HUMAN RIGHTS WATCH

RAPE VICTIMS AS CRIMINALS

Illegal Abortion after Rape in Ecuador

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Summary

Ecuadorian law imposes prison terms ranging from one to five years for women and girls who receive abortions. Medical professionals who provide them are subject to harsher penalties. The criminal code provides for only three exceptions to criminal punishment: 1) in the case of a threat to the life of a pregnant woman, when the danger cannot be averted by other means, 2) in the case of a threat to the health of a pregnant woman, when the danger cannot be averted by other means, or 3) when the pregnancy is the result of a rape or statutory rape of a woman who is an "idiot or demented." Ecuador's laws do not allow other women or girls to seek abortion in the case of rape, this despite the fact that a 2011 nationwide government survey estimated that one out of four Ecuadorian women has been a victim of sexual violence.

Although actual prosecutions of women who receive abortions or doctors who perform them are rare, the criminal restrictions on abortions have very real consequences. Notably, abortion—often performed in clandestine, unsafe conditions due to their illegality—is the leading cause of female morbidity (disease, disability, or physical harm), and a significant cause of maternal mortality, in Ecuador. These provisions in the criminal code also treat women and girls with disabilities differently from other women and girls, fostering inequality.

Human Rights Watch conducted research on these issues in Ecuador from May to July 2013 in eight provinces. We interviewed 45 medical professionals who provide post-abortion care to women and girls; 37 women and girls, almost half of whom were Afro-Ecuadoran or indigenous, about their reproductive health and gender-based violence histories; and 22 experts on women's rights, including government officials and NGO representatives. We found that Ecuador's criminalization of abortion after sexual violence (except in the case of so-called "idiot and demented" women) has the following impacts. It:

- Hinders detection and prevention of sexual and gender-based violence;
- Contributes to maternal injury and death;
- Creates delays or obstacles for women and girls needing potentially life-saving care; and
- Perpetuates negative stereotypes and inequality of women and girls with disabilities.

Ecuador's restrictions on legal and safe abortion, even in the case of rape, also impose unnecessary costs on the state and private health sector, and impair the state's response to sexual and other gender-based violence.

In 2012 Ecuador's National Assembly debated reforms to Ecuador's criminal code that included increased penalties for some forms of violence against women and eliminated criminal punishment for abortion in all cases of sexual violence. These criminal code reform debates resumed in 2013, with a vote expected in late August 2013.

President Rafael Correa has on multiple occasions made public statements promising to veto any legislation that "goes beyond" the current code's abortion provisions.[1] In May 2013, President Correa stated that "We truly defend life from the moment of conception, as stated in the Constitution; so, abortion is not allowed, my fellow countrymen."[2] The president's adamant public opposition to any changes to Ecuador's abortion laws threatens the advances in protecting the human rights of women and girls proposed in the draft criminal code reform.

Over the last seven years, Human Rights Watch has published six reports on Latin American and Caribbean countries, and one report on a European country, that looked at the impact of penal codes and policies that restrict the exercise of women's reproductive rights. We have consistently found that legal frameworks that do not exempt from punishment abortions performed when a woman's life or health is endangered or in the case of rape create an environment where women turn to unsafe and clandestine procedures that threaten their health and lives.

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[1] President Correa stated on his Twitter account, "with all due respect for different opinions, I will veto every new article about abortion that wants to go further than what is already established in the criminal code." The original Twitter post can be found at: https://twitter.com/MashiRafael/status/221113741784256512 (accessed July 17, 2013). See also "Debate sobre aborto queda casi definido por advertencia de Rafael", El Universo, July 9, 2012, http://www.eluniverso.com/2012/07/10/1/1355/debate-sobre-aborto-queda-casi-definido-advertencia-rafael.html (accessed July 17, 2013); "Aborto: el tema polémico en debate del Código Penal", La Hora Nacional, July 8, 2012, http://www.lahora.com.ec/index.php/noticias/show/1101358121/-1/Aborto%3A_El_tema_pol%C3%A9mico_en_debate_del_C%C3%B3digo_Penal.html (accessed July 17. 2013).

[2] Translation by Human Rights Watch. Original states: "Nosotros defendemos verdaderamente la vida como dice en la Constitución, desde la concepción; por eso el aborto no está permitido compañeros." El Ciudadano, Enlace Cuidadano Nmr 322, video clip, http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=42136:enlace-ciudadano-nro-322-desde-mocha-tungurahua&catid=43:enlaces-ciudadanos-todos&Itemid=67 (accessed July 17, 2013).

In the interest of improving protection for women and girls in Ecuador against violence and respecting their rights—including their rights to life, physical integrity, health, and non-discrimination—Ecuador's government should remove criminal penalties for abortion. It should immediately eliminate penalties for all women and girls who are the victims of sexual violence and seek abortions, and strike all demeaning language in the current criminal code referring to women and girls with disabilities. Human Rights Watch also urges the government to improve data collection on reproductive and maternal health, including by assessing the costs to the health system of treating complications from unsafe and illegal abortion, and more precisely tracking maternal deaths and injuries resulting from unsafe and illegal abortion.

Ecuador's Laws on Violence against Women and Reproductive Health

Ecuador has a number of laws and policies relevant to violence against women, reproductive and maternal health, and post-rape care. Some are rights-respecting, and others are in major need of reform.

Article 32 of the 2008 Constitution provides significant protection for the rights of women and girls, guaranteeing the right to health and obligating the state to promote and provide sexual and reproductive healthcare. The provision explicitly invokes a set of principles including equity, prevention, and quality, and a focus on women's rights.[3] Victims of domestic and sexual violence also have the constitutional right to receive priority and specialized care in the public and private health sectors.[4] All people have a right to a life without violence and to make free, responsible, and informed decisions about one's health and reproductive life, and decide when and how many children to have.[5]

Ecuador also has laws specifically addressing and criminalizing domestic and sexual violence,[6] as well as policies and protocols to implement those laws, as described below (under the section on "Detection of Sexual Violence or Other forms of Gender-Based Violence").

These protections are undermined by the criminal penalties for termination of pregnancies resulting from rape—for anyone other than a woman who is an "idiot or demented" or who is not covered by other exceptions.[7] If not covered by the exceptions, the criminal code imposes prison sentences for those who receive or perform abortions.[8] Article 443 criminalizes the act of providing abortion services or abortifacients to a woman who has voluntarily sought an abortion, and it imposes

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[3] Constitution of Ecuador, 2008, art. 32.

[4] Ibid., art. 35.

[5] Ibid., arts. 66(3)(b) and (10).

[6] See Law against Domestic Violence and Violence against Women, N. 103, 2007, art. 4; Criminal Code of Ecuador, Cap. II.

[7] Criminal Code of Ecuador, 1971, arts. 441- 447.

