda, September 29, 2009)

In the view of the clinic “Sólo por Fe” (Through Faith Only), located in Portoviejo city, Manabí, “Yolanda” was “addicted to her partner.”

“I was believed to have her as an addiction, she was my addiction ... ‘your addiction is that person, she is your addiction and that is what you have to give up. ... You cannot say that you will continue being with her because you are not going to do so, you must quit that. What you have is confusion.’” (Yolanda)

Another concern is that hospitalization is often requested by parents who admit their daughters to the clinics— in many cases lying to them— and sign contracts agreeing to the hospitalization and “rehabilitation” practices.

“I was taken there with lies. I never knew I was going to a clinic. My entire family, Dad, Mom, my brothers, one of my aunts, my cousin... they were all in agreement. They told me we were going to visit a friend who had just had a baby. It was May 10, I could never forget it, it was Mother’s Day. At 8 pm they told me to go and visit this friend. I never mistrusted them.” (Yolanda)

¹³ As argued in the Tribunal for Women’s Economic, Social and Cultural Rights in 2005: “By exposing violations of their civil and political rights, lesbians affirm that the free development of their personality – and, in particular, the right to their sexual identity – demands the enjoyment of those other rights (...) The cases submitted by lesbians before this Tribunal confirm that individual freedoms and of course sexual freedom and autonomy in their physical and psychical dimensions demand an effective articulation of social, economic and cultural rights as the laws containing the latter ones are precisely those providing the spaces in which the subjects act (...)”

¹⁴ Cordero, Tatiana, *Tribunal regional de los derechos económicos sociales y culturales de las mujeres. Casos por discriminación a mujeres lesbianas en el Ecuador*, 2005.

¹⁵ By Fundación Causana.

¹⁶ Before the Ombudsman Office (Defensoría del Pueblo) CLADEM-Ecuador-Causana.

¹⁷ Interviews done in Manta, September 2009/Taller de Comunicación Mujer.

“If you are married, they get you in the clinic with your husband’s signature and if you are living with your parents, with their signature, even if you are of legal age, even if you are 50 years old.” (Soraya, September 23, 2009)

In this way, nuclear and extended families resort to abusive practices in the name of preserving the heterosexual order, as protected by its social legitimacy. Families are enabled to interfere with these women’s lives, “for their own good.” The perspective that understands heterosexuality as the norm allows for the implementation of practices aimed at “curing deviants”. The underlying assumption is that homosexuality or (non conventional) gender identities are “illnesses” or “vices”.

In addition to forced hospitalization through deception and coercion, in some cases women are also kidnapped, subjected to torture and ill treatment in order to be taken to the clinics.

“Some of her neighbours told me she shouted, begged for help, and she was forced into a car, worse than if she were a criminal. That is how I knew that Viviana was handcuffed as soon as she left the house. She was locking the entrance door when these two men came. One of them was called Richard and he is the husband of Teresa Mantilla; the other was Mario Mantilla, the director of the men’s clinic. Teresa Mantilla and Yajaira were also there. They grabbed her by force. She shouted, begged for help. All the neighbours saw how she was handcuffed and then forced into a taxi. Yajaira, the therapist, beat her!” (Soraya)

According to Yolanda’s testimony, so called therapists chose nicknames for the hospitalized women. She was scornfully called “Yolo” or “Mother” in reference to her allegedly being a bad mother for providing a poor example for her children. She also said that fifteen women were sharing three rooms at the “clinic” and only a single jar of water for bathing. Women were assigned duties like cleaning, cooking and child-care for the children of the staff. Lunch constituted approximately one kilo of rice to be shared among all fifteen women. They were not allowed any communication with the outside world, including their loved ones, during the “therapy” period. In those facilities, “therapy” implies exploitation of women, exasperated by forced seclusion and lack of communication with relatives, partners and/or friends:

“At first they would not give us water. We had to drink from the well, the same water we were using to clean ourselves, going up and down the stairs with a vessel. Inside that well there were rotten frogs, insects, even cockroaches, all those things. The day I had to cook I even cried because I had never seen anything like it. They gave me flour full of weevils and small worms. ‘Give us our breakfast’, the women were shouting from upstairs, and all I was doing was trying to clean the flour as much as possible, but because I had a fixed amount of time to prepare breakfast I could not clean it completely” (Yolanda).

