

First standards for protection from sexual violence in schools: Inter-American Court of Human Rights – *Guzmán Albarracín et al v. Ecuador*

Vallejo Toledo, Esteban*

On June 24, 2020, the Inter-American Court of Human Rights ruled on *Guzmán Albarracín et al v. Ecuador*,¹ the first case of sexual violence in schools under the jurisdiction of the Inter-American Human Rights System. The decision became public almost two decades after the death of Paola del Rosario Guzmán Albarracín, a student at “Colegio Nacional Técnico de Comercio y Administración Dr. Miguel Martínez Serrano,” a public high school in Ecuador’s port city Guayaquil. It took approximately twenty years for the Republic of Ecuador to acknowledge its failure to investigate Paola’s demise. Likewise, the institutions of the Inter-American Human Rights System took several years to determine that Ecuador violated Paola’s and her family’s human rights. In this paper, I will briefly explain why *Guzmán Albarracín et al v. Ecuador* is one of the most important cases considered by the Inter-American Human Rights System in recent years. To this end, I will provide some background information and also refer to the decisions made by the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.

From 2001 to 2002, Paola suffered harassment and sexual violence from the vice-principal of her school, after having requested his help to improve her declining academic performance. The repeated acts of sexual violence that Paola suffered led to an unintended pregnancy. The vice-principal urged her to interrupt the pregnancy and requested the school doctor to carry out the procedure. The physician agreed to carry out the procedure but put pressure on Paola to have sex with him as a condition. Days later, on December 12, 2002, Paola ingested white phosphorus in an attempt to take her own life. Neither the school authorities nor the doctor undertook effective measures to provide or summon medical assistance, take Paola to a hospital,

* Esteban Vallejo Toledo / 'stɛbən və'dʒɛhɔ tɔ'lɛdɔ /, PhD student in Law & Society at University of Victoria and member of the UVic Graduate Student Law & Society Research Group. I would like to thank my law librarian at UVic, Sarah Miller, and the editor of the REPROHEALTHLAW Blog, Linda Hutjens. I also appreciate the support from the Social Sciences and Humanities Research Council (SSHRC), the Law Foundation of British Columbia, and the University of Victoria

¹ Inter-American Court of Human Rights, *Paola del Rosario Guzmán Albarracín et al v. Ecuador*, Court Decision- Case C No. 405 (June 24, 2020) Online: < https://corteidh.or.cr/docs/casos/articulos/seriec_405_esp.pdf > [perma.cc/2AUZ-V5TK]. [Court Decision].

or contact her family. Paola's mother found out her daughter's condition thanks to a classmate and went to the school to take Paola to a hospital. Paola died on December 13, 2002. She was 16 years old.²

After Paola's death, her family discovered the acts of harassment, coercion, and sexual abuse that she had suffered. Although they filed several complaints against the vice-principal and the school, the Ecuadorean justice system neglected the case and failed to conduct a proper investigation and deliver justice. To this day, Ecuadorean courts have not reached a decision against any person connected to Paola's case because of reasons such as: (1) the public prosecutors and judges made substantial mistakes during the early stages of the case; (2) the vice-principal fled from police; and (3) the statute periods of the crimes reached the limit because the authorities delayed the case.³ These negligent actions and omissions of the justice system did not grant Paola's family access to justice and have granted impunity to people responsible for Paola's demise.

In addition to the negligence of the Ecuadorean justice system, the ministerial authorities investigating Paola's case in Guayaquil made several inadequate decisions like: (1) ignoring the testimonies of other students; (2) disregarding evidence indicating that several teachers and students saw the vice-principal's misconduct; (3) using false gender stereotypes to conclude that Paola fell in love with the vice-principal without any evidence that the feeling was required.⁴ Based on these decisions, the ministerial authorities did not conclude that the vice-principal was responsible for the crimes of which he was accused. The inappropriate criteria followed by the ministerial authorities in Guayaquil not only overlooked the profound relations of power that exist within academic institutions, but also perpetuated the vulnerability of students who suffer harassment and sexual violence within schools. Rather than protecting students like Paola, these insensitive criteria stigmatize students who suffer harassment and violence from school

² See: Inter-American Commission of Human Rights, *Paola del Rosario Guzmán Albarracín et al v. Ecuador*, Admissibility Report 76/08 – Petition 1055-06 (October 17, 2008), at 2-3 [Admissibility Report]; Inter-American Commission of Human Rights, *Paola del Rosario Guzmán Albarracín et al v. Ecuador*, Merits Report 110/08 – Case 12.678 (October 5, 2018), at 3 [Merits Report]. *Court Decision*, paras 41, 48-54. It must be noted that the Court considered that the claimants and the Commission did not presented clear evidence to demonstrate Paola's pregnancy. See: Court decision paras 145-146.

³ Merits Report, at 3; Court Decision, paras 57-78.

