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تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

الزيارة إلى إكوادور

تقرير المقرر الخاص المعني بحق كل إنسان في التمتع بأعلى مستوى ممكن من الصحة البدنية والعقلية* **

موجز

أجرى المقرر الخاص المعني بحق كل إنسان في التمتع بأعلى مستوى ممكن من الصحة البدنية والعقلية زيارة إلى إكوادور في الفترة من 17 إلى 26 أيلول/سبتمبر 2019. وقد أحرزت إكوادور تقدماً في مجال إعمال الحق في الصحة، لا سيما عن طريق الاستثمار في الهياكل الأساسية الصحية. وحتى تتمكن الحكومة من إعمال الحق في الصحة إعمالاً كاملاً، يشجعها المقرر الخاص على التصدي لعدد من التحديات الخطيرة ولانتشار التمييز والعنف ضد الفئات السكانية الرئيسية، ولا سيما النساء والفتيات، والأطفال والمراهقين، والمثليات والمثليين ومزدوجي الميل الجنسي ومغايري الهوية الجنسانية، والأشخاص المصابين بفيروس نقص المناعة البشرية/الإيدز، والأشخاص المتنقلين. وتؤثر هذه التحديات بشكل غير متناسب على السكان الأصليين والأشخاص المنحدرين من أصل أفريقي وأولئك الذين يعيشون في المناطق الريفية، وجميعهم لديهم مؤشرات صحية أسوأ من بقية السكان. ويتناول المقرر الخاص أيضاً الصحة العقلية والتحديات التي تؤثر على النظام الصحي الوطني ويقدم عدداً من التوصيات.

* يُعمَّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدّم بها وبالإسبانية فقط.

** اتفق على نشر هذا التقرير بعد تاريخ النشر الاعتيادي لظروف خارجة عن إرادة الجهة التي قدمته.

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Annex

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Ecuador

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I. Introduction

1. The Special Rapporteur visited Ecuador from 17 to 26 September 2019 at the invitation of the Government. The purpose of the mission was to ascertain, in a spirit of dialogue and cooperation, how the country has endeavoured to implement the right to physical and mental health.

2. During his visit, the Special Rapporteur met with high-ranking government officials from the Ministries of Foreign Affairs, Social Affairs and Inclusion, Education and Public Health. He also met with high-ranking officials from the Social Security Institute, the Police Social Security Institute, and the Army Social Security Institute. He held meetings with members of the Constitutional Court, the Judiciary Council and the National Assembly, as well as representatives of the offices of the Mayors of Quito, Guayaquil and Otavalo. He also met with representatives of the Ombudsman's Office, civil society and international organizations, as well as academics and health professionals.

3. The Special Rapporteur visited several health facilities in Quito, Lago Agrio, Otavalo and Guayaquil. Those facilities included general hospitals and primary health-care centres, a psychiatric hospital and a mental health outpatient centre, a maternity hospital, an intercultural centre on health and a border centre where migrants and refugees are provided with services.

4. The Special Rapporteur is grateful to the Government of Ecuador for its invitation and full cooperation during his visit. He appreciates the outstanding support provided by the United Nations country team, the National Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and all those who contributed their time and experience.

II. Right to health in Ecuador

A. Background

5. With a population of over 16 million, Ecuador is a multicultural and multi-ethnic country divided into four regions – coastal, mountain, Amazon and the islands. According to the most recent census, the population includes the following groups: mestizo (71.9 per cent), montubio (7.4 per cent), Afro-Ecuadorian (7.2 per cent), indigenous (7.0 per cent), white (6.1 per cent), and other (0.4 per cent).[1] The country has vast natural resources and is marked by deep inequalities particularly affecting those living in rural areas, indigenous peoples and persons of African descent.

6. Ecuador is prone to natural disasters, such as volcanic eruptions, earthquakes and tsunamis. In 2015, a state of emergency was declared for the eruption of Cotopaxi and Tungurahua, and in April 2016 a coastal earthquake caused significant damage to the social sectors, including education and health.

7. In the recent past, there have been important investments in the health infrastructure. Health expenditure doubled between 2010 and 2015 to 9.2 per cent of gross domestic product (GDP).[2] There were 851 new units established in the public health services network between 2010 and 2016 and an increase in the number of health professionals, leading to a 10.6 per cent increase in care between 2011 and 2014.[3] In 2014, there were 20.4 physicians and 10.1 nurses per 10,000 of the population. However, the ratio of specialists remains low and their distribution unequal (urban, 29.0 and rural, 5.4 per 10,000 inhabitants).[4]

8. Ecuador experienced a period of growth and poverty reduction thanks to the rise in oil prices between 2007 and 2014. However, structural problems, such as an inefficient

[1] See www.ecuadorencifras.gob.ec/resultados/.

[2] See Pan American Health Organization and World Health Organization, "Country report: Ecuador", available at www.paho.org/salud-en-las-americas-2017/?page_id=117.

[3] Ibid.

[4] Ibid.

public sector, large macroeconomic imbalances, a lack of stabilization mechanisms and limited private investment, have remained.[5] In 2014, there was a financial slowdown, caused primarily by a sharp decline in the price of oil, challenges in accessing new sources of funding and the appreciation of the US dollar.[6] Between 2015 and 2018, GDP growth averaged 0.6 per cent and poverty and the Gini coefficient (a measure of income inequality) have remained relatively stable at around 22.7 per cent and 0.47, respectively, since 2014.[7] With regard to employment, the latest official data from December 2019 puts the economically active population at 65.3 per cent, while the unemployment rate is 3.8 per cent and the percentage of adequate employment was 38.8 per cent of the economically active population.[8]

9. To finance growing fiscal imbalances, public debt has doubled in recent years and international reserves have plunged to low levels.[9] The Special Rapporteur was informed that the Government had announced in early 2019 a process of rationalizing public investment and optimizing current expenditures that foresaw a decrease in public spending. In March 2019, Ecuador reached an agreement with the International Monetary Fund (IMF), which would provide support for the country's economic policies over the following three years.[10] The Special Rapporteur was informed that, in accordance with the structural adjustments demanded by the IMF, health workers were being dismissed from the administrative and substantive areas of care, in line with Ministerial Agreement No. 195, without a clear figure to date as to the number and category of health personnel affected. Although it is not clear exactly how the budget cuts announced in 2019 will affect the health sector, the Special Rapporteur is concerned that much-needed medical and technical expertise in the health-care system risks being suppressed. That could create an additional strain on a system that is already overburdened and with limited human and financial resources. The dismissal of health-care workers at the central and operational levels risks having an impact on the institutional capacity to ensure access and health coverage for the overall population.