[8] In addition to criminalizing abortions that are sought and performed with the consent of the woman, articles 441 and 442 of the Criminal Code of Ecuador, 1971, prohibit abortions provoked without a woman's consent and punish such acts with prison terms from six months to six years.

punishment of prison terms from two to five years.[9] Article 444 of the code punishes women who have abortions with one to five years in prison.[10]

Criminal Code Reform

Ecuador is undertaking a revision of its criminal code. In October 2011, the executive branch introduced a draft criminal code to the Justice and State Structure Committee of the National Assembly. The Committee held 39 hearings on the bill before it was referred to the full Assembly for debate in July 2012. That debate ended without the bill being adopted. A second debate is expected to be held in late August 2013, before a final vote is taken on the criminal code.[11]

An amendment to the draft criminal code presented in the first debate would modify the exception to punishment for abortion in the case of rape by eliminating the provision that limits abortion after rape only when the victim is a so-called "idiot or demented woman." This would have the effect of establishing an exception to penalties for abortion in all instances of rape.[12] This provision was in the final draft of the bill submitted by the Justice Committee, headed by the majority party, for debate in July 2012. In fact, Mauro Andino, a member of Correa's Alianza País party and president of the Justice Committee in the Assembly, explained that the change was not a "decriminalization of abortion," but rather a correction of discriminatory language in the code.[13] It is this version of the bill, however, that President Correa has repeatedly

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[9] Criminal Code of Ecuador, art. 443. Under art. 446, when medical professionals are suspected of an offence under articles 441-443, the prison terms can be increased.

[10] Ibid., art. 444.

[11] A simple majority (more than half of the total members) of the National Assembly is needed to pass a bill. Constitution of Ecuador, 2008, art. 133. Once the bill is approved by the National Assembly, it will be sent to the President to review. The president can either approve it or veto it. If he signs it or does not act for more than 30 days, the bill becomes law, and will be published in the official registry. Ibid, art. 137.

[12] Proyecto de Código Orgánico Integral Penal, June 13, 2012, art. 142. Non-punishable abortion: An abortion practiced by a doctor, with the consent of the woman or of her spouse, partner, close family members or her legal representative when she is not in a position to give consent, will not be punishable in the following cases: 1 if it is done to avoid danger to the life or health of the woman and such danger cannot be prevented by other means; and 2) if the pregnancy is the consequence of rape. (Translation by Human Rights Watch).

[13] Andino stated in July 2012, "What we are doing in this proposed bill is to take out these two words (an idiot or demented woman) that are discriminatory against women. No more."(Translation by Human Rights Watch). El Universo, July 9, 2012, Debate sobre aborto queda casi definido por advertencia de Rafael, available at http://www.eluniverso.com/2012/07/10/1/1355/debate-sobre-aborto-queda-casi-definido-advertencia-rafael.html (accessed July 17, 2013).

promised to veto precisely because it loosens restrictions on abortion.[14] The December 9, 2012 draft of the criminal code bill, prepared after the first debate, maintained this proposed change. However, a new draft is expected to be released prior to the August 2013 debate, and it is unknown whether it will address penalties for abortion after rape.

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[14] President Correa stated on his Twitter account, "con todo respeto a otras opiniones, vetaré cualquier artículo sobre aborto que vaya más allá de lo que ya existe en el Código Penal." The original Twitter post can be found at: https://twitter.com/MashiRafael/status/221113741784256512 (accessed July 17, 2013).

Impact of Ecuador's Abortion Ban on Women and Girls

Human Rights Watch evaluated the impact of Ecuador's existing abortion law on the basis of interviews with individual women and girls, health care professionals, government officials, and other experts (described in the methodology section). We found that Ecuador's criminal ban on abortions, including in the case of rape (except for so-called "idiot or demented" women), (1) hinders medical professionals' ability to detect sexual violence or other forms of gender-based violence, (2) contributes to Ecuador's high maternal mortality and morbidity rates, (3) creates delays or obstacles for women and girls needing potentially life-saving care, and (4) perpetuates negative stereotypes about and discrimination against women and girls living with disabilities, which may risk depriving them of their legal right to make decisions about when and whether to have children.

Detection and Prevention of Sexual Violence and Other Forms of Gender-Based Violence

Ecuador has high rates of violence against women, including sexual violence. A 2011 government-conducted nationwide survey of almost 19,000 households in all of Ecuador's 24 provinces found that 60 percent of Ecuadoran women respondents had experienced some type of gender-based violence in their lifetimes.[15] According to government estimates based on its analysis of data from the survey, one out of every four women in Ecuador has suffered sexual violence in her lifetime.[16] Of women who reported sexual violence in the survey, 53.3 percent said their partner or ex-partner was the perpetrator, while 46.5 percent reported that the perpetrator was someone other than a partner or ex-partner.[17]

[15] The survey was conducted in accordance with Ecuador's 2007 National Plan for the Eradication of Gender-based Violence. It defined gender-based violence as physical, psychological, or sexual violence, as defined in domestic law, and patrimonial violence, as defined by Ecuador's international obligations under the American Convention Belém do Pará. See Ley contra la violencia a la mujer y la familia, 2007, art. 4, literal a, b, y c. INEC, Encuesta Nacional sobre Relaciones Familiares y Violencia de Género contra las Mujeres, 2011.

[16] Ibid., According to the survey, s 25.7 percent of women in Ecuador have suffered sexual violence in their lifetimes.

[17] Ibid.

Although Ecuador is actively taking steps to address gender-based violence,[18] the criminalization of abortion after rape creates obstacles for Ecuador to effectively tackle the high rates of violence against women.

The Ecuadoran Ministry of Public Health has developed detailed norms for the comprehensive treatment and care of pregnant and post-partum women and girls, including the detection of sexual abuse and intra-familial violence.[19] However, when victims of sexual violence seek post-abortion medical care for complications from clandestine, illegal abortions, the current abortion law serves as a disincentive to reporting the violence, because the victims fear that clinic or hospital staff will conclude they illegally induced the abortions themselves. As detailed below, this makes detection of violence against women and girls more difficult, and contributes to impunity for such violence.

The majority of medical professionals interviewed by Human Rights Watch said that they believe fear of criminal penalties distorts what women and girls are willing to tell them, and thus leads them to miss opportunities to refer the women and girls to appropriate services. These professionals said that if women or girls arriving at clinics or hospitals with abortions in process or needing post-abortion care tell doctors that they were raped, medical professionals and state authorities may suspect that the women or girls intentionally and illegally terminated their pregnancy.

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[18] See, for example, Resolución 057-2013, http://www.funcionjudicial.gob.ec/www/pdf/resoluciones/2013cj/057-2013.PDF (accessed July 22, 2013). This resolution creates legal units for victims of domestic and gender-based violence, removing the competency for enforcement of Law 103 from the Comisarias de la mujer y la familia and situating it in the Justice Council. See also "Las Unidades Judiciales de Violencia contra la Mujer empezaron a trabajar," *El Ciudadano*, July 17, 2013, http://www.elciudadano.gob.ec/index.php?option=com_content&view=article&id=43899:el-tramite-judicial-de-los-casos-de-violencia-contra-la-mujer-seran-mas-agiles&catid=40:actualidad&Itemid=63 (accessed July 17, 2013). The objective of this change is to provide a comprehensive attention to victims of gender-based violence. These units will have judicial officers, and will also provide psycho-social support and other services to survivors of violence.