“The so-called therapist insults and mistreats you, but so does the doctor. They were telling us ‘trash, you all are trash’, and even their kids could say whatever they wanted to us. Besides cooking, I also had to act as nanny, because I had to take care of (the therapist’s) daughter. Another woman had to clean the girl every time she defecated. (The therapist) would say ‘Mayra, take the girl, she has pooped.’ And the poor woman sighed and went to clean the girl. And then I had to give the child a bath.” (Yolanda)

Torture and cruel, inhumane, and degrading treatment—including beatings, cold water poured over the women at night, insults, shouting, scorn and sexual violence including harassment and threats of rape as a practice that proves the “cure”—are systematic ways to punish lesbian women for challenging social and gender norms through their sexual preferences and/or gender identity.

“As I spent lots of time in the kitchen one of the brothers that was supposed to come down to do therapy started by taking my hand, and then moved to kiss it, and to say ‘you are not an ugly one’. Whenever I was in the kitchen he would come too. It was most uncomfortable because the way he was looking at me was sick ... I would be doing something, cutting something, and he would be standing there, looking at my breasts, in such a sick way ... ‘you are looking good’, and then he would start groping, squeezing me, and then again ... he would leave but only to come back, to make me sit in front of him, grab me, hold me and touch me.” (Yolanda)

These testimonies show that, to a great extent, Ecuadorean society understands gender identity as an innate and pre-determined biological characteristic, and not a social and historical construction that can diverge with hegemonic notions about masculinity and femininity¹⁸. Biological, heteronormative and binary discourses are still prevalent in different institutions (state, family, medical establishment, etc.) and they establish mechanisms for social disciplining in order to produce and reinforce the sexual and gender order. In this regard, torture and cruel treatment stand as *normalization* mechanisms at the service of several goals: to increase control over their daughters’ sexuality; to transfer the punishment for sexual dissidents from the family’s responsibility to that of so-called health professionals; and to perpetuate women’s submission by physically bending and psychologically diminishing them in order to restore the heterosexual and patriarchal order that they have transgressed.¹⁹ In some occasions these acts constitute torture.

In short, forced hospitalization of lesbian women in these kinds of clinics violates their right to individual and sexual identity; personal integrity; autonomy; freedom from discrimination; physical and mental health; and their right to work and study.

In relation to the International Covenant on Civil and Political Rights (ICCPR), forced hospitalization of lesbian women in these clinics contravenes the following:

a) Article 2.1: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

¹⁸ See Soledad Varea y Tatiana Cordero, Informe Sombra: Situación de las mujeres lesbianas, bisexuales, transexuales, transgénero e intersex en Ecuador en relación a la discriminación, Taller de Comunicación Mujer, September 2008.

¹⁹ See Taller de Comunicación Mujer, *Tribunal Regional por los Derechos Económicos, Sociales y Culturales de las Mujeres. Casos por discriminación a mujeres lesbianas en el Ecuador*, Quito, July 2005, p. 18.

b) Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”.

c) Article 9.1: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

d) Article 17.1 and 17.2: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation” and “ Everyone has the right to the protection of the law against such interference or attacks”; and

e) Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, examines torture from a gender perspective and states that “While a variety of international instruments explicitly or implicitly provide for an extensive set of obligations with respect to violence against women or rape, classifying an act as ‘torture’ carries a considerable additional stigma for the state and reinforces legal implications, which include the strong obligation to criminalize acts of torture, to bring perpetrators to justice and to provide reparation to victims.”²⁰ Ecuador has ratified international instruments forbidding the use of torture like the International Covenant on Civil and Political Rights (Article 7) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment.²¹

The Special Rapporteur points out that in its Article 1 the Convention against Torture provides a definition that includes the four elements needed to “meet the threshold of torture”:

- 1) Severe pain and suffering, physical or mental;
- 2) Intent;
- 3) Purpose; and
- 4) State involvement.²²

Moreover, he suggests that the criterion of “powerlessness” must be added to them: “*A situation of powerlessness arises when one person exercises total power over another ... it can also arise during demonstrations, when a person is not able to resist the use of force any more, e.g. handcuffed ... Rape is an extreme expression of this power relation,*

²⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, January 15, 2008, p. 26.