10. The Special Rapporteur followed developments that took place in the country after his visit, including the protests triggered by the austerity measures announced by the Government. Austerity measures are of special concern as they often directly affect the minimum core content of economic, social and cultural rights, and impact directly or indirectly and disproportionately on those individuals already discriminated against or living in the most vulnerable situations. In compliance with article 2.2 of the International Covenant on Economic, Social and Cultural Rights, ratified by Ecuador in March 1969, and the provision on progressive realization of those rights, States should not adopt impermissible retrogressive measures, unless strictly justifiable. While the Special Rapporteur is mindful of the challenges that may arise in times of financial constraint, he reminds the Government that austerity measures should not be to the detriment of achievements made and the fulfilment of international human rights obligations. He strongly recommends ensuring that the necessary financial and human resources are in place to secure adequate access to health services, reaching at least 4 per cent of GDP, as provided under the Constitution (transitory provision 22).

11. The Special Rapporteur wishes to endorse the recommendations of the Committee on Economic, Social and Cultural Rights, adopted in November 2019, in which the Committee recommended that Ecuador "review the economic measures taken and under consideration and ensure transparency and dialogue in order to guarantee the enjoyment of economic, social and cultural rights". In particular ... the Committee recommended that Ecuador: "Not reduce social spending in the areas of health and education from the levels achieved in 2018" and "Maintain budget lines related to social investment in respect of the most disadvantaged groups and facilitate the effective and sustainable implementation of public policies" (E/C.12/ECU/CO/4, para. 6).

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[5] See www.worldbank.org/en/country/ecuador/overview#1.

[6] See www.paho.org/salud-en-las-americas-2017/?p=4272.

[7] Ibid.

[8] See www.ecuadorencifras.gob.ec/empleo-diciembre-2019/.

[9] See International Monetary Fund (IMF), "Ecuador's new economic plan explained", 21 March 2019.

[10] See IMF, "IMF Executive Board approves US$4.2 billion extended fund facility for Ecuador", press release 11 March 2019.

B. Normative and institutional framework

12. Ecuador is a founding member of the United Nations and has played a leading role in the international forums on the right to health. It has ratified the core international human rights treaties that determine the country's important commitments in different areas, including the right to health, sexual and reproductive rights, and the rights of children and adolescents, among others. Ecuador issued a standing invitation to the special procedures mandate holders in 2003 and in the last two years has received five country visits.

13. The country was reviewed in the context of the universal periodic review in 2008, 2012 and 2017. During the most recent review in May 2017, Ecuador accepted a number of recommendations, inter alia those relating to efforts to promote health-care facilities, particularly in rural areas, with a focus on tackling malnutrition; to continue to develop, implement, monitor and strengthen policies to reduce rates of obesity and the incidence of non-communicable diseases; and to continue to strengthen measures to deal with teenage pregnancies by promoting access to reproductive health services for all, including sexual and reproductive health education, as well as counselling services and health care adapted to young people (see A/HRC/36/4).

14. The 2008 Constitution enshrines the concept of "good living" (*buen vivir* or *sumak kawsay*) in its preamble, "We ... hereby decide to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living." The "good living" concept has been the basis of several national development plans, in which the Government has sought to integrate its international commitments, including on the right to health, into national development planning. The national development plans from 2007, 2009 and 2013 were articulated in line with the Millennium Development Goals. The current national development plan for the period 2017–2020 (the National Plan for Good Living) is articulated in line with the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, and includes a policy for the health sector and several health objectives that Ecuador has committed to achieving.[11]

15. The Constitution recognizes health as a human right for both Ecuadorians and foreigners without discrimination. It provides the legal framework for the health system, guaranteeing the right to health and primary health care, along with an integrated public network of free health-care services. Several of its provisions are relevant to the right to health and its underlying determinants. In particular, article 32 provides that: "Health is a right guaranteed by the State and whose fulfilment is linked to the exercise of other rights, among which the right to water, food, education, sports, work, social security, healthy environments and others that support the good way of living." The same article states that the State guarantees the right to health "by means of economic, social, cultural, educational, and environmental policies; and the permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral health care, sexual health, and reproductive health".

16. The Constitution further provides that public health-care services shall be universal and free at all levels and include the necessary diagnostic procedures, treatment, medication and rehabilitation (art. 362). It also provides that the State shall be responsible for the universalization of health care, permanently improve quality and expand coverage (art. 363).

17. The Special Rapporteur notes that article 11 (3) of the Constitution establishes that the rights and guarantees set forth in the Constitution and in international instruments are to be directly and immediately enforceable by and before any public servant, whether administrative or judicial, ex officio or at the request of a party. In addition, article 426 of the Constitution establishes that judges, administrative authorities and public servants are to directly apply the provisions of the Constitution and those of international human rights instruments when they are more favourable than those set forth in the Constitution, even when they are not expressly invoked by the parties.

18. The right to health is considered justiciable in Ecuador. According to information provided by the Constitutional Court during the Special Rapporteur's visit, of the 3,847

[11] See http://repositorio.dpe.gob.ec/bitstream/39000/2184/1/DEOI-DPE-005-2018.pdf.

actions that have obtained a sentence from the Constitutional Court, in only 19 cases have the actions alleged that the right to health had been violated (i.e. 0.53 per cent). Of these, the right to health was addressed in 42 judgments of the Court and violations were found in 5 judgments. In its jurisprudence, the Constitutional Court has pointed out the obligation of the State to act preventively to allow an adequate development of the physical and psychological capacities of all persons, as well as providing medical care, treating diseases and supplying medicines.

19. The Special Rapporteur notes that despite the constitutional safeguards, the implementation of free and universal health-care services has been insufficient to guarantee the right to health for everyone. In practice, according to information provided during the visit, out-of-pocket spending remains over 40 per cent.[12] The Special Rapporteur was concerned to receive widespread reports and testimonies regarding serious problems in accessing medicines, including for children. In some cases, access has required legal complaints to be filed. That has affected persons diagnosed with cancer and rare diseases and those who need expensive treatment and palliative care. The Special Rapporteur recommends that Ecuador ensure transparency and equal access to expensive medicines.

20. The Ministry of Public Health is responsible for formulating the national health policy and regulating, enforcing and controlling all health-related activities in the country, as well as for the operation of entities in the health sector. As provided by article 361 of the Constitution, the State is to exercise leadership of the system through the national health authorities, be responsible for national health policymaking and set standards for regulating and monitoring all health-related activities, as well as the functioning of the entities in the sector.

21. In the Special Rapporteur's view, the constitutional provisions are remarkably progressive and provide a unique opportunity to develop a legal and policy framework in line with a human rights-based approach. However, the current legal framework, consisting of some 40 related health laws (including the Law on Health) is in need of reform. It includes different laws which, in some cases, have provisions that date back to before the current Constitution and, according to the information provided, are obsolete and inapplicable.

22. The proposal for the new health code (*código orgánico de salud*), which has been discussed by the National Assembly over the last eight years, aims to update existing norms and organizational structures. During the visit, the Special Rapporteur met with members of the Health Commission of the National Assembly and was informed that a new health code would finally be adopted shortly thereafter. Under the current proposal, awaiting its second debate in the National Assembly, a new legal framework would be introduced, in line with the rights-based approach in the Constitution.

