



Global Initiative to
**End All Corporal Punishment
of Children**

ECUADOR – COUNTRY REPORT

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

??? – We have been unable to establish whether legislation confirms a right of parents and others to “moderately correct” children, but corporal punishment is widely accepted in childrearing and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Explicit prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority, together with the repeal of all legal defences for its use.

Other legislative measures necessary

Penal system – Corporal punishment as a sentence of the courts should be unlawful in all justice systems, including among indigenous communities. Explicit prohibition should also be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 67 of the Children and Adolescence Code defines ill-treatment of children as “any conduct, any act of omission or commission, that causes or may cause harm to the integrity or physical, psychological or sexual health of a child or young person, by any persons, including their parents, other relatives, educators and persons responsible for their care, whatever means used, whatever the consequences and whatever time is necessary for the victim to recover” (article 67), and article 76 states that abusive practices suffered by children cannot be justified on the grounds that they are educative methods or traditional cultural practices, but this is not interpreted as prohibiting all corporal punishment in childrearing. Provisions against violence and abuse in the Law against Violence against Women and the Family (1995), the Childhood and Adolescence Code (2003), the Criminal Code (1991) and the Constitution (2008) are not interpreted as prohibiting all corporal punishment in childrearing.

Schools

Corporal punishment is explicitly prohibited in schools in articles 40 and 41 of the Childhood and Adolescence Code.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Constitution, the Criminal Code and the Criminal Procedure Code, which make no provision for it although do not explicitly prohibit it. The Childhood and Adolescence Code provides for socio-educational measures in the case of juvenile offenders, and, in exceptional circumstances, deprivation of liberty. However, the Constitution allows indigenous communities to follow their traditional customary forms of justice providing that they do not conflict with the Constitution or with national laws. These can include corporal punishments such as whipping and dousing with cold water and other public humiliation. As at August 2009, draft laws on indigenous justice were under discussion.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** against children in detention, though children in institutions providing education would be protected from corporal punishment under article 41 of the Childhood and Adolescence Code.

Alternative care

There is no explicit prohibition of corporal punishment in alternative care settings.

Prevalence research

None identified in the last ten years.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 March 2010, CRC/C/ECU/CO/4, Concluding observations on fourth report, paras. 7, 8, 9, 10, 45, 46, 47, 64 and 65)

“The Committee notes that various concerns and recommendations made for the consideration of the State party’s combined second and third periodic report (CRC/C/15/Add.262) have not been given sufficient follow-up. While noting that recent political, constitutional and economic changes in the country are giving a new impetus to some of these areas, the Committee remains concerned at the lack of implementation.

“The Committee urges the State party to take all necessary measures to address those recommendations contained in the concluding observations on the combined second and third periodic reports that have not yet been implemented, such as those related to ... corporal punishment....

“The Committee takes note with appreciation of the progress made by the State party in the legislative review process. In particular, it notes with satisfaction the new Constitution, which establishes human rights as fundamental. However, the Committee is very concerned that in the legislative reform, the specific rights of children may become subordinated to more general issues and/or disappear under broader structures. It also notes that national legislation is not entirely in conformity with the Convention, for instance, in relation to corporal punishment....

“The Committee recommends that the State party strengthen and expedite its efforts to bring domestic law into full compliance with the Convention by completing a comprehensive review of legislation and its implementation, maintaining the specificity and interdependence of all children’s rights in policy, legislative, institutional and programme terms, in accordance to the Convention on the Rights of the Child.

“While welcoming the prohibition of all forms of violence in the new Constitution, the Committee is concerned that corporal punishment is still not explicitly prohibited in the home and remains a culturally accepted form of discipline in the family and other settings, including schools and other places of care, and that there is no explicit prohibition of corporal punishment as a disciplinary measure against children deprived of liberty.

“The Committee recommends that the State party introduce and enforce legislation prohibiting corporal punishment in all settings, including in the family, schools and all places of deprivation of liberty. In this respect, it should take into account the Committee’s general comment No. 8 (2007) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

“With reference to the United Nations study on violence against children (A/61/299), the Committee recommends that the State party:

a) take all necessary measures for the implementation of the recommendations contained in the report of the independent expert for the United Nations study on violence against children while taking into account the outcome and recommendations of the regional consultation for Latin America held in Buenos Aires between 30 May and 1 June 2005. In particular, the Committee recommends that the State party pay particular attention to the following recommendations:

- Prohibit by law all violence against children, including corporal punishment in all settings....”