²¹ Ecuador signed the Covenant on Civil and Political Rights on April 4, 1968, and ratified it on March 6, 1969. The Convention against Torture was ratified in 1998. Currently the Correa government is planning to ratify the Convention again.

²² Report of the Special Rapporteur, p. 27.

of one person treating another person as merely an object".²³ In this sense—and this is crucial in the case of forcibly hospitalized lesbian women— *“applied to situations of ‘private violence’, the degree of powerlessness of the victim in a given situation must be tested. If it is found that a victim is unable to flee or otherwise coerced into staying by certain circumstances, the powerlessness criterion can be considered fulfilled”*.²⁴ Women locked in these clinics either can not flee or are forced to remain because they are legally under-age and dependent on their families, or are being treated as legally and mentally incapable by their families who then consider themselves entitled to represent them and sign contracts in their names. Thus, following the reasoning of the Special Rapporteur on Torture, it could be argued that forced seclusion in “rehabilitation” clinics constitutes cruel, inhuman and degrading treatment as both the “powerlessness” and intention criteria are met. Powerlessness results from the fact that some women are legally minors and as such are dependent on their families or from the violent practices through which families subject women to their will. In the latter cases, even though women might be of legal age, they are unable to decide on their own if they want to remain in seclusion or not. It is clear that the intention of the forced seclusion is “normalizing” the victim’s sexual preference and/or gender identity. This normalizing process evidences the unequal status of women in the family and a kind of violence that has not been defined or penalized in legal instruments addressing family violence or violence against women.

In this sense it is important to quote the Special Rapporteur’s reference to subordination of women: *“A society’s indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and a pattern of State failure to punish perpetrators and protect victims, create the conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist”*.²⁵

Moreover, even though the definition of torture as included in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment restricts torture to acts *“inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”*²⁶ the Rapporteur suggests that this definition must not be understood as restricting torture to the public sphere. State obligations are extended to the private sphere and individual actions as the State must protect those under its jurisdiction against torture and ill treatment. The Convention against Torture stands as an important precedent in this regard as it allows for condemnation of States for failing to protect women, either through omission, indifference or inaction, in situations of physical or psychological violence perpetrated by non-State actors be they relatives, employers, managers or personnel of “rehabilitation clinics”, etc.

In the Ecuadorean case the situation is even more serious as many of these clinics operate with permission from the Ministry of Health and the Consejo Nacional de

²³ Op.cit, p. 28.

²⁴ Op.cit, p. 28. Italic added.

²⁵ Op. cit, p. 29.

²⁶ Article 1 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Adopted and open for signature, ratification and accession by the General Assembly by Resolution 39/46, December 10, 1984. Entered into force on June 26, 1987. URL: <http://www2.ohchr.org/spanish/law/cat.htm>

Sustancias Psicotrópicas y Estupefacientes (CONSEP – National Council for Psychotropic Substances and Narcotics). But these two institutions have failed to provided an adequate response and persist in their indifference²⁷.

The lack of responses on the part of the State before these acts of violence shows the disempowerment experienced by LGBTI individuals and particularly lesbian, transexual and transgender women as well as *travestis*. No administrative and/or legal measure to close down these establishments and prosecute their legal representatives has been taken.

As a conclusion, in spite of having a legal framework that broadens protections against discrimination and includes sanction mechanisms, as well as of the political will to hear complaints, practices of torture against lesbian women in private clinics for rehabilitation of alcohol and drug users continue. The relatives of these lesbian women as well as the professional staff of those clinics are violating constitutionally protected rights and incurring in acts that are criminalized by law. The same can be said of State institutions like the Ministry of Public Health and the National Council of Psychotropic Substances and Narcotics (CONSEP) through omission and negligence.