23. The Special Rapporteur was informed about some shortcomings of the draft health code, including the inclusion of conscientious objection in a broad manner, which may be misused to limit the provision of contraception or abortion goods and services. The Special Rapporteur notes that any provision permitting conscientious objection should: (a) be joined with clear guarantees of an adequate number and appropriate geographic dispersal of willing public and private providers; (b) limit its invocation to individuals and prohibit institutional refusals of care; (c) establish an effective referral system for access to a medical professional who is willing and able to provide the health goods and services that have been refused; (d) impose clear limits on the legality of refusals, such as ensuring that they are not permitted in urgent or emergency situations; and (e) implement adequate monitoring, oversight and enforcement mechanisms to oversee compliance in practice.

24. The Special Rapporteur was informed about the absence of detailed provisions on orphan and rare diseases in the draft health code, which are currently included in article 212 together with catastrophic diseases. The Special Rapporteur recommends the inclusion of a specific section for special and specialized care of rare diseases in the new health code.

25. Owing to the lack of an updated comprehensive legal framework, the Special Rapporteur was informed during the visit that the Ministry of Health has exercised its steering role, particularly in the area of regulation for protection against health risks, under

[12] For an explanation of out-of-pocket payments, see www.who.int/health_financing/topics/financial-protection/out-of-pocket-payments/en/.

ministerial agreements. Continuing to exercise its functions without a legal framework provided by the Constitution could eventually jeopardize the progress the country has made, for example in the area of food labelling. The Special Rapporteur stresses that an updated and comprehensive human rights-compliant legal framework is essential for the formulation of corresponding health regulations and policies. Without clear public health policies and regulations, the national health-care system risks being influenced by powerful interest groups that often lobby for investment that may not be in the interests of the public.

C. National health-care system

26. The national health-care system is a mixed system, consisting of both the public and private sectors. The public sector comprises the Ministry of Health, the health services of some municipalities and the entities of the social security system aimed at the labour market, which consist of (a) the Ecuadorian Social Security Institute, which includes peasant social security; (b) the Social Security Institute of the Armed Forces under the Ministry of National Defence; and (c) the Social Security Institute of the National Police under the Ministry of the Interior. The private system consists of health insurance companies and prepaid medicine providers. The health system is characterized by some degree of fragmentation, to the extent that it is composed of different institutions, each with its own management and financing, which may make coordination challenging. The Special Rapporteur is concerned that this fragmentation is not efficient and recommends it be addressed in an effective manner, following a human rights-based approach, with a view to ensuring better coordination and integration of all the existing elements.

27. The Constitution describes the principles and characteristics of the national health system (in particular, articles 358, 359, 360 and 361). According to these provisions, the national health system shall be guided by the general principles of social inclusion and equity, and by those of bioethics, sufficiency and interculturalism, with a gender and generational focus.

28. The comprehensive health-care model (*modelo de atención integral de salud*) is defined in accordance with the principles of primary health care. The model sets forth a set of strategies, norms, procedures, tools and resources that guarantee the provision of health services, with a focus on community, family, pluriculturalism and gender by taking health services beyond health centres into homes and the community. The model is oriented to the provision of health services in all its dimensions: biological, mental, spiritual, psychological and social.[13]

29. While the Ministry of Health has developed the definition of the model and the tools for its implementation, the Special Rapporteur regrets that putting it into practice remains a challenge and that no national implementation strategy has been designed. Although there have been heterogeneous improvements, these have depended on capacity at the local and provincial levels. In the proposed health code, the model is recognized as one that should be implemented in the national health system. The Special Rapporteur recommends the adoption of a national health policy that promotes the implementation of the model and a strategy that includes the human and financial resources required for its effective implementation.

30. During his visit, the Special Rapporteur was informed about the inter-institutional agreement of July 2019, which provides for the reorganization of the State presence in the territory and the organic restructuring of the central public administration.[14] Although its scope and state of progress are not yet known, the Special Rapporteur received information that such restructuring might affect the implementation of the comprehensive health-care model and decrease the capacity of the Ministry of Health to exercise its function of steering and governance of the national health system. The Special Rapporteur recommends that any territorial planning should be promoted in line with the requirements of the health sector and the comprehensive health-care model and should enable the Ministry to exercise its public health functions.

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[13] See http://instituciones.msp.gob.ec/somossalud/images/documentos/guia/Manual_MAIS-MSP12.12.12.pdf.

[14] Agreement No. SENPLADES-MEF-MDT-001-2019.

31. The Minister of Health assured the Special Rapporteur during the visit that there was an increased focus on primary care services, as well as health promotion and preventive health care. The Special Rapporteur strongly supports this and recommends that investment in primary health care is substantially increased as a high priority.

32. Regarding intercultural health, article 32 of the Constitution provides that health services shall be governed by, inter alia, the principle of interculturalism. However, as observed by the Special Rapporteur on the rights of indigenous peoples, following her visit to Ecuador in 2018, there is a lack of coordination and integration between ancestral systems and the national health system, as well as persistent inequality in the enjoyment of the right to health for indigenous peoples. The Special Rapporteur on the rights of indigenous peoples also highlighted the lack of culturally appropriate health services of quality in many indigenous communities and the persistence of racism and discrimination, which obstructs access to public services (see A/HRC/42/37/Add.1).

33. The Special Rapporteur received similar first-hand information about indigenous midwives not being paid, feeling inferior to those working in the national health system and not being fully recognized as part of the national health system. On the other hand, he was also pleased to visit the recently established intercultural centre on health and the so-called Establishment Friends of Mother and Child in Otavalo. In particular, the Establishment Friends allows women to give birth in a public hospital but with an indigenous midwife and following traditional practices, including "vertical births". The Special Rapporteur encourages the National Directorate for Intercultural Health of the Ministry of Public Health to strengthen its programmes in the area of ancestral medicine and supports enhancing the participation of indigenous midwives in the national health system, so that traditional systems of medicine can be fully recognized. Notwithstanding those initiatives, the Special Rapporteur emphasizes that planned births outside hospitals may also be an affordable and accessible option. Women must be able to make informed choices as to their delivery preferences. They should not be deprived of assistance should they choose to give birth at home and health-care personnel and indigenous midwives should be allowed to provide such assistance.

III. Mental health

34. The Special Rapporteur has always highlighted the importance of a human rights-based national mental health policy guided by modern public health principles and staffed with a sufficient number of qualified mental health specialists. During the visit, the Special Rapporteur was concerned to find that despite recent efforts, the mental health-care system in Ecuador remains underdeveloped owing to the insufficient integration of mental health services at the community level and into general health care. Initial investments in modern mental health policies only began in 2014 with the adoption of the national strategic plan on mental health (2015–2017) and its corresponding mental health-care model with a family, community and intercultural focus. Those initiatives seek to strengthen community participation in the development and planning of mental health-care services and provide for, inter alia, the opening of community mental health centres and the deinstitutionalization of persons with mental health conditions so that they may receive dignified and integrated care in society. However, the Special Rapporteur regrets that very few advances have been made in that regard. One commendable example is the establishment of the San Lazaro mental health centre in Quito, which he visited. The centre provides outpatient community services that are not reliant on coercion; such initiatives should be replicated throughout the country.