⁴ Merits Report, at 3-4; Court Decision, paras 82-83.

authorities. In brief, according to such prejudicial criteria, students like Paola are not considered victims of coercion, manipulation, harassment, and sexual violence from school authorities.

On October 2, 2006, Paola's mother filed a petition to the Inter-American Commission of Human Rights (the Commission) claiming the responsibility of Ecuador regarding Paola's case. On October 17, 2008, the Commission deemed the petition admissible, and, after ten years, on October 5, 2018, the Commission concluded that Ecuador is responsible for violating Paola Guzmán's rights to life; physical, mental, and moral integrity; privacy; special protection as a child; equal protection; and progressive development, consecrated by the American Convention on Human Rights. Likewise, the Commission indicated that Ecuador violated the right to education, protected by the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).⁵ Concerning Paola's family, the Commission concluded that Ecuador violated their rights to humane treatment; fair trial; and judicial protection. Finally, the Commission stressed that Ecuador failed to observe article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), which mandates state members to adopt appropriate policies to prevent, punish and eradicate violence against women.⁶

Based on these conclusions, the Commission recommended Ecuador to: (1) provide comprehensive reparations to Paola's family; (2) provide any physical and mental health needed by her relatives; (3) determine responsibilities of people involved in Paola's case; (4) investigate the negligence of judicial and administrative authorities in charge of her case; (5) implement policies to prevent harassment and sexual violence within schools; (6) implement protocols to investigate cases of harassment and sexual violence within schools and to protect victims and witnesses; (7) reform existing curricula to provide students with sufficient information to prevent cases of sexual violence; (8) provide adequate training and support to

⁵ Ibid., at 41; *American Convention on Human Rights*. Costa Rica (November 22, 1969), articles 4.1, 5.1, 11, 19, 24 [Pact of San José]; *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*. El Salvador (November 16, 1999), article 13 [Protocol of San Salvador].

⁶ Merits Report, at 41; Pact of San José, articles 5, 8.1, and 25.1; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Brazil (June 9, 1994), article 7 [Convention of Belém do Pará].

authorities investigating cases of violence against women; and (9) implement education campaigns to eradicate social conditions that contribute to sexual violence within schools.⁷

Ecuador failed to comply with the Commission's recommendations. Therefore, on February 7, 2019, the Commission took the case to the Inter-American Court of Human Rights and requested this Court to officially declare the responsibility of the Republic of Ecuador for violating the rights of Paola Guzmán and her family and also to mandate the implementation of the measures recommended by the Commission.⁸ This is the first case of sexual violence in schools that the Court has analyzed.⁹ As such, the Court was expected to determine the first Inter-American standards to protect the well-being and autonomy of students against any kind of sexual violence within educational settings.

Before analyzing the case, the Court considered two important points: (1) the acknowledgment of State's responsibility; and (2) the existence of social contexts that facilitate the violation of human rights. First, on January 28, 2020, at a public hearing in the Court, representatives of Ecuador acknowledged its failure to investigate the death of Paola and also apologized to her family for the actions and omissions that caused the violations of their rights.¹⁰ Although Ecuador acknowledged its responsibility, the Commission and the Court considered that the acknowledgement was not conclusive and its legal significance was not clear. For this reason, the Commission had requested a final decision from the Court. In analyzing the acknowledgement of the State, the Court pointed out that it was not only contradictory and incomplete, but also unsatisfactory to finish the case and repair all the damages.¹¹

Second, the Court highlighted that, before Paola's demise, the Republic of Ecuador was aware of the systemic conditions that facilitated sexual violence within schools because national and international

⁷ Merits Report, at 41-42.

⁸ See: Inter-American Commission of Human Rights, *Petition to the Inter-American Court of Human Rights. Case 12.768*. February 7, 2019 [Petition]; Inter-American Commission of Human Rights, *Press Release. IACHR takes case involving Ecuador to the Inter-American Court of Human Rights* (February 13, 2019)

⁹ Court Decision, para 106.

¹⁰ Inter-American Court of Human Rights, *Public Hearing Case Paola Guzmán Albarracín et. al. v. Ecuador*, online (Youtube): < <https://www.youtube.com/watch?v=vRwGnbMCPfE> >

¹¹ Court Decision, paras 18-25. Nevertheless, the Court did not elaborate on the essential standards that a State's acknowledgement should follow to achieve both goals. Therefore, the Court would need to explain those standards in a different case.

organizations had already raised awareness about this nation-wide reality.¹² For instance, the National Council of Women (Consejo Nacional de las Mujeres-CONAMU) had determined that sexual violence is a reality within the Ecuadorean educational system and underlined that teachers are the aggressors in most cases. Similarly, the Committee on the Rights of the Child had expressed its concern for the cases of sexual violence and suicide in Ecuador. Likewise, the World Health Organization had found that about three out of ten Ecuadorean children had suffered sexual violence, including 23.3% of children in Guayaquil. Despite all the warnings and recommendations that the Republic of Ecuador had received, the Court concluded that Paola's case took place within a context where the lack of effective policies to protect children and teenagers facilitated sexual violence within schools.¹³