Lastly, on the issue of reparations, the Special Rapporteur highlights three key aspects: 1) “truth-telling” as a crucial element of reparation; 2) criminal justice as the core of any reparation process that should never be restricted and; 3) Bringing perpetrators to justice as the precondition for another key objective of reparations: ensuring the non-repetition of the violence. He also considers that “the categories of crimes that trigger reparation should explicitly mention gender-specific forms of torture and ill-treatment. Special attention needs to be paid to measures aimed at overcoming the stigmatization of victims of sexual violence and to address the socio-economic impact of violence against women”. And he concludes by affirming that “Victims should also have access to medical services and to support programs that focus on the psychological trauma caused by torture and cruel treatment”.²⁸

3. Cases of discrimination against lesbian women members of the Guipuzcoa neighborhood football league for alleged “immoral” acts”²⁹ (Article 26)

On July 22, 2009, La Floresta District Football League suspended the 15 members of the lesbian women football team Guipuzcoa for one year, preventing the players from continuing participating in the 2009 female indoor football tournament.

In an extraordinary assembly conveyed by the League’s Managing Board, more than 30 representatives of the other teams taking part in the tournament – both female and male – voted to punish the Guipuzcoa women invoking Article 107.c of the League’s internal statutes that reads as follows,

“Any player/s that infringes upon the public morals and good customs that is, engages in immoral acts inside or outside the playing field, will be suspended for one calendar year. The member on duty, referee and designated observers have the duty to record the infraction. Re-incident will be punished with double penalties”. As none of the reports

²⁷ See Varea, Soledad, *Encierro y Tortura a Mujeres Lesbianas*, Taller de Comunicación Mujer, 2007.

²⁸ Para 75.

²⁹ Written by Fundación Causana, Equipo de Fútbol Guipuzcoa, Saltamonte de Venus.

from the members on duty or referees in games played by the Guipuzcoa team mentioned “immoral” or “obscene” acts, the League’s Managing Board stated that even though the claims against the team were not included in any written report, they alluded to a kiss between two women. And it added that such behaviour was not to be allowed in the League.

As allowed by Article 70 of the Physical Culture, Sport and Leisure Law, the team’s president submitted an appeal to the League’s head against the decision made by the extraordinary general assembly against Guipuzcoa. Up to now, the District League’s President affirms not to have been able to conduct the due process for lack of quorum in all the weekly Managing Board sessions since the appeal was submitted. The Sports Ministry claims not to have jurisdiction over District Leagues and thus has not taken action. The sanction imposed by the League violates Article 11.c of the Ecuadorean Political Constitution that prohibits discrimination based on sexual orientation. Moreover, the entire team – including its heterosexual players – was punished for a kiss between two women, that is, the punishment was not restricted to the two individuals that allegedly would have engaged in “immoral” acts. Punishing the entire team constitutes a discriminatory act violating fundamental rights of the Guipuzcoa team members like the right to freedom of movement in public spaces and to be free from discrimination based on sexual orientation (Article 26, ICCPR).

4. Hate crimes and discrimination against lesbians and trans women perpetrated by relatives (Articles 2 and 26).

The following excerpts are taken from the statement submitted by Andrea Dennis Castro Stacio to the Guayas Defensoría del Pueblo (Ombudsman Office) on May 12, 2009:

“For the last eight months I have been in a relationship with my partner Esther Noemí Triviño Suárez. We have been living together for the last three months because one day we went to Montañita and when Esther went back home her mother, Nancy Suárez Caraguay, asked her to say the truth, where had she gone, to tell her everything IN THE NAME OF GOD. Ms. Suárez is a minister in an Evangelical church. Under pressure, Esther confessed that she was a lesbian. The mother made Esther burn her own clothes and to watch them burn, because the Bible says that what is burnt is forgotten. Then her mother took her to the Evangelical church where she was subjected to an exorcism. Her hands were tied, she was whipped and then administered sedatives so she would forget everything and also to render her unable to talk to anybody. Some days later I called Esther on the phone, around 12. She asked me to help, saying she was sedated and locked in a room. The next day we decided to move in together. But yesterday, Monday, May 11 2009, about 7.30 pm Esther told me: ‘Love, my sister has called because she wants to see me’. I replied ‘And what if your parents come and something happens? I don’t know...’. In spite of our fears we decided to go. We took a taxi and went to Saucos 8, CALICUCHIMA school, where Esther was supposed to meet her sister. Her father was hidden behind a car and when we saw him coming we decided to leave but then several policemen arrived. Esther held me. A policeman took me away while her parents forced her into a car. Lieutenant Montenegro, who was leading the group – PAI 47, from Saucos 8 – told me I was going to be arrested because I was charged for kidnapping. I asked him to show my arrest warrant or to prove that he had caught me in flagrante. The policeman had his face covered and did not say anything. I was taken to