[19] Ministry of Public Health, Componente Normativo Materno, 2008, p. 27, https://aplicaciones.msp.gob.ec/salud/archivosdigitales/documentosDirecciones/dnn/archivos/COMPONENTE%20NORMATIVO%20MATERNO.pdf (accessed July 20, 2013). See also Ministerio de Salud Publica, Norma y protocolos de atención integral a la violencia de género, intrafamiliar y sexual por ciclos de vida, 2011, http://aplicaciones.msp.gob.ec/salud/archivosdigitales/documentosDirecciones/dnn/archivos/NORMAS%20Y%20PROTOCOLOS%20DE%20ATENCI%C3%93N%20INTEGRAL%20A%20LA%20VIOLENCIA%20DE%20G%C3%89NERO.pdf (accessed July 22, 2013); Ministerio de Salud Publica, Guia de atención integral en violencia de género, 2012, http://aplicaciones.msp.gob.ec/salud/archivosdigitales/documentosDirecciones/dnn/archivos/GU%C3%8DA%20DE%20ATENCI%C3%93N%20INTEGRAL%20EN%20VIOLENCIA%20DE%20G%C3%89NERO.pdf (accessed July 22, 2013).

According to a 2013 WHO report on gender-based violence globally, women who have been physically or sexually abused by their partners are more likely to seek an abortion than women who have not experienced partner violence.[20] In its analysis, the WHO emphasizes the importance of health-care providers "identify[ing] opportunities to provide support and link women with other services they need...."[21] But as the WHO notes, and Human Rights Watch interviews in Ecuador confirm, women and girl survivors of violence may seek health care, particularly sexual and reproductive services including post-abortion care, and not disclose information about the violence to providers.[22]

For example, at a health clinic in the city of Santo Domingo in Tsachilas, two medical professionals in separate interviews told Human Rights Watch about a woman they jointly treated twice for reproductive post-abortion care, in April 2013 and in June 2013.[23] The patient did not report that the pregnancies were the product of sexual violence; however, the woman had in previous routine medical visits told the medical professionals that her partner was sometimes violent.[24] The professionals suspected that both abortions were punishable under Ecuadorian law. They did not question the woman further about violence by her partner or ask whether the pregnancies resulted from rape, nor did they refer the case to authorities for fear the woman could be subject to prosecution.[25] The clinic provided the woman with necessary medical post-abortion treatment, but did not refer her to services for victims of sexual violence. The current status of the patient is unknown.

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[20] The study states that victims of sexual or physical violence are two times more likely to seek an abortion than women who have not experienced partner violence, but the impact of the legal status of abortion on this decision is not clear. World Health Organization, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013, p. 2, http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf (accessed July 20, 2013) [hereinafter WHO Report]. A Spanish summary of the report can be found at: http://apps.who.int/iris/bitstream/10665/85243/1/WHO_RHR_HRP_13.06_spa.pdf (accessed July 20, 2013). WHO also identifies other poor health outcomes for women victims of violence, including increased "incident HIV infection, incident sexually transmitted infections (STIs), […], low birth weight, premature birth, growth restriction in utero and/or small for gestational age, alcohol use, depression and suicide, injuries, and death from homicide. WHO Report, p. 21.

[21] Ibid., p. 3.

[22] Ibid., p. 35. Almost all 45 health care professionals who provide post-abortion care interviewed by Human Rights Watch between June and July 2013 confirmed this. For example, Dra. G in Quito told Human Rights Watch that "many of the cases [I treat for post-abortion care] are due to sexual violence, but patients never tell [me] that." Human Rights Watch interview with Dra. G., Quito, June 26, 2013. See also, Human Rights Watch skype interview with Obst. D., Guayaquil, July 9, 2013.

[23] Human Rights Watch interview with Lcda. N.Z., consejera, Santo Domingo, July 5, 2013. See also Human Rights Watch interview with Dra. L. T., gynecologist, Santa Domingo, July 5, 2013.

[24] Ibid.

[25] Ibid.

A counselor at the same clinic recounted a similar case within the last 10 years of a 13-year-old girl. The child came to the clinic needing post-abortion care for three separate pregnancies in the course of one year.[26] The criminal ban on abortion was in effect at the time. Each time, the girl's father accompanied her to the clinic, raising questions in the professional judgment of health professionals as to how much he knew about who was sexually abusing and impregnating his daughter. Under the law the age of consent is 14, meaning at the very least each of these pregnancies resulted from statutory rape. When the counselor tried to speak with the girl about her pregnancies, the abortion, and the potential abuse, she refused to speak. The counselor did not refer the case to authorities for further investigation because medical evidence strongly suggested that the child's abortions were induced in all three cases, opening her up to potential juvenile justice consequences.[27] The clinic did not conduct follow-up in the patient's case, and had no information about the girl's current circumstances.

Almost half of the medical professionals interviewed by Human Rights Watch described cases they had handled of adolescent girls or young women that came to clinics seeking abortions after what the patients described as cases of rape.[28] These girls and young women were not what the medical professionals thought might be considered "idiot or demented" under the law, a phrase nowhere defined in Ecuadorian law, nor, in their view, did the pregnancies threaten the lives or health of the women and girls. The medical professionals had to turn away these women and girls, some as young as 12 years old, because abortion was not legal in their cases. These professionals did encourage the victims of violence to report the rapes to prosecutors, but none were aware of the victims having done so. As one peer counselor told Human Rights Watch, "these girls [and women]

[26] Human Rights Watch interview with Lcda. N.Z., Consejera, Santo Domingo, July 5, 2013. The counselor could not remember the exact date of the case, but approximated it took place in the last 10 years.

[27] Ibid. According to Ecuador's Code for Children and Adolescents, children under the age of 12 years will not be subject to any form of liability. Adolescents over the age of 12 years who commit an infraction of criminal law cannot be held liable in a criminal court of ordinary jurisdiction. Instead, adolescents may be subject to social-educative measures. See Code for Children and Adolescents, 2003, arts. 305-07.

[28] See, for example, Human Rights Watch interview with M.C., Quito, June 3, 2013, referring to a pregnant 13-year-old victim of sexual abuse by step-father; Human Rights Watch interview with Obst. M., Riobamba, July 15, 2013, referring to a pregnant 14-year-old victim of sexual abuse; Human Rights Watch telephone interview with Dra. M.C., Rio Verde, July 4, 2013, referring to a pregnant 12-year-old victim of sexual violence, assaulted after being drugged at a party; Human Rights Watch interview with S., peer counselor, July 10, 2013, referring to a case of a pregnant 14- or 16–year-old victim of sexual violence, assaulted after being drugged at a party, and to a pregnant 22-year-old victim of kidnapping and sexual violence. All of these cases occurred within the last three to four years.

want to end the pregnancy" more than they want justice.[29] Reporting the cases to prosecutors would make securing an illegal abortion more difficult, because authorities would be aware of the pregnancy. They would then know if the pregnancy was terminated, and could prosecute the woman or girl for undergoing an abortion. For example, one Ministry of Health official told Human Rights Watch about a case of an 11-year-old girl whose pregnancy became a source of evidence for prosecutors in the rape case against the suspect.[30] The alleged perpetrator, a close family member, remained free until the child could give birth and a DNA test could be conducted on the baby to establish paternity.[31]

Maternal Mortality and Morbidity

Global studies underscore that the criminalization of abortion does not reduce the number of abortions,[32] but instead drives women and girls to seek clandestine and unsafe abortions that contribute to maternal mortality and morbidity. This is a major concern for Ecuador, which has high rates of maternal mortality and morbidity.