35. The mental health system has not yet transitioned from a model that is based around hospitals to a community care model. The Special Rapporteur observed that the process of deinstitutionalization had been obstructed by a number of factors, including the lack of community centres without the possibility of family and social reintegration; a weak system of outpatient care at the primary and secondary levels that made it difficult to follow up on patients discharged from hospitals; and insufficient resources for community-based services. For example, during his visit to the Julio Endara psychiatric hospital in Quito, he was pleased to see the investment that had been made in providing more dignified care for persons with chronic conditions. However, he was concerned that those persons had remained in the facility for decades, as community-based services were lacking throughout

the country. Such a third-level health-care facility should not provide long-term institutional care; that reflects a systemic underdevelopment of the mental health system and calls for the urgent development of community-based care, as provided by the Convention on the Rights of Persons with Disabilities, ratified by Ecuador in April 2008.[15] The Special Rapporteur urges Ecuador to shift its approach from public investment in mental health services to community-based care, providing quality services and empowering users. That can be achieved only when modern public health principles and a human rights-based approach are applied when developing and implementing mental health policies and services.

36. While the national strategic plan on mental health and the mental health-care model constitute significant progress by conceiving mental health care from a community approach, the Special Rapporteur regrets that to date, no evaluation has been made of its implementation. He recommends conducting such an evaluation to take stock of lessons learned and to plan accordingly for future initiatives.

37. Mental health has not received the same importance as physical health in terms of financial and human resources. The number of mental health professionals remains very low (fewer than 1,000 psychologists and psychiatrists, according to information provided during the visit). The Special Rapporteur is concerned that the numbers could be even lower following the austerity measures adopted by the Government and recommends increasing the number of mental health professionals in the mental health-care system and in the health-care system in general. As indicated to the Special Rapporteur during the visit, the budget for mental health-care services only amounted to 1.3 per cent of the general budget for public health in 2019. More alarmingly, the consolidated State budget for 2020 does not allocate specific funding for mental health-care services.[16] Such budget cuts may have serious consequences, not only for the mental health system but also for the well-being of the population in general. The Special Rapporteur urges Ecuador to consider mental health as a global health priority and recommends prioritizing funding for mental health in the national budget as a matter of urgency.

38. Despite these serious shortcomings, the Special Rapporteur believes there is still an opportunity to develop a rights-based mental health system in Ecuador. For this to occur, real political commitment and will is needed to encourage, guide and engage all stakeholders in a meaningful public debate on how to ensure the full realization of the right to mental health. Addressing the determinants of mental health – inequality, poverty, violence and discrimination – is an important element of any mental health policy. In that way, institutionalization, social exclusion and stigmatization are prevented. Mental health-care services should be integrated into primary and specialized general health care and institutionalization and over-medicalization should be avoided. The network of outpatient community-based services needs to be strengthened throughout the country so that persons with mental health conditions, including persons with psychosocial or intellectual disabilities can receive care and support where they live. At the non-specialized level, professionals (teachers, social workers, general practitioners, paediatricians and others) need to be trained to manage mental health conditions and only in complicated cases to refer them to specialists such as psychiatrists and psychologists. Public investment should be directed not to supporting psychiatric hospitals or institutions for long-term care, which should be progressively closed, but to developing a network of community-based mental health services throughout the country. Those services should be mainstreamed within the general health-care and social care services. Children with developmental disabilities and mental health conditions should be provided with inclusive education and mental health services.

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[15] The Committee on the Rights of Persons with Disabilities emphasizes full respect for legal capacity, the absolute prohibition of involuntary detention based on impairment and the elimination of forced treatment (A/HRC/34/32, paras. 22–33). See also Convention on the Rights of Persons with Disabilities, arts. 12 and 14; and Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law and guidelines on article 14 of the Convention.

[16] See www.finanzas.gob.ec/wp-content/uploads/2019/10/20-Plan_Anual_de_Inversiones_Entidad_CUP_Egresos.pdf.

39. The Special Rapporteur was also concerned to learn about the high suicide rates, particularly among adolescents. While he was informed by the Ministry of Health about efforts to develop an intersectoral plan to prevent suicides, he recalls that the prevention of suicide should be addressed as an issue of societal cohesion and public health. The protection and promotion of all human rights are important to suicide prevention, as are the care and support for persons who are affected by depression and other mental health conditions.

IV. Key populations and groups

40. The Special Rapporteur observed that certain key populations and specific groups faced serious challenges in realizing their right to health, including women and girls, children and adolescents, lesbian, gay, bisexual and transgender persons, persons with disabilities, people living with HIV/AIDS and people on the move. Such challenges disproportionately affect indigenous populations and persons of African descent, who have worse health indicators than the rest of the population. The situation is aggravated by the limited number of services and human resources available for the rural and impoverished populations.

A. Women and girls

Maternal mortality and gender-based violence

41. The maternal mortality rate was reported to be 41.1 per 100,000 births.[17] There were 221 maternal deaths, of which over half concerned adolescents and youth and 3 concerned girls under the age of 14. Inequalities persist among poorer women, adolescents and youth, and in rural areas. The Special Rapporteur was concerned to see the increase in late maternal deaths, which rose from 21 cases in 2016 to 84 cases in 2018.[18] He recommends that the monitoring and evaluation system for maternal deaths, including late maternal deaths, be strengthened and efforts to implement maternal mortality reduction plans increased.

42. Sexual abuse and other forms of gender-based violence are widespread. According to official data, 1 in 10 women has been sexually abused as a child or teenager and 6 out of 10 women have experienced gender-based violence.[19] Accordingly, every day, 7 girls below the age of 14 and 158 girls between 15 and 19 years of age become mothers. It has been reported that 8 out of 10 adolescent pregnancies result from sexual violence.[20] Three per cent of women with disabilities reported having their first child before the age of 14.[21] According to information provided by the Ministry of Education during the visit, there were over 8,700 cases of sexual violence in schools between 2014 and 2019, of which 37 per cent were committed by persons within the education system.

43. Such alarming data, as well as the information collected, allow the Special Rapporteur to conclude that violence against women and girls is endemic, leads to high numbers of forced pregnancies and motherhoods and affects communities in the most marginalized situations. Sexual violence, paired with minimal access to sexual and reproductive rights, means that women and girls are frequently forced to carry unwanted pregnancies to term.