With these two considerations in mind, in analyzing this case, the Court's main thesis was that there is an undeniable connection between the individual rights transgressed by acts of sexual violence, the protection of women's right to a life free of violence, and children's right to education. Therefore, acts of sexual violence affecting individual rights are inseparable from the transgression of the other two rights.¹⁴ To determine States' responsibility in cases of sexual violence, the Court pointed out that the term "violence" is not limited to physical violence but includes any action or conduct that causes death, harm or suffering within the public or private spheres of life, including sexual violence within educational settings, according to Convention of Belém do Pará and the Convention on the Rights of the Child.¹⁵ Accordingly, States have the obligation to implement policies to prevent, investigate, sanction, and eradicate acts of violence by authorities such as teachers or school principals.¹⁶ Based on these arguments, on the one hand, the Court stresses the need to recognize the existence of power relations that expose students to coercion, manipulation, harassment, and sexual violence within educational settings. On the other hand, the Court underlines that the lack of adequate reproductive and sexual health education makes students like Paola

¹² Ibid., paras 44-47.

¹³ Ibid., para 47.

¹⁴ Ibid., para 107.

¹⁵ UN General Assembly, *Convention on the Rights of the Child*, (November 20, 1989) United Nations, Treaty Series, Vol.1577.

¹⁶ Court Decision, para 111-119.

more vulnerable to coercion, manipulation, harassment, and sexual violence. This is because students lack adequate education to protect themselves from those actions. In parallel, the lack of adequate education contributes to tolerating and trivializing sexual violence within schools, as it happened in Paola's school.¹⁷

Along the same lines, to determine States' responsibility in cases of sexual violence, the Court mentions that States transgress students' right to a dignified life when policies to protect victims like Paola are not implemented. On the one hand, the lack of adequate policies to protect students directly disrespects their rights to dignified lives. On the other hand, the lack of those policies contributes to institutionalizing, tolerating, and hiding acts of sexual violence. Thus, the lack of adequate policies to protect victims of sexual violence like Paola led to the helplessness, severe psychological suffering, and discrimination that pushed her to commit suicide.¹⁸

In a broader social context, the lack of adequate education and policies to protect children and adolescents place them in a situation of vulnerability because they and their families do not have real access to justice. This is because administrative authorities and judges do not have an adequate understanding of relevant social problems like sexual violence in schools. According to the Court, this situation became evident when the courts of Guayaquil used false gender stereotypes to decide that the vice-principal of Paola's school could not be charged with sexual harassment but with statutory rape. According to the courts of Guayaquil, the vice-principal could only be charged with statutory rape because, rather than using violence or coercion, the vice-principal only "seduced" Paola after she provoked the affair by requesting academic support. Such a biased conclusion, according to the Court, not only implies that academic support requested by female students could be deemed as consent to "seduction," unwanted attention and forced relationships, but also exonerates the perpetrator and makes victims responsible for the sexual violence that they suffer.¹⁹ The Ecuadorean court's understanding of "seduction" required that female victims meet

¹⁷ Ibid., paras 120, 129-140.

¹⁸ Ibid., paras 156- 164.

¹⁹ Ibid., paras 190- 195. It must be noted that different articles in Section 4 Chapter 2 of the current Criminal Code of Ecuador (Código Orgánico Integral Penal) have motivated a debate about the age of consent in Ecuador. Whereas article

preconceived gender standards of female virginity and naivety, conceptually evaluated prior to evaluation of the male's actions. Those preconceived gender standards were wrongfully discriminatory because they could not be objectively justified according to existing Inter-American jurisprudence. Based on that jurisprudence, Ecuador could not demonstrate "that the difference in treatment between one victim [...] who exhibits honesty and maidenhood and another victim who does not show such qualities, is justified, without basing its decision on stereotypes".²⁰ The Court then noted that the gender stereotypes enshrined in Ecuadorean law were inconsistent with the Pact of San José which "prohibits [...] discrimination derived from inequality arising from internal law or its application."²¹ These preconceived and biased gender standards combined with inadequate legal frameworks and existing lack of adequate education, training, and policies can lead to wrongful decisions that perpetuate false gender stereotypes and increase the vulnerability of victims and families who do not have real access to justice.