Though lauded by development organizations as a success story in meeting many of its Millennium Development Goals (development goals agreed upon states and institutions in 2000 with targets and benchmarks through 2015),[33] recent government statistics indicate Ecuador is not on track to meet its goal of reducing maternal deaths by 75 percent from 1990 levels—from estimates as high as 150— to 29 maternal deaths per 100,000 live births.[34] Since 2008, the Ministry of Health has undertaken significant efforts to reduce the

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[29] Human Rights Watch interview with S., peer counselor, July 10, 2013, referring to a case of a pregnant 14- or 16-year-old victim of sexual violence, assaulted after being drugged at a party, and to a pregnant 22-year-old victim of kidnapping and sexual violence.

[30] Human Rights Watch interview with Lcda. G, Latacunga, July 16, 2013.

[31] Ibid.

[32] See, G. Sedgh, S. Singh, S. K. Henshaw, and, A. Bankole, "Induced abortion: incidence and trends worldwide from 1995 to 2008," *The Lancet*, February 18, 2012, vol. 379, issue 9816, pp. 625-632. WHO, *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008*, 6th ed. (WHO: Geneva, 2011), p. 6.

[33] For example, the Center for Global Development (CDG) ranked Ecuador first in the world, tied with Egypt and Honduras, in progress toward meeting its Millennium Development Goals in 2011. See Center for Global Development, "MDG Progress Index: Gauging Country-Level Achievements," 2011, http://www.cgdev.org/page/mdg-progress-index-gauging-country-level-achievements (accessed July 22, 2013).

[34] The target maternal mortality ratio for Ecuador by 2015 is 29 maternal deaths per 100,000 live births. See United Nations Development Programme, Second National Report of the Millennium Development Goals- Ecuador, 2007, p. 18, http://www.undp.org.ec/odm/II_INFORME_NACIONAL.pdf (accessed July 22, 2013). National data on maternal mortality was not available in 1990; the 1990 estimate is a modeled ration from the United Nations Statistic Division. In 2011, Ecuador had a ratio of 105 deaths per 100,000 live births. INEC-Estadistícas Vitales: Nacimientos y Defunciones 2011, p. 15, http://www.inec.gob.ec/estadisticas_sociales/nac_def_2011/anuario.pdf (accessed July 22, 2013). In contrast, the ratios used in the Center for Global Development (CGD) report referenced in previous footnote, which concluded Ecuador was on

maternal mortality ratio, including the development of detailed norms and technical guides on maternal health.[35] Such efforts have led to a reduction in maternal deaths caused by post-partum hemorrhaging.[36] Nevertheless, maternal mortality in Ecuador remains stubbornly high.[37] Lack of data and differences in the methodologies used by the government and international agencies in their calculations have led to conflicting estimates of maternal mortality ratios, but none of the government's most recent calculations reported by the National Institute for Statistics and Census put Ecuador on track to meet its goal.

In 2011 the government-reported maternal mortality ratio was 105 maternal deaths for every 100,000 live births—more than three times its target ratio.[38] According to government statistics using the same ratio of maternal deaths to 100,000 live births, the 2011 ratio of maternal death is more than twice as the high as the ratio in 2006, which was 48 maternal deaths per 100,000 live births.[39] In 2011, the maternal mortality ratio was as high as 290

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track to meet its target maternal mortality ratio, were taken from a study which projected maternal morality ratios in 181 countries. The projections were calculated from preexisting estimated maternal morality ratios collected from vital registration data, censuses, surveys, and verbal autopsy studies dated from 1980-2008. See Margaret C Hogan, Kyle J Foreman, Mohsen Naghavi, Stephanie Y, Mengru Wang, Susanna M Makela, Alan D Lopez, Rafael Lozano, and Christopher JL Murray, "Maternal mortality for 181 countries, 1980-2008: a systematic analysis of progress towards Millennium Development Goal 5," *The Lancet*, Volume 375, Issue 9726, Pages 1609 - 1623 (2010). The more recent government statistics from Ecuador show an increase in the maternal morality ratios, rather than the projected decrease reported by CGD, based on the Lancet study. See discussion below.

[35] See, for example, Ley de Maternidad Gratuita y Atención a la Infancia, 1994, http://www.gparlamentario.org/spip/IMG/pdf/Ley_de_Maternidad_y_proteccion_a_la_infancia.pdf (accessed July 22, 2013); Ministerio de Salud Pública, Componente Normativo Materno, 2008; Ministerio de Salud Pública, Guía técnica para la atención del parto culturalmente adecuado, 2008, http://aecid.lac.unfpa.org/webdav/site/AECID/shared/files/Gu%C3%ADa%20T%C3%A9cnica%20para%20la%20Atenci%C3%B3n%20del%20Parto%20Culturalmente%20Adecuado.pdf (accessed July 22, 2013); Ministerio de Salud Pública, Normas y Protocolo de planificación familiar, 2010, http://aplicaciones.msp.gob.ec/salud/archivosdigitales/documentosDirecciones/dnn/archivos/NORMA%20Y%20PROTOCOLO%20DE%20PLANIFICACION%20FAMILIAR.pdf (accessed July 22, 2013); Ministerio de Salud Pública, Reglamento para regular el acceso de métodos anticonceptivos, 2013, http://www.lexis.com.ec/webtools/biblioteca_silec/documentos/noticias/2013-04-22Acuerdo%20Ministerial%202490.pdf (accessed July 22, 2013).

[36] Human Rights Watch interview with former Ministry of Health official, Quito, June 6, 2013.

[37] The Pan-American Health Organization has claimed that the maternal mortality ratio in Ecuador is "one of the hardest indicators to assess because of the diversity of sources and inaccuracies in selecting both the numerator and denominator." Pan-American Health Organization, Health in the Americas, Ecuador Chapter, 2012 Edition, p. 291, http://www.paho.org/saludenlasamericas/index.php?option=com_docman&task=doc_view&gid=128&Itemid= (accessed July 20, 2013). None of the government's most recent calculations reported by the National Institute for Statistics and Census put Ecuador on track to meet its goal.

[38] INEC-Estadistícas Vitales: Nacimientos y Defunciones 2011, p. 15, http://www.inec.gob.ec/estadisticas_sociales/nac_def_2011/anuario.pdf (accessed July 22, 2013).