44. Particularly worrying is the high number of teenage pregnancies, which, according to information received by the Special Rapporteur, are often the result of sexual violence. The high rate of early pregnancies, which is one of the highest in the region, reflects a serious protection gap in children's rights, including their right to physical and mental health and integrity, their right to be free from all forms of violence and their right to receive adequate information and health education. In the view of the Special Rapporteur,

[17] See www.salud.gob.ec/wp-content/uploads/2019/09/Gaceta-del-2018-de-MM.pdf.
[18] Ibid.
[19] See www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/sitio_violencia/presentacion.pdf.
[20] See https://ecuador.unfpa.org/sites/default/files/pub-pdf/Politica_Interseccional%20%282%29.pdf.
[21] See www.ecuadorencifras.gob.ec/estadisticas/.

there is a failure to protect girls and young women who have been victims of sexual abuse and are then forced to continue high-risk pregnancies and high-risk motherhoods with long-lasting impacts on their physical and mental health. In that regard, the Special Rapporteur recommends enhancing efforts to address early pregnancies as a matter of priority, including through the implementation of the intersectoral policy for the prevention of child and adolescent pregnancy (2018–2025).

45. The Special Rapporteur recalls that violence against women and girls is a human rights protection issue as well as a public health concern, since it is directly associated with adverse consequences for the physical and mental health of the women and girls who are affected. In that regard, he welcomes the recently adopted 2018 Comprehensive Statutory Law for the Prevention and Eradication of Violence against Women, which establishes a legal framework for the prevention and elimination of violence against women and girls. During the visit, the Special Rapporteur was informed that this legal framework is not yet fully operational. He therefore recommends its full implementation, with the necessary budget and the participation of all the bodies and sectors involved, including the administration of justice, the Public Prosecutor's Office, and the Ministry of Health.

46. The Special Rapporteur shares the concerns of the Special Rapporteur on violence against women, its causes and consequences, about information received that suggests that the budget for 2020 will reduce by 100 per cent the allocation for the implementation of the intersectoral policy for the prevention of pregnancy of girls and adolescents and by 84 per cent for implementation of the Comprehensive Statutory Law for the Prevention and Eradication of Violence against Women.[22] He also agrees that, given the high levels of violence against women and teenage pregnancies in the country, should this decision be adopted, it would contribute to the violation of the human rights of women and girls.

Sexual and reproductive health rights

47. The Special Rapporteur takes note of the national plan on sexual and reproductive health for the period 2017–2021, but remains concerned at the existing obstacles to the right to sexual and reproductive health, including the high rate of teenage pregnancies mentioned earlier; at the barriers to accessing abortion services; at insufficient access to modern methods of contraception and family planning; and at insufficient comprehensive sexual and reproductive education and the negative sociocultural patterns of adolescent sexuality and gender-based violence.

Access to abortion services

48. The Special Rapporteur recalls that the right to sexual and reproductive health is a fundamental part of the right to health, which includes access to safe, legal abortion. Access to safe, legal abortion guarantees the dignity and autonomy of girls and women as elements of their sexual and reproductive health. If not provided, this has severe negative impacts on the health of girls and women. Those negative impacts are made worse in cases of unwanted pregnancies and forced motherhood as a result of sexual violence.

49. The Special Rapporteur deeply regrets that during his visit, the National Assembly voted not to decriminalize abortion in cases of rape. Such a decision disproportionately exposes girls and women to potential time in jail and to extreme mental suffering that may lead to suicide. The decision of the National Assembly goes against all modern public health principles and casts doubt on whether there is the political will to improve the health of women and girls. The Special Rapporteur also regrets that the competent authorities did not veto the decision.

50. The evidence shows that criminalizing abortion only leads to clandestine and unsafe practices and exposes women and girls to additional dangers, violence and stigma that negatively affect the full enjoyment of their right to health. This is a human rights protection issue and a public health concern that must be addressed without delay through changes in legislation, policies and practices based on scientific evidence and a human rights-based approach. Existing legislation should be reviewed to decriminalize abortion

[22] See preliminary observations and recommendation by the Special Rapporteur on violence against women on her visit to Ecuador from 29 November to 9 December 2019, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25405&LangID=E.

and guarantee the therapeutic interruption of pregnancy through access to services, at the least when the pregnancy is the result of rape or incest, in cases of fetal impairment and when the life and health of the mother are in danger. In that respect, the Special Rapporteur reminds Ecuador of the numerous recommendations made by United Nations human rights mechanisms, including the Committee on the Elimination of Discrimination against Women, which recommended that Ecuador "decriminalize abortion in cases of rape, incest and severe foetal impairment, in line with the Committee's general recommendation No. 24 on women and health" (CEDAW/C/ECU/CO/8-9, para. 33 (c)).

51. The Special Rapporteur was informed that the criminalization of women for abortion in the country occurs primarily in cases of obstetric emergencies arising from an abortion or home birth, which are treated by the judicial system as abortion by consent, murder or wrongful death. Women who need health care after a miscarriage or who seek an abortion are allegedly reported to the authorities by the health-care personnel. In line with the recommendations of the Committee on the Elimination of Discrimination against Women, the Special Rapporteur calls on Ecuador to respect the obligation of confidentiality in the health-care system, adopt evidence-based protocols, develop human rights training for health-care providers on their obligations to provide legal abortions, particularly on the grounds of threats to life or physical and mental health, and to respect the privacy and confidentiality of women who use sexual and reproductive health services (ibid., para. 33 (b)).

Access to modern methods of contraception and family planning

52. The fertility rate is highest in women with no schooling (4.4), followed by women in the poorest economic quintile (4.1), indigenous women (4.4) and Afro-Ecuadorian women (4.0). Indigenous and Afro-Ecuadorian women also had the highest rates of non-use of contraceptives (30.7 per cent and 34.0 per cent, respectively).[23] Women in rural areas have more children, especially in the Amazon region. The unmet demand for modern contraception methods in Ecuador is 7 per cent on average. It is even higher in some population groups, in particular for indigenous women and Afro-Ecuadorian women. There seems to be a lack of family planning, as two thirds of pregnancies are unwanted.[24] The Special Rapporteur was informed that as a result of the budget cuts in the health sector, there had been no consolidated international purchases of modern contraception methods for 2019, which could lead to shortages in the short or medium term, with serious consequences such as an increase in unwanted pregnancies, abortions, obstetric complications and maternal death. He recommends that the authorities ensure the provision of quality family planning and counselling, as well as the availability of modern contraceptive methods, including through increased budgetary allocations.

Access to sexual education

53. The Special Rapporteur was informed that Ecuador faces significant shortcomings in the provision of comprehensive sexual and reproductive information and education for children and adolescents in schools, in families and in other settings. According to information received, the Ministry of Education does not have a comprehensive sexual education programme aligned with international standards. In 2019, the Ministry of Education developed comprehensive sexual education curriculum proposals, including methodologies and educational materials, within the framework of the national policy of pregnancy prevention for girls and adolescents for the period 2018–2025. However, those proposals have not yet been implemented, although it is foreseen that they will be in 2020. The Special Rapporteur supports these efforts and recommends that age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health should be a compulsory element of the school curriculum.