PAI 47, Sauces 8, and then taken in police van G428 to the Federal Police. The policeman never showed me the alleged complaint and only said that I had kidnapped my girlfriend. When the police van was getting close to the Federal Police headquarters I saw that my girlfriend Esther was coming in another car behind mine and that her mother was forcing pills in her mouth. I was taken to the Prosecutor Officer on duty. He asked my girlfriend Esther if she was kidnapped. She said no and added that we were a couple, loved each other and lived together. The Prosecutor said there was no problem; as Esther was of legal age, no crime had been committed. Her mother said 'She is my daughter, she does whatever I command'. Esther asked me what to do and I told her to relax, that everything was going to be all right. But a moment later I realized they had taken her away. By midnight I got several messages from Esther's mother saying that she was going to kill me, that she rules Esther's life, that she was going to isolate her, to force her to marry a man and to take the devil out of her daughter with pain and burnings (they are fanatical Evangelicals). I did not reply to the messages but in the last three months since my partner left her family home after confessing to her mother that she is a lesbian, her family subjected her to an exorcism, tied her hands, burnt her clothes, fed her sleeping pills (...).”³⁰

Once again, this testimony shows discrimination against lesbian women by their families. It also portrays violence within families to which they are subjected, including physical and psychological mistreatment.

In spite of the fact that the Prosecutor Officer on duty stated that no crime had been committed, the family isolated their daughter and continued perpetrating violent acts against her. It could be argued that this case implies a “hate crime” committed by the family and the members of the Evangelical Church with which the mother is affiliated, as the acts are motivated by hatred towards homosexuality.

In the case of lesbian women, violence and torture perpetrated by the families are common. Of 5 cases submitted to Famivida from March 2008 to May 2009, two involved lesbian women and 3 trans women. The two cases involving lesbian women were solved thanks to the actions undertaken by Famivida; in one of those cases the Guayaquil Ombudsman Office intervened (Andrea Castro Stacio, May 12, 2009). But in the cases involving trans women the perpetrators were not punished in spite of having complaints and positive recommendations issued by the Ombudsman Office. These cases include discrimination by the Metropolitan Police (Brisa Jaramillo Peña, May 12, 2008), Vicente Rocafuerte University (Briana Gijón Arce) and a polling station.

Even though the kidnapped lesbian women were released, there were no sanctions against perpetrators. These cases constitute violations to Articles 21, 7, 9.1, 9.2, 17.1, 17.2 and 26 of ICCPR.

The cases presented in this document expose the ongoing rights violation against lesbian and trans women. After 7 years of documenting forced hospitalization of lesbian women in “rehabilitation” clinics by their families, of reiterated instances of discrimination and violence against trans women and impunity in the face of these crimes, we urge the Distinguished Committee to demand an answer on the part of the

³⁰ This testimony was provided to Taller Comunicación Mujer by Fundación Amigos por la Vida for this Shadow Report.

Ecuadorean State, taking into account the progress achieved in terms of human rights, and effective enforcement of legal reforms in the country.

Recommendations:

We request the Distinguished Committee:

-To urge the Ecuadorean State to close down the “de-homosexualization” clinics and to regulate the clinics treating alcoholism and drug abuse by applying professional and excellence standards.

- To investigate complaints submitted by lesbian women about torture and ill-treatment in private clinics; to follow up on them and duly punish those found responsible. In consultation with civil society, to develop strategies to prevent and punish this human rights violation.