[39] Ibid.

for every 100,000 live births in the province of Sucumbios,[40] a higher ratio than in Bangladesh, Pakistan, and some countries in sub-Saharan Africa.[41]

According to government data, complications from abortion—whether a legal abortion or one procured illegally—killed at least 10 women or girls in Ecuador in 2011.[42] The number of women or girls that died from unsafe abortions in fact is likely to be higher, because few doctors report the actual cause of death or morbidity, instead reporting cases of abortion as sepsis, hemorrhaging, and other pregnancy and post-partum complications.[43] Therefore, the actual number of deaths related to abortion in 2011 likely includes the 10 known cases plus some of the 93 deaths listed as due to post-partum hemorrhaging, sepsis, and unspecified causes.[44]

One former Ministry of Health official told Human Rights Watch that he believes the ministry has reached the maximum that it is able to do within the law to prevent maternal injury and deaths by producing detailed norms, protocols, and practical guides.[45] In the opinion of this former government official, a legal and political change through criminal code reform broadening exceptions to penalties for abortion is needed to protect the health and lives of Ecuador's women and girls from maternal mortality and morbidity.[46] Allowing abortion in the case of sexual violence is an important legal change that could reduce the number of illegal and unsafe abortions.

According to government data, abortion (no breakdown was provided differentiating between legally and illegally procured abortions) was the leading cause of morbidity in women in Ecuador's hospitals in 2011, with over 23,000 cases of disease, disability, or

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[40] Ibid., p. 24. This number was calculated by Human Rights Watch by converting the rate provided by the government, which used an estimate of live births in the region for 2011 as a denominator, to the more standard calculation of deaths per 100,000 live births.

[41] This is based on comparison of 2010 data, not 2011 data. World Bank, Maternal mortality ratio (modeled estimate, per 100,000 live births), 2010, http://data.worldbank.org/indicator/SH.STA.MMRT?order=wbapi_data_value_2010+wbapi_data_value+wbapi_data_value-first&sort=desc (accessed July 22, 2013).

[42] INEC-Estadistícas Vitales: Nacimientos y Defunciones 2011, p. 195.

[43] See, for example, Human Rights Watch interview with Ministry of Public Health official, Quito, June 25, 2013.

[44] There are 41 post-partum hemorrhaging deaths; 20 deaths from sepsis; and 32 non-specific deaths, including deaths related to labor or complications with labor, hemorrhage not listed anywhere else, death by other direct obstetric causes, and unclassified obstetric death. INEC-Estadistícas Vitales: Nacimientos y Defunciones 2011, p. 29.

[45] Human Rights Watch interview with former Ministry of Health official, Quito, July 9, 2013.

[46] Ibid.

physical harm.[47] This classification is widely understood by medical professionals to be one of the categories under which health facilities report treatment of women who have complications arising from unsafe, induced abortion (as opposed to spontaneous miscarriages). Several doctors and former officials said they believe the true number of abortion-related injuries is much higher, and expressed frustration that doctors and hospitals are vague and inaccurate when reporting such morbidity because they fear criminal penalties against their patients.[48] As one doctor told Human Rights Watch, "decriminalizing abortion [in the case of rape] would mean we could accurately report on the reproductive health of women. There would be more transparency about what is going on and [ability to] help."[49]

The impact on health-care costs for post-abortion care for clandestine abortions in Ecuador is unknown, but may in fact be very high given the reported numbers of hospitalizations related to abortion. According to a general estimate, the cost in Latin American countries in 2006 was as high as $109 dollars per patient seeking post-abortion care, or an inflation-adjusted cost of $126 per patient in 2013.[50]

Of great concern is the number of cases of abortion-related morbidity affecting girls and adolescents. Ecuador estimates that in 2011, there were 258 cases of abortion-related morbidity in girls ages 10 to 14, and over 4,000 cases in girls and women ages 15 to 19.[51] The WHO has warned that pregnant adolescents are more likely than adults to have unsafe abortions, and that such abortions contribute substantially to lasting health problems and maternal deaths.[52] Government statistics show a 74 percent increase in pregnancies among 10- to 14-year-olds in the last decade, and childbirth is the second leading cause of

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[47] INEC, Anuario de Estadisticas Hospitalarias Egresos, 2011, http://www.inec.gob.ec/estadisticas_sociales/Cam_Egre_Hos_2011/anuario.pdf (accessed July 22, 2013).

[48] See, for example, Human Rights Watch interview with Gynecologist previously associated with Ministry of Health and the country's largest maternity hospital, Quito, June 10, 2013; and Human Rights Watch interview with Ministry of Health official, June 25, 2013.

[49] Human Rights Watch interview with Dr. A.M., Santo Domingo, July 4, 2013.

[50] Michael Vlassoff, et al, "Estimates of Health Care System Costs of Unsafe Abortion in Africa and Latin America," vol. 35, no. 3, September 2009, p.114-121.

[51] INEC, Anuario de Estadísticas Hospitalarias: Camas y Egresos, 2011, http://www.inec.gob.ec/estadisticas_sociales/Cam_Egre_Hos_2011/anuario.pdf (accessed July 22, 2013).

[52] World Health Organization. Adolescent pregnancy, Geneva, World Health Organization, 2012. 2012. http://www.who.int/mediacentre/factsheets/fs364/en/index.html, (accessed July 27, 2013).

morbidity in girls ages 10 to 14 in Ecuador.[53] Women's rights organizations in Ecuador note that there is a high likelihood that many of these girls became pregnant due to sexual abuse.[54] According to the age of consent, any pregnancy in a girl under the age of 14 would be a product of statutory rape.[55]

The limited availability of *misoprostol*, a multi-use drug that can be used to perform generally safe, medical abortions, has reduced the number of abortions performed with instruments in the region. Nevertheless, medical professionals in Ecuador confirmed that "even with *misoprostol* available, very grave cases still exist—uterine perforations, infections, sepsis, bleeding—from [surgical abortions]. [And] [w]ith *misoprostol*, women still come in bleeding."[56]

All of the medical professionals with whom Human Rights Watch spoke had treated or provided post-abortion care to women and girls who had complications arising from illegal abortions, while a few had patients who had died from an illegal abortion.[57] One doctor in Quito told Human Rights Watch about a case dating from approximately 2007 of a 24-year-old woman who arrived at the main maternity hospital in Quito too late to be saved.[58] She had a uterine perforation and internal bleeding from an unsafe abortion, and blood filled her abdomen. Though the doctor and colleagues took emergency measures immediately, the woman died in this doctor's arms. He does not have any idea about the events that caused her death. When abortion is illegal, he said, "women live through abortion alone. All the information about the abortion died with her," he told Human Rights Watch. Doctors at the hospital did not know why she had the abortion, or if she had been victim of rape. They also did not know where she received the abortion, information which could have helped them dissuade other women from using the same provider, or if it was self-induced.

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[53] Dirección de Normatización del Sistema Nacional de Salud, Normas y Procedimientos para la atención integral de salud a adolescentes, annex 1, p. 70, 2009.