[23] See www.salud.gob.ec/encuesta-nacional-de-salud-y-nutricion-ensanut/.

[24] See https://ecuador.unfpa.org/sites/default/files/pub-pdf/PLAN%20NACIONAL%20DE%20SS%20Y%20SR%202017-2021.pdf and www.salud.gob.ec/encuesta-nacional-de-salud-y-nutricion-ensanut/.

B. Children and adolescents

54. Malnutrition remains a very important national health challenge. The level of malnutrition is the second highest in Latin America and remains high among the indigenous and Afro-Ecuadorian populations, as well as in rural areas. According to information received, acute diarrhoeic infections caused by rotavirus and pneumonia have a great impact on malnutrition. Pneumonia is one of the three main causes of death in children under five years old. According to official data, 24 per cent of children under five suffered from chronic malnutrition in 2016 compared to 25.8 per cent in 2006.[25] As of 2014, among indigenous peoples that indicator was approximately 49 per cent.[26] In 2014, 15 per cent of households with children or adolescents did not have enough food and 26 per cent had problems paying for food. That indicator was 33 per cent for Afro-Ecuadorian households.[27] As of 2012, 63.9 per cent of children aged between 6 and 11 months suffered from anaemia, 22 per cent of adolescents aged between 12 and 19 were overweight and 7 per cent were obese.[28] The vaccination coverage is below the desired level of 95 per cent.

55. In line with the recommendations of the Committee on Economic, Social and Cultural Rights, the Special Rapporteur recommends that Ecuador should recognize the situation of malnutrition as a national priority and adopt a comprehensive policy to address it, including sufficient human and financial resources. Such financial resources should also guarantee the supply of nutrients and minerals to all children and adolescents, especially in schools (E/C.12/ECU/CO/4, para. 44 (f)).

56. The Special Rapporteur stresses that it is of the utmost importance not only to invest in preventing malnutrition, but also to guarantee the healthy holistic development of children and adolescents, with due importance given to their social, cultural and emotional development, as provided in article 6 of the Convention on the Rights of the Child, which was ratified by Ecuador in March 1990. That approach requires the concerted efforts of the health, education and social inclusion sectors, together with the network of community-based services that protect children from violence and other harmful factors in families, schools, communities and other settings.

57. The Special Rapporteur echoes the concerns of the Committee on the Rights of the Child, noting the prevalence of several forms of violence, including physical, sexual and psychological violence, against children of all ages at home, in school and in public spaces that is inflicted by parents, teachers, partners, caregivers and/or classmates, (CRC/C/ECU/CO/5-6, para. 24 (a)). He emphasizes that according to new research, the prevention of violence and other forms of adverse childhood experiences is crucial to promote the physical and mental health of individuals throughout their life span. For that reason, the Special Rapporteur recommends increasing investment in services that prevent all forms of violence against children and supporting parents so that they have the skills to bring up children in non-violent ways.

C. Lesbian, gay, bisexual and transgender persons

58. Lesbian, gay, bisexual and transgender persons face significant barriers in the full enjoyment of their right to physical and mental health. The barriers are connected to deeply entrenched discriminatory attitudes in society at large, which generate stigma, violence and abuse, including in the health system.

59. Lesbian, gay, bisexual and transgender persons have reported discrimination by health-care personnel and a lack of integral health services tailored to their needs. The of Special Rapporteur received testimonies and evidence that they face forms violence on the basis of their sexual orientation and gender identity and expression. That is particularly relevant for transgender people who require hormonal treatment, which is reportedly not available through the public health services. Information gathered during his visit allowed the Special Rapporteur to conclude that many such persons do not use the health services

[25] See www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/915B4499240864A405257B82007270FF/$FILE/Mapa_de_Desnutricion_2009.pdf.

[26] See www.unicef.org/ecuador/informes/situación-de-la-niñez-y-adolescencia-en-el-ecuador.

[27] Ibid.

[28] See www.salud.gob.ec/encuesta-nacional-de-salud-y-nutricion-ensanut/.

for fear of stigma and rejection, which can have negative consequences for the health of the persons concerned and for society at large.

60. The Special Rapporteur was informed that so-called dehomosexualization clinics continue to operate, despite public knowledge of their existence. Lesbian, gay, bisexual and transgender persons are allegedly placed involuntarily in private centres in which "sexual reorientation or dehomosexualization therapies" are practised. The Special Rapporteur deeply regrets such practices, which may amount to ill-treatment, and urges Ecuador to close such centres immediately. In line with the recommendations of the Committee against Torture, he recommends that all cases of violence against persons on the basis of sexual orientation or gender identity should be investigated, with the aim of prosecuting and punishing the perpetrators of such acts. Awareness-raising activities for the general public should also be carried out to combat the social stigmatization of lesbian, gay, bisexual and transgender persons (CAT/C/ECU/CO/7, para. 50).

D. People living with HIV/AIDS

61. According to available data, the HIV/AIDS epidemic is concentrated in key populations: men who have sex with men, women sex workers, persons deprived of their liberty and transgender women. According to a report done for the Global Fund to Fight AIDS, Tuberculosis and Malaria, in 2017 it was estimated that over 36,000 people were living with HIV, of which only 61 per cent knew their HIV status. Of the people living with HIV, only 57 per cent had access to health services and 53 per cent had received antiretroviral treatment, of whom 33 per cent had an undetectable viral load.[29]

62. The Special Rapporteur was informed by multiple sources that people with HIV/AIDS faced stigma and discrimination in society and in general there was little information, dialogue or training on how to address and overcome this situation. The Special Rapporteur received information about the lack of antiretroviral medicines in the health services of the social security system, particularly for lesbian, gay, bisexual and transgender persons who faced discrimination and rejection by health-care personnel. He also received information on barriers to accessing HIV testing, owing to attitudinal prejudices on the part of health-care professionals. The Special Rapporteur recommends eliminating those and combating the stigma and discrimination faced by persons living with HIV/AIDS.

E. Persons with psychosocial, intellectual and cognitive disabilities

63. The Special Rapporteur heard with concern of cases of women with intellectual disabilities subjected to forced sterilization without their consent or with the consent of third parties between 2005 and 2017. According to the information received, sterilization of women with disabilities is perceived as a natural and necessary procedure, as well as a means of protecting women from pregnancy in cases of sexual violence. These women are thus denied their legal capacity and their will is substituted by the decision of third parties. The Special Rapporteur notes that the 2012 Organic Act on Disabilities does not recognize the sexual and reproductive rights of persons with disabilities. Such omissions may reproduce the stereotype that people with disabilities have no sexuality or reproductive potential. The 2017 manual on sexual and reproductive health care for persons with disabilities provides that the informed consent process requires, among other elements, the "capacity to consent".[30] However, in light of article 1463 of the civil code, persons with intellectual disabilities are considered incapable and thus do not have the capacity to consent prior to a medical procedure. The Special Rapporteur recalls the recommendations of the Committee on the Rights of Persons with Disabilities calling on Ecuador to explicitly recognize the rights of persons with disabilities, including those with intellectual or psychosocial disabilities, to marry, found a family, exercise parental responsibilities and adopt children on an equal footing with others (CRPD/C/ECU/CO/2-3, para. 42). The

[29] See MCP Ecuador, Pharos Global Health Advisors and Bitrán & Asociados, "Ruta crítica del plan de trabajo para la transición, Ecuador" (April 2019).