- To define acts of discrimination against LGBTI individuals in all spheres as crimes and to prescribe relevant sanctions.

- To broaden the definition of “violence against women” to include violence perpetrated against lesbians, including when the perpetrators are relatives of the victim.

- To criminalize violence against women.

- That the new Council for Women and Gender Equality implements public policies that include gender identity and sexual orientation and guarantee the rights of lesbian and trans women.

- To implement the required legal amendments to civil, criminal and procedural law to punish discriminatory acts and to provide redress in case of violations.

- To implement specific measures to protect lesbian and trans women against violence and abuses perpetrated by police, family members, schools, public and private institutions.

- To implement educational programs aimed at society in general and particularly at families, to eradicate violence against lesbian women.

- To develop a national database on violence against lesbian women and to compile qualitative information.

- To design a reparations and “no repetition” program for human rights violations against lesbian and trans women

Questions:

1. Which measures has the Ecuadorean State taken to effectively include lesbian and trans women at all levels?
2. In which way and through which mechanisms are the rights of LGBTI individuals protected against discriminatory acts perpetrated by State and non-State actors?
3. Which concrete steps are being taken to investigate complaints of torture and ill-treatment against lesbian women in “rehabilitation clinics”? Which “no repetition” measures have been implemented to prevent these incidents from occurring again in the future? What reparation measures does the Ecuadorean State provide in these cases?
4. Through which specific measures (political, juridical and legislative) will the Ecuadorean State guarantee and promote that all LGBTI women exercise and enjoy the fundamental rights and freedom protected by Article 3 of the national Constitution in conditions of equality with other citizens?
5. Which temporary and urgent measures has the Ecuadorean State implemented to eradicate the different forms of discrimination against lesbian and transsexual women in the streets and in private, work, study and leisure spaces?
6. Which mechanisms will the Ecuadorean State implement to ensure that Article 11.2 of the new Political Constitution forbidding discrimination based on sexual orientation and gender identity is enforced?
7. Which measures is the Ecuadorean State taking to eliminate bias and stereotypes that allow and condone the different forms of discrimination based on gender identity and sexual orientation?

ANNEX

Complaints of violence and discrimination against lesbian and trans women submitted to FAMIVIDA in 2008 and 2009

N	Reported by	Date	Reported against	Case	Outcome	LT	Remarks
1	Olga Pino Carrera and Xiomara Contreras Ortiz	March 27, 2008	Clara Cabrera, Víctor Pino, Mariana de Jesús and Simón Contreras	Physical aggression by family members opposed to the relationship between Olga Pino Carrera and Xiomara Contreras Ortiz	After the actions undertaken by FAMIVIDA, the couple continues with her relationship	L	
2	Henry Merchán Pluas (Naomi)	September 29, 2008	Polling station staff	Discrimination based on sexual orientation in the polling station during the September 28, 2009 elections	Complaint submitted before the Ombudsman Office on September 30, 2009	T	At the time of writing this report, those responsible for the discriminatory acts had not been punished.
3	Luis Jaramillo Peña (Brisa)		Metropolitan Police personnel	Verbal violence and discrimination	Complaint submitted before the Ombudsman Office on May 12, 2008	T	At the time of writing this report, those responsible for the discriminatory acts had not been punished because the Ombudsman Office has not carried out any action until the present day.
4	Pedro Gijón Arce (Briana)		Secular University Vicente	Discrimination based on sexual orientation	Complaint submitted before the	T	In spite of a favourable recommendation by the Ombudsman Office, the Secular University

			Rocaforte		Ombudsman Office		rejected the recommendation. An appeal was submitted to the Tenth Civil Court but it was rejected. A Constitutional appeal submitted to the First Tribunal was also denied. A complaint against the Ecuadorean state has been submitted to the Interamerican Human Rights Commission
5	Andrea Castro Stacio	May 12, 2009	Nancy Suárez Caraguay	Physical violence and kidnapping by family members opposed to the relationship between Andrea Castro Stacio and Esther Triviño	Complaint submitted before the Ombudsman Office on May 13, 2009	L	Esther Triviño, who had been kidnapped, was rescued thanks to the intervention of the Ombudsman Office.