[54] For example, Movimeinto Nacional de Mujeres y Feministas del Ecuador, Propuestas de Las Mujeres al Proyecto de Codigo Organico Integral Penal, September 2012, p. 12; see also Human Rights Watch interview with women's rights specialist, Quito, June 13, 2013.

[55] Criminal Code of Ecuador, art. 512.1.

[56] Human Rights Watch interview with Dr. C.A., Quito, June 24, 2013.

[57] See, for example, Human Rights Watch interview with Dra. A., July 2, 2013, Esmeraldas; Human Rights Watch interview with Dr. W., Quito, July 9, 2013.

[58] Ibid.

A counselor working at a women's health clinic in the town of Latacunga, Cotopaxi province, told Human Rights Watch of an incident in which a woman was left with a permanent disability after an attempted abortion.[59] The woman first sought an abortion at a private health clinic in Latacunga. The woman explained that her husband was abusive, and would not allow her to practice family planning. The counselor said she explained to the woman that it was illegal to perform an abortion, but in the future they could work with her to find a family planning method for her situation. The woman did not disclose further information, including whether the pregnancy was the result of intimate partner violence. The woman eventually found a clandestine clinic in the nearby town of Ambato to perform the abortion.

The clandestine abortion did not end the woman's suffering, as the counselor discovered in a subsequent conversation with her. Instead, the abuse continued and, when the woman became pregnant again several months later, she climbed the tallest tree she could find and threw herself from the highest branch she could reach—hoping to induce an abortion. Rushed to the hospital, she did not disclose she was pregnant. The fall did not induce an abortion. She received x-rays to evaluate injuries as a result of her fall, exposing the fetus to high levels of radiation. Under these circumstances, she was able to secure a safe abortion.[60] The woman, however, broke her spine in the fall and is confined to a wheelchair for the rest of her life.[61]

Medical professionals who spoke to Human Rights Watch also lamented the cases they did not treat. Many of them recounted stories of adolescent girls or young women who sought abortions after what their patients described as rape.[62] The professionals said that after they informed their patients that abortion is not legal even after rape, the patients left and did not return—leaving them without any knowledge of the fate of the girls and young women.

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[59] Human Rights Watch interview with counselor, Latacunga, July 13, 2013. The interviewee could not recall the exact dates of this case, but estimated the first abortion occurred about eight years ago.

[60] There is no exception provided for in the Ecuador Criminal Code for abortions on the basis of fetal malformation or poor health. There are, however, regulations within the health code that allow doctors to perform abortions in the case of fetal malformations upon the consent of two doctors. While this leads many people to believe the procedures are exempt under the criminal code, there is no such explicit exemption.

[61] Human Rights Watch interview with counselor, Latacunga, July 13, 2013.

[62] See, for example, Human Rights Watch interview with M.C., Quito, June 3, 2013, referring to a pregnant 13-year-old victim of sexual abuse by step-father; Human Rights Watch interview with Obst. M., Riobamba, July 15, 2013, referring to a pregnant 14-year-old victim of sexual abuse; Human Rights Watch telephonic interview with Dra. M.C., Rio Verde, July 4, 2013, referring to a pregnant 12-year-old victim of sexual violence, assaulted after being drugged at a party; Human Rights Watch interview with S., peer counselor, July 10, 2013, referring to a case of a pregnant 14- or 16–year-old victim of sexual violence, assaulted after being drugged at a party, and to a pregnant 22-year-old victim of kidnapping and sexual violence. All of these cases occurred within the last three to four years.

Obstacles to Obtaining Potentially Life-Saving Care

The illegality of abortion, including after rape, leads some women and girls who experience abortion-related complications to delay seeking important medical care. Their reluctance to speak about the abortion can also compromise the quality of treatment they receive.[63]

All of the medical professionals interviewed by Human Rights Watch said that when women and girls who have had illegal abortions do seek care, most often they do not tell healthcare professionals how they went about trying to induce an abortion. Medical professionals told us that women and girls come in bleeding, sometimes with infections, yet offer little information. They said this forces them to guess what happened to their patients, and undermines their ability to provide timely, quality care.[64] As one doctor described, "women don't tell you what happened; there is fear and it is illegal. [But] women still die from induced abortion."[65] Lack of information about what occurred makes treatment difficult. A certified midwife told Human Rights Watch, "[t]hey say 'I fell' or 'I hit something.' Rarely will they tell the truth."[66] Another doctor said, "[p]atients don't tell us the truth when they come in with abortions in progress. In their clinical history, they don't say they took anything."[67]

Some women and girls, even if they are not afraid to disclose that they intentionally induced the abortion, do not have complete information about how the abortion was performed in order to inform the doctor's treatment. One doctor explained that the abortions she sees can be induced with anything from unknown injections, herbs, malaria pills, anti-parasite drugs, and other methods. "Women don't even know what they are most of the time," the doctor said.[68] A counselor Human Rights Watch interviewed described the fear this instilled in patients she saw: "[The women come in with] fever, pain, infections and bleeding; they don't know what they took, or what was injected, or what will happen to them."[69]

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[63] See, for example, Human Rights Watch interview with Dr. W., Quito, July 9, 2013.

[64] See, for example, Human Rights Watch interview with Dra. A., Esmeraldas, July 2, 2013; Human Rights Watch interview with Dr. W., Quito, July 9, 2013; Human Rights Watch interview with Dra. S, Quinindé, July 1, 2013; Human Rights Watch interview with Lcda. A.M., Santo Domingo, July 4, 2013; Human Rights Watch interview with Obst. C., Cajabamba, July 14, 2013.

[65] Human Rights Watch interview with Dr. A.M., Santo Domingo, July 4, 2013.

[66] Human Rights Watch interview with Obst. M., Riobamba, July 15, 2013.

[67] Human Rights Watch interview with Dra. M.M., Quito, June 24, 2013.

[68] Human Rights Watch interview with Dra. S, Quinindé, July 1, 2013.

[69] Human Rights Watch interview with Lcda. A.M., Santo Domingo, July 4, 2013.

Negative Stereotypes and Discrimination against Women and Girls Living with Disabilities

The current criminal code article related to abortion perpetuates negative stereotypes about women and girls living with disabilities, implying that they are more likely to be "unfit" mothers, and thus eligible for abortion after sexual violence even when other women and girls are not. The application of this provision is rare, and none of the medical professionals interviewed by Human Rights Watch said they had been involved in providing abortions for so-called "idiot or demented" women or girls. Independent of how often it is applied, though, the provision uses outmoded and offensive terms and, as described below, may in some cases contribute to human rights violations.