[30] See www.salud.gob.ec/wp-content/uploads/downloads/2017/09/manual-ss-discapacidades-FINALWEB-1.pdf.

Special Rapporteur recommends that the restrictions on the legal capacity of persons with disabilities be eliminated, so as to ensure that persons with intellectual disabilities can give their prior consent to a medical procedure such as sterilization.

64. According to information received, services for children with autism and children with psychosocial or intellectual disabilities remain insufficient, while civil society organizations attempt to fill the lack of mental health community services for children and adolescents. The Special Rapporteur recommends the development of a rights-based national child and adolescent mental health programme in line with modern public health principles. The objective must be to promote networks of community-based services so that families, children and adolescents with mental health needs may have access to preventive and therapeutic services. Those services should reach parents who belong to the disadvantaged population groups and those who have children with intellectual or psychosocial disabilities or other mental health conditions.

F. People on the move

65. Since the adoption of the humanitarian visa in July 2019, which requires applicants to have a passport, the number of migrants and refugees crossing the borders of the country through regular channels has decreased significantly. Such a requirement disproportionately affects migrants in vulnerable situations who find themselves in an irregular situation when they enter Ecuador and are thus afraid to demand their constitutional right to medical assistance. For that reason, the requirement of a visa may have a serious effect on the health of the overall population. The Special Rapporteur supports the recommendations of the Committee on Economic, Social and Cultural Rights and recommends that the State party adopt a simplified procedure to facilitate the regularization of migrants and relax the passport requirement for persons in vulnerable situations, especially unaccompanied minors (E/C.12/ECU/CO/4, para. 28).

66. During the visit, the Special Rapporteur had the opportunity to visit a centre on the border with Colombia where migrants and refugees are provided with services. He also heard about moving stories from migrants crossing Ecuador. According to the information provided, of the total number of women who entered the country, 8.7 per cent were pregnant.[31] There is also an increased risk of sexual exploitation and sexual violence. According to data provided by the Ministry of Public Health in May 2019, there has been a 45 per cent increase in the number of migrants who request a health booklet in order to access medical control as a sex worker.

67. Although the Constitution guarantees access to health services, irrespective of legal status, in practice it is apparently difficult for people on the move. The Special Rapporteur received allegations of discriminatory attitudes regarding migrants and refugees, contributing to an environment of fear and intolerance. Such an environment must be prevented at all costs because it damages the quality of human relationships, brings mistrust, disrespect and intolerance into societal life and affects the health both of people on the move and of host communities. The Special Rapporteur strongly believes that rights-based responses to health and migration can be a transformative opportunity to rebuild and strengthen a health and social system that supports and restores dignity, inclusion and rights for everyone in the country (see A/73/216). He recommends that the necessary measures are taken to ensure that people on the move are provided with access to appropriate health-care services, without discrimination, through the incorporation of their needs into the national health-care system.

[31] Office of the United Nations High Commissioner for Refugees and Ministry of Economic and Social Inclusion, protection monitoring report, Ecuador overview (May 2019).

V. Environment

68. The right to the highest attainable standard of physical and mental health includes access to both medical care and the underlying determinants of health, such as safe water, adequate sanitation and a safe environment. In the same vein, article 14 of the Constitution of Ecuador guarantees the right to a healthy and ecologically balanced environment as an integral part of the right to health. However, throughout his visit the Special Rapporteur received numerous allegations and updated information regarding the impacts of the extractive and agricultural industries on the right to health. The Special Rapporteur was concerned about the threats made against human rights defenders who have raised their voices about these cases and will remain vigilant as to their situation.

69. The Special Rapporteur reviewed existing scientific evidence, received personal testimonies and consulted with experts, and was concerned about the high incidence of cancer cases and other diseases disproportionately affecting the populations living in the regions where agriculture and the extractive industries are situated. The examples he was given included the use of pesticides in the banana plantations in Esmeraldas, Santo Domingo, Los Ríos, Guayas, El Oro, Santa Elena and Bolivar; the persistent effects of the extractive industries in Sucumbíos and the risk of similar impacts in other regions as the oil and mining frontier expands; and the worrying situation of numerous Afro-Ecuadorian workers and their families who live and work inside the premises of the Furukawa abaca plantations.

70. The Special Rapporteur was informed that aerial spraying of highly toxic substances to control pests and diseases in large banana monocultures is carried out when workers are present in the hacienda and are thus exposed to the agrochemicals that are spread on the plantations. The particles from the agrochemicals, such as glyphosate and mancozeb, contaminate the air, as well as the water and soil that absorb the chemicals, and are then contained in different plants and products, many of which are for family consumption. Agroindustrial activities involving spraying highly toxic substances have been linked to certain diseases such as leukaemia and skin and stomach cancer, among others.

71. Similarly, pollution caused by extraction projects may also have very negative effects on the population living in the area. When visiting the province of Sucumbíos, the Special Rapporteur witnessed oil spills contaminating the soil and water, as well as several gas pipes (commonly known as *mecheros*) in populated areas. He was also informed about a register of cancer cases compiled by civil society to demonstrate the impact of the gas pipes on the health of the local population.

72. The Special Rapporteur recommends that the impacts of the extractive and agricultural industries on the right to health in specific areas of the country, where the population is exposed to dangerous chemicals and the water and soil where they live are polluted, be researched and investigated and policies developed to deal with them.

73. Finally, with regard to the Furukawa plantations, the Special Rapporteur had already expressed concern in a joint communication with other special procedure mandate holders that the practices of the Furukawa Company might constitute a system of servitude and forced labour prohibited by the international instruments ratified by Ecuador.[32] He also expressed concern about the physical and mental integrity of persons in particular situations of vulnerability, including children, adolescents, older adults and persons with disabilities as a result of occupational accidents.[33] During the visit, the Special Rapporteur received similar information indicating that those concerns continue to be relevant. He recommends taking the necessary measures to eliminate the exploitation of labour and forced labour at the Furukawa Company and ensure decent living conditions for the people living on the farms, including their access to food and basic services, such as water and sanitation, and non-interference in their access to health and education services.

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[32] Available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24480.

[33] Ibid.