After analyzing this case, the Court concluded²² that: (1) Ecuador had violated Paola's rights to life, integrity, dignity, and education. Likewise, Ecuador had not prevented acts of violence against adolescent women and abstained from implementing policies to do so;²³ (2) Ecuador had infringed rights to judicial protection, and equality before the law;²⁴ and (3) Ecuador had contravened the right to psychological and social integrity of Paola's mother and sister, who suffered trauma and social stigma surrounding news media coverage of her suicide and sex scandal, then spent decades struggling for justice.²⁵ On the other hand, (4) Ecuador could not be proven responsible for alleged acts of torture, nor cruel, inhuman or degrading

167 (statutory rape) implies that the age of consent is 14, that article seems to be practically null and void by virtue of article 175 which points out that consent provided by people younger than 18 is invalid. The effect is that sexual relations with a person younger than 18 could become acts of sexual assault due to article 175. Similar articles existed in previous versions of the Ecuadorean Criminal Code, but the Court does not mention why the courts of Guayaquil ignored the previous versions of article 175.

²⁰ Court decision, para 193, quoting: Inter-American Court of Human Rights, *Atala Riffo et al v. Chile* (February 24, 2012) Series C No. 239, para 125, and Inter-American Court of Human Rights, *López Soto et al v. Venezuela* (September 26, 2018) Series C No. 362, para 231.

²¹ Ibid., para 194.

²² Ibid., para 276.

²³ See: articles 1.1, 4.1, 5.1, 11, and 19 Pact of San José; article 13 of Protocol of San Salvador; articles 7.a, 7.b, and 7.c of Convention of Belém do Pará.

²⁴ See: articles 1.1, 2. 8.1, 24, and 25.1 Pact of San José; articles 7.b Convention of Belém do Pará.

²⁵ Court Decision, paras 207-214. See also: articles 1.1 and 5.1 Pact of San José.

treatment because extreme sexual violence could not be proven, and because a negligent autopsy by medical authorities had also left Paola's presumed pregnancy and hence her obstructed abortion unproven. Finally, her inadequate sex education had already been deemed a violation of her right to education, not a separate restriction of her personal rights to freedom of thought and expression.²⁶

To endorse and complement the recommendations presented by the Commission in 2018, the Court ordered²⁷ Ecuador to: (1) provide any physical and mental health support needed by Paola's relatives; (2) publicize the Court's decision; (3) publicly acknowledge its responsibility; (4) grant a senior high school degree to Paola; (5) institutionalize an official day against sexual violence in schools; (6) implement policies to prevent harassment and sexual violence within schools as well as implement protocols to investigate cases of harassment and sexual violence within schools and to protect victims and witnesses; (7) provide comprehensive monetary reparations to Paola's family; and (8) submit a progress report to the Court within one year.

Guzmán Albarracín et al v. Ecuador is an important decision because it is the first ruling on sexual violence in schools under the jurisdiction of the Inter-American Human Rights System. The decisions of the Inter-American Court of Human Rights are not only viewed as a form of reparation, but also as legal norms that directly affect national legal orders.²⁸ As such, from a legal perspective, the final decision made in *Guzmán Albarracín et al v. Ecuador* will contribute to improving the legal orders of Ecuador and the other member states of the Inter-American System of Human Rights in different ways. First, the Court's decision requires Ecuador, and motivates the other state members, to appreciate the need of adopting curricula that acknowledge the sexual and reproductive rights of adolescents. Those curricula are essential to prevent coercion, manipulation, harassment, and abuse within schools. Second, this decision compels Ecuador, and

²⁶ Court Decision, paras 147-152, 169-170, 276. See also: articles 5.2 and 13 Pact of San José; articles 1 and 8 Inter-American Convention to Prevent and Punish Torture (February 28, 1987).

²⁷ Court Decision, para 276.

²⁸ See: Court Decision, para 276; Juan Carlos Hitters, "¿Son vinculantes los pronunciamientos de la Comisión y de la Corte Interamericana de Derechos Humanos? (control de constitucionalidad y convencionalidad)" (2008) *Revista Iberoamericana de Derecho Procesal Constitucional*, 131.

encourages the rest of the member states, to amend public policies that make adolescents, especially female teenagers, vulnerable to sexual violence. In this sense, this decision compels Ecuador, and inspires all state members, to implement reforms and adopt decisive actions to protect students against sexual violence that is supported by existing power relations within educational settings. Third, this decision encourages all state members to eradicate the use of false gender stereotypes to uphold national administrative and judicial decisions. To this end, Ecuador and all state members must provide adequate training to judges, teachers, and administrative authorities. Finally, this decision makes clear that decisive actions are needed to prevent, investigate, find solutions, and sanction cases of harassment and sexual violence within schools and society. To achieve this, Ecuador and the other state members must engage in systemic discussions to implement adequate policies designed to correct the social conditions that cause, deny, or trivialize harassment and sexual violence within schools and society. In brief, *Guzmán Albarracín et al v. Ecuador* is certainly an important first case. This decision should prompt important reforms to protect children and teenagers from sexual violence in Ecuador and throughout the Americas.

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