The terms "idiota" and "demente" do not have modern medical significance and are not defined in the law.[70] These terms are inconsistent with Ecuador's disability-rights respecting Constitution, its disability laws, and its obligations under the Convention on the Rights of Persons with Disabilities (CRPD), which calls for equal treatment under the law.[71] Moreover, medical professionals told Human Rights Watch that the vagueness of these terms makes it difficult for them to assess the legality of abortion when women and girls with disabilities become pregnant as a result of sexual violence.[72]

To operate within the law in assessing whether rape victims are eligible for abortions, doctors must determine whether a woman or girl in question falls within the anachronistic terms "idiota" or "demente"—conditions without modern medical diagnostics. Some doctors with whom Human Rights Watch spoke literally threw up their hands in disgust at the idea of having to ask a woman, who has admitted to being pregnant from an act of sexual violence, if she is an "idiota" or "demente."

In addition, this challenge may lead some doctors to choose to rely on a woman or girl's legal guardian to make decisions about her health, making it more likely they will undergo

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[70] In 2012, the UN Committee on Economic, Social and Cultural Rights urged Ecuador to expunge these anachronistic terms from it criminal code. UN Committee on Economic, Social and Cultural Rights, "Observaciones finales del Comité sobre el tercer informe de Ecuador, aprobada por el Comité de Derechos Económicos, Sociales y Culturales en su cuadragésimo noveno período de sesiones," General Comment No.29, Abortion, U.N. Doc. E/C.12/ECU/CO/3 (2012), http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.ECU.CO.3_sp.pdf (accessed July 22, 2013).

[71] Convention on the Rights of Persons with Disabilities, art. 12.

[72] See, for example, Human Rights Watch interview with Dr. E., former Ministry of Health official, Quito, June 6, 2013; Human Rights Watch interview with Dra. M., Quito, June 20, 2013; and Human Rights Watch interview with Dr. A, Quito, June 24, 2013.

abortions without their consent. This would be contrary to Article 23 of the CRPD and the call from the Committee on the Rights of Persons with Disabilities for the "abolition of surgery and treatment without the full and informed consent of the patient."[73]

Uncertainty around the definition of "idiot" and "demented" may also create delays in processing requests for legal abortion. A Ministry of Health official in Cotopaxi told Human Rights Watch that she was aware of at least two cases in the last few years of children under the age of 14 (one was 11) with disabilities who filed for legal abortions. Although the official was not certain of the reason for the delays, she believed they were due to confusion in determining whether the girls met the definition. Neither of the requests was processed in time and both children carried the pregnancies to term, she said.[74]

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[73] CRPD, art. 23(b); and *UN Committee on the Rights of Persons with Disabilities* (CRPD Committee), Concluding Observations: Tunisia, para. 29, U.N. Doc. CRPD/C/TUN/CO/1 (2011).

[74] Human Rights Watch interview with Lcda. G, Latacunga, July 16, 2013.

International Legal Obligations

Authoritative interpretations of international law recognize that obtaining a safe and legal abortion is crucial to women's effective enjoyment and exercise of their human rights, in particular rights to equality, life, health, physical integrity, the right to decide on the number and spacing of children, and to be free from cruel, inhuman, and degrading treatment.[75] Human Rights Watch has previously published detailed legal analysis of the relationship between international human rights law and abortion, equally relevant for Ecuador.[76]

Since the mid-1990s, the UN treaty bodies that monitor the implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Convention of the Rights of the Child have produced a significant body of jurisprudence regarding abortion in over 122 concluding observations concerning at least 93 countries.[77] These treaty bodies have also issued general comments addressing reproductive rights and abortion.[78]

In their commentaries, these bodies have frequently expressed concern about the relationship between restrictive abortion laws, clandestine abortions, and threats to women's lives, health, and well-being. They have repeatedly recommended the review or amendment of punitive and restrictive abortion laws and have urged states parties on multiple occasions to legalize abortion, in particular when a pregnancy is life or health-threatening or the result of rape.[79]

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[75] For a full analysis of international human rights law and abortion, see Human Rights Watch, "International Human Rights Law and Abortion in Latin America," *A Human Rights Watch Briefing Paper*, July 2005 , http://hrw.org/backgrounder/wrd/wrd0106/wrd0106.pdf (accessed August 5, 2013); Human Rights Watch, *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina*, vol. 17, no. 1(B), June 2005, http://www.hrw.org/node/11694/section/7 (accessed August 5, 2013). Human Rights Watch, *A State of Isolation: Access to Abortion for Women in Ireland* (New York: 2010).

[76] Ibid.

[77] These numbers are from an analysis of the jurisprudence by Human Rights Watch staff, copy on file at Human Rights Watch.

[78] See, for example, the recent general comment of the Committee on the Rights of the Child, General Comment No. 15, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), April 2013, UN Doc CRC/C/GC/15, para. 54.

[79] See, for example, concluding observations of the Committee on Economic, Social and Cultural Rights on Chile, 26/11/2004, U.N. Doc. E/C.12/1/Add.105, paras. 26, 53; Malta, 14/12/2004, U.N. Doc. E/C.12/1/Add.101, paras. 23, 41; and Nepal, U.N. Doc. E/C.12/1/Add.66, paras. 33, 55 concluding observations of the Human Rights Committee on Poland, CCPR/CO/82/POL, December 2, 2004, para. 8; Monaco, CCPR/C/MCO/CO/2, December 12, 2008 para.10; and Nicaragua, CCPR/C/NIC/CO/3,

International human rights law and relevant jurisprudence support the conclusion that decisions about abortion belong to a pregnant woman alone, without interference by the state or third parties. Any restrictions on abortion that unreasonably interfere with a woman's exercise of her full range of human rights should be rejected. UN bodies and conferences have recognized that firmly established human rights are jeopardized and prejudiced by restrictive and punitive abortion laws and practices. Likewise, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has determined that criminal laws penalizing and restricting induced abortion are "impermissible barriers to the realization of women's right to health."[80]

UN treaty bodies have expressed particular concern with legislation that restricts access to legal and safe abortion after rape.

Moreover, international human rights law protects the right to noninterference with one's privacy and family,[81] as well as the right of women to decide on the number and spacing of their children without discrimination.[82] These rights can only be fully implemented where women have the right to make decisions about when or if to carry a pregnancy to term without interference from the state. In the case of a pregnancy resulting from rape, abortion is a way for a woman or girl to exercise this right.

The CEDAW Committee has often recommended that states parties review legislation prohibiting abortion to meet their obligation to eliminate discrimination against women,[83] as set out in detail in its General Recommendation No. 24 on women and health:

December 12, 2008, para. 13; concluding comments of the Committee on the Elimination of Discrimination against Women on Nicaragua, CEDAW/C/NIC/CO/6, February 2, 2007, paras.. 17-18; Colombia, CEDAW/C/COL/CO/6, February 2, 2007, paras.. 22-23; and Peru, CEDAW/C/PER/CO/6, February 2, 2007, para., 25; and conclusions and recommendations of the Committee against Torture on Peru, CAT/C/PER/CO/4, July 25, 2006, para. 23; and Nicaragua, CAT/C/NIC/CO/1, June 10, 2009, para. 16.

[80] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, August 3, 20122, A/66/254.

[81] ICCPR, article 17.