VI. Conclusions and recommendations

74. **Ecuador is in a good position to reach universal health coverage and other health-related goals. However, for that to happen, key elements need to be in place. In the first place, investment in primary care, modern mental health-care services and palliative care must be substantial and sustainable, even in times of financial constraint. Investment in health-care infrastructures must be complemented by good care, devoting special attention to the coverage and accessibility of health-care services in rural areas and zones inhabited by indigenous peoples and Afro-Ecuadorians. The Government's proposed austerity measures and budget cuts risk being detrimental to the effectiveness and sustainability of the national health-care system. The Special Rapporteur reiterates that it is essential to ensure the sustainability, as well as the necessary human and financial resources, of the health sector to guarantee the right to physical and mental health of all persons.**

75. **Secondly, efforts to invest in the biomedical elements of health care to provide health-care services are not enough. As set out in the Constitution, the determinants of health are crucial to the health and well-being of all persons. Non-discrimination in the health-care system and beyond must become a reality. Violence, in particular against women and girls, is detrimental to health and must be addressed with determination and courage by all actors. Respectful relationships with nature are also crucial to building a healthy and inclusive society (see A/HRC/41/34).**

76. **The right to health should be promoted and protected, not only through access to health-care services, supplies and facilities, which should be available, affordable, appropriate and of good quality, but should also be realized through the design and implementation of cross-sectoral programmes that address socioeconomic, cultural and environmental factors. Such policies or programmes should be guided by a human rights-based approach with a strong emphasis on the principles of equality and non-discrimination, participation and empowerment, and accountability.**

77. **The Special Rapporteur recommends that the State:**

(a) **Ensure the necessary financial and human resources to maintain sufficient levels of access to health-care services and reach at least the 4 per cent of GDP provided under the Constitution. In that regard, the Special Rapporteur recommends that the economic measures taken and those under consideration be reviewed and transparency and dialogue ensured, in order to guarantee the right to physical and mental health of all persons. In particular, he recommends substantial investment in primary health care, mental health services and measures to combat violence against girls and women as the highest priority, and that the effective and sustainable implementation of public policies in that regard be facilitated;**

(b) **Adopt without delay an updated health code in compliance with international human rights standards. The Special Rapporteur recommends that conscientious objection exemptions be well-defined in scope and well-regulated in use and that referrals and alternative services be available in cases where the objection is raised by a service provider. He also recommends the inclusion of a specific section for special and specialized care of rare diseases in the new health code;**

(c) **Address the fragmentation of the health-care system, with a view to integrating existing elements in an effective manner and following a human rights-based approach, with a view to ensuring better coordination and integration of all the existing elements;**

(d) **Adopt a national health policy that promotes the implementation of the comprehensive health-care model and establish a strategy that includes the necessary human and financial resources required for the effective implementation of the model;**

(e) **Ensure that any territorial planning is promoted in line with the requirements of the health sector and the comprehensive health-care model, enabling the Ministry of Health to exercise its public health functions;**

(f) **Ensure transparency and equal access to expensive medicines;**

(g) **Consider mental health as a national health priority and ensure the move towards an effective integration of mental health services into general health care and community life. Implement a mental health-care system based on the principles of non-discrimination, participation and respect for the dignity and all rights of users of mental health services. Conduct an evaluation of the national strategic plan on mental health and the mental health-care model and develop a rights-based national child and adolescent mental health programme in line with modern public health principles;**

(h) **Strengthen the monitoring and evaluation system for maternal deaths, including late maternal deaths, and increase efforts to implement maternal mortality reduction plans;**

(i) **Enhance efforts to address gender-based violence and child and adolescent pregnancy as a matter of priority, including through the implementation of the intersectoral policy for the prevention of child and adolescent pregnancy (2018–2025).**

(j) **Fully implement the Comprehensive Statutory Law for the Prevention and Eradication of Violence against Women with the participation of all the bodies and sectors involved, including the administration of justice, the Public Prosecutor's Office, and the Ministry of Health, and assign the necessary budget for the Law to be implemented effectively;**

(k) **Urgently amend the Criminal Code in order to decriminalize abortion in cases of rape, incest and severe fetal impairment and create an enabling environment to ensure that every woman and girl has access to safe abortion and post-abortion care, including by ensuring access to services. Respect the obligation of confidentiality in the health-care system, adopt evidence-based protocols and develop human rights training for health providers on their obligations to provide legal abortions, particularly on the grounds of threats to life or physical and mental health, and to respect the privacy and confidentiality of women who use sexual and reproductive health services;**

(l) **Ensure that barriers to girls' and women's sexual and reproductive rights are removed, including by providing sexual and reproductive health information, services and goods, in particular comprehensive, age-sensitive and scientifically accurate sex education in schools as a compulsory element of the school curriculum. Provide quality family planning and counselling and modern contraceptive methods, including through increased budgetary allocations and expenditure of public funding;**

(m) **Strengthen programmes in the area of ancestral medicine and work on intercultural health policies for the training, recognition and certification of indigenous midwives. Enhance the participation of indigenous midwives in the national health system, so that traditional systems of medicine can be fully recognized, and ensure that planned births outside hospitals, assisted by indigenous midwives, may also be an affordable and accessible option;**

(n) **Recognize malnutrition as a national priority and adopt a comprehensive policy to address it, with sufficient human and financial resources. Such financial resources should also guarantee the supply of nutrients and minerals to all children and adolescents, especially in schools;**

(o) **Protect children and adolescents from all forms of violence, including sexual violence in schools. Increase investment in services that prevent all forms of violence against children and support parents so that they have the skills to raise their children in non-violent ways;**

(p) **Prohibit violence and any discrimination in the health sector on the basis of sexual orientation and gender identity and expression and prosecute perpetrators of violence against lesbian, gay, bisexual and transgender persons, protect victims and ensure access to justice and remedies. Carry out awareness-raising activities for the general public to combat the social stigmatization of lesbian, gay, bisexual and transgender persons;**

(q) **Ensure that health services are available, accessible, acceptable and of good quality for people living with HIV/AIDS and combat the stigma and discrimination faced by persons living with HIV/AIDS;**

(r) **Eliminate restrictions on the legal capacity of persons with disabilities to ensure that persons with intellectual disabilities can give their prior consent to medical procedures such as sterilization;**

(s) **Ensure that people on the move are provided with access to appropriate health services, without discrimination, through the incorporation of their needs into the national health-care system. Adopt a simplified procedure to facilitate the regularization of migrants and relax the passport requirement for persons in vulnerable situations, especially unaccompanied minors;**

(t) **Research, investigate, provide information and build policies on the impacts of extractive and agricultural industries on the right to health in specific areas of the country, where the population is exposed to dangerous chemicals and the water and soil where they live are polluted;**

(u) **Eliminate the exploitation of labour and forced labour at the Furukawa Company and ensure decent living conditions for the people living on the farms, including access to food and basic services, such as water and sanitation, and non-interference in their access to health-care and education services.**