[82] CEDAW, article 16(1)(e). This article reads: "States Parties shall . . . ensure, on a basis of equality of men and women . . . (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

[83] See, e.g., CEDAW Committee, "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/54/38/Rev.1, Part II*, July 9, 1999, para. 229 (noting with regard to Chile: "The Committee recommends that the Government consider review of the laws relating to abortion with a view to their amendment, in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including the mental health, of the woman"); and CEDAW Committee "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/53/38/Rev.1,* February, 1998, para. 349 (noting with regard to the Dominican Republic: "The Committee invites the Government to review legislation in the area of women's reproductive and sexual health, in particular with regard to abortion, in order to give

"When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."[84]

Treaty bodies have made specific recommendations to Ecuador in relation to its restrictive abortion laws. The Human Rights Committee has expressed its concern about the relationship in Ecuador between very high numbers of suicides of young girls and women and the prohibition of abortion:

> [T]he Committee regrets the State party's 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. Such situations are, from both the legal and practical standpoints, incompatible with articles 3, 6 and 7 of the Covenant, and with article 24 when female minors are involved.[85]

The Human Rights Committee recommended that Ecuador "adopt all necessary legislative and other measures" so that women and girls with unwanted pregnancies can access adequate health and educational facilities.[86]

In November 2012, the Committee on Economic, Social and Cultural Rights (CESCR), noting concerns about legal restrictions on abortion in Ecuador, recommended that the government:

> …amend its Criminal Code so as to establish that abortion is not an offence if the pregnancy is the result of rape, regardless of whether or not the woman in question has a disability, or if the existence of congenital anomalies has been established.[87]

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full compliance to articles 10 [education] and 12 [health] of the Convention."). See also CEDAW Committee, "Report of the Committee on the Elimination of Discrimination against Women," *U.N. Doc. A/54/38/Rev.1, Part I*, July 9, 1999, para. 393.

[84] CEDAW Committee, "General Recommendation 24, Women and Health (Article 12)," *U.N. Doc. No. A/54/38/Rev.1* (1999), para. 31(c): "31. States parties should also in particular: (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."

[85] Human Rights Committee, *Concluding Observations: Ecuador*, para. 3, U.N. Doc. CCPR/C/79/Add.92 (1998).

[86] Ibid.

[87] In 2012, the Committee on Economic, Social and Cultural Rights urged Ecuador to expunge these anachronistic terms from it criminal code. UN Committee on Economic, Social and Cultural Rights, "Observaciones finales del Comité sobre el tercer informe de Ecuador, aprobada por el Comité de Derechos Económicos, Sociales y Culturales en su cuadragésimo noveno período de sesiones," General Comment No.29, Abortion, U.N. Doc. E/C.12/ECU/CO/3 (2012), http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.ECU.CO.3_sp.pdf (accessed July 22, 2013).

Recommendations

To President Rafael Correa

- Publicly support women and girls' right to unhindered access to abortion where allowed by law, and press changes to Ecuador's criminal code provisions on abortion that make them consistent with the Constitution and Ecuador's international human rights obligations by making abortion legal in all cases of rape.

To the National Assembly

- Update the criminal code to make it consistent with the Constitution and Ecuador's international human rights obligations by allowing all girls and women access to legal, voluntary, and safe abortions in all cases of rape.
- Remove the criminal code reference to "idiot or demented" women in the provision on abortion after rape, because the terms are antiquated and offensive and because ambiguities around their definitions can lead to involuntary medical treatment based on disability status. Women and girls living with disabilities should have access to abortion in cases of sexual violence in accordance with their wishes.

To the Ministry of Public Health

- Ensure that women and girls have access to high quality abortion services in all cases of legal abortion, and that post-abortion care is available for all abortion-related complications.
- Adopt and implement clear protocols for legal abortions, including abortions allowed under the current criminal code and abortions allowed after enactment of the new criminal code, including in all cases of rape.
- Ensure that all health care and services provided to persons with disabilities are based on the free and informed consent of the individual concerned.
- Collect and publish data showing the societal and economic costs of maternal mortality and morbidity related to illegal abortion in Ecuador, or assist other government ministries to do so.
- Should the criminal code be amended to allow abortion after rape, the Ministry of Health should coordinate with other competent ministries to educate the

population about the change in law and women's and girls' right to health services after rape, including abortion services if they want them. Particular attention should be paid to youth and at-risk populations.

To Donors and United Nations Agencies

- Advocate for Ecuador to remove criminal penalties for abortion, including in all cases of rape, and to ensure that women and girls have access to safe and legal abortions.
- Help fund the collection and publication of data showing the societal and economic costs of maternal mortality and morbidity related to illegal abortion in Ecuador.

Methodology

This report is based on research conducted by Human Rights Watch in the provinces of Pichincha, Tsachilas, Esmeraldas, Cotopaxi, Chimborazo, and Imbabura. Telephone or Skype interviews were also conducted with experts from the provinces of Guayas and Azuay. All interviews were conducted in May, June, and July 2013.

A Human Rights Watch researcher carried out more than 45 interviews with medical professionals that provide post-abortion care to women and girls; 37 interviews with women and girls about their reproductive health and personal histories regarding violence against women; and 22 interviews with experts on women's rights, including government officials and NGO representatives.

All women and girls interviewed provided oral informed consent to participate. Individuals were assured that they could end the interview at any time or decline to answer any questions, without any negative consequences. All participants were informed of the purpose of the interview, its voluntary nature, and the ways information would be collected and used. Care was taken with victims of gender-based violence to minimize the risk that recounting their experiences could further traumatize them. No interviewee received compensation for providing information. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, counseling, health, or social services. Due to the illegality of abortion and the highly sensitive nature of the topic within Ecuadoran society, interviewees are identified by their initials and profession.

In this report, the word "child" refers to anyone under the age of 18, with "girl" referring to a female child.

Rape Victims as Criminals

Illegal Abortion after Rape in Ecuador

Ecuador's criminal code prohibits abortion with few exceptions, imposing prison terms ranging from one to five years for women and girls who receive abortions. Medical professionals who provide them are subject to harsher penalties. Even abortion after rape is punishable under the criminal code, except in the case of so-called "idiot or demented" women. These penalties drive some women and girls to have illegal and unsafe abortions, thwarting Ecuador's efforts to reduce maternal mortality and injury.

Rape Victims as Criminals: Illegal Abortion after Rape in Ecuador documents how Ecuador's restrictive abortion laws impede health care and post-rape services, and can put the health and even the lives of rape victims in danger. The report is based on interviews with 37 women and girls who had sought reproductive health care, including care after gender-based violence, 22 officials and women's rights experts, and 45 medical professionals working in public and private health facilities.

As part of its imminent work on reform of the criminal code, Ecuador's National Assembly should eliminate penalties for voluntary abortions and ensure that all women and girls who have been victims of rape can get comprehensive health services, including abortion if requested. President Rafael Correa should endorse any legislation proposed by the Assembly that would expand the rights of women and girls in Ecuador to access and exercise their reproductive rights and protect their health and well-being.

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