“The Committee [is] concerned at ... corporal punishment as a form of ‘discipline’ in schools....

“The Committee recommends that the State party: ...

d) take measures to prevent corporal punishment and sexual abuse and harassment against children, especially girls, in schools and investigate and, as appropriate, prosecute promptly all such allegations;

...

h) take into account the Committee’s general comment No. 1 (2001) on the aims of education.”

Committee on the Rights of the Child

(13 September 2005, CRC/C/15/Add.262, Concluding observations on second and third combined report, paras.37, 38, 73 and 74)

“While taking note that the Childhood and Adolescence Code prohibits corporal punishment in schools and in the penal system as well as the introduction of programmes such as ‘good treatment’, the Committee remains concerned that corporal punishment is still traditionally accepted and widely practised in the family and in other settings as a form of discipline.

“The Committee recommends that the State party introduce and enforce legislation prohibiting all forms of corporal punishment in all settings, including in the family and alternative childcare system, as well as strengthening awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the human dignity of the child and in conformity with the Convention, in particular article 28(2).

“The Committee takes note of the various measures undertaken by the State party with regard to indigenous children.... However, the Committee remains concerned ... that indigenous children

b) are subjected to punishment, including forms of public shaming....

“The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. In this regard, the Committee refers the State party to its recommendations adopted following its day of general discussion on the rights of indigenous children at its thirty-fourth session in 2003. The Committee further recommends that the State party provide indigenous communities, including children with sufficient information regarding birth registration procedures, child labour, HIV/AIDS, child abuse and neglect, including corporal punishment.

Committee Against Torture

([November 2010], CAT/C/ECU/CO/4-6 Advance Unedited Version, Concluding observations on fourth-sixth report, para. 18, as at February 2011 available only in Spanish)

“El Comité expresa su más profunda consternación ante la numerosa y concordante información recibida sobre la magnitud del problema de los abusos y la violencia sexual de menores en los centros educativos de Ecuador. Si bien toma nota de la existencia del « Plan para la erradicación de los delitos sexuales en establecimientos educativos », el Comité considera que hasta la fecha no se ha dado una respuesta institucional adecuada por parte del Estado parte, lo que contribuye a que con frecuencia las víctimas prefieran no denunciar los abusos. Preocupan especialmente las informaciones sobre casos en que las víctimas habrían identificado a su agresor entre el personal docente. A este respecto, el Comité sigue con atención la tramitación del caso Paola Guzmán c. Ecuador, admitido a trámite por la Comisión Interamericana de Derechos Humanos el 17 de octubre de 2008 (Informe N°76/18) tras examinar la queja presentada por los peticionarios sobre la presunta violación de los artículos 4, 5, 8, 19, 24 y 25 de la Convención Americana sobre Derechos Humanos. Al Comité le preocupa también que el castigo corporal sea legal en el hogar (arts. 1, 2, 4 y 16).

El Comité urge al Estado parte a que, dada la gravedad de los hechos denunciados:

Intensifique sus esfuerzos en la erradicación de los abusos y la violencia sexual a menores en las escuelas;

Tome todas las medidas necesarias para investigar, enjuiciar y castigar a los responsables de tales actos;

Asegure la disponibilidad de recursos para eliminar el persistente clima de abusos y violencia sexual a menores en centros educativos;

Establezca mecanismos de denuncia a disposición de las víctimas y sus familiares en centros de enseñanza y otras instituciones;

Refuerce los programas de sensibilización y formación continua en la materia para el personal docente;

Garantice plenamente el acceso de las víctimas a los servicios de asistencia sanitarias especializados en planificación familiar y la prevención y diagnóstico de enfermedades de transmisión sexual. Además, el Estado parte deberá redoblar sus esfuerzos para proporcionar a las víctimas reparación, incluida una indemnización justa y adecuada, y la rehabilitación más completa posible;

Establezca un mecanismo de consulta que cuente con la participación de la sociedad civil, incluidas las asociaciones de padres de alumnos;

Prohíba expresamente el castigo corporal de niños en el hogar.”

Human Rights Committee

(4 November 2009, CCPR/C/ECU/CO/5, Concluding observations on fifth/sixth report, para. 14)

“While the Committee notes that the Children and Adolescents Code prohibits corporal punishment in schools, it remains concerned that corporal punishment traditionally continues to be accepted and practised as a form of discipline in the family and other contexts (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment. It should likewise encourage non-violent forms of discipline as alternatives to corporal punishment in the education system, and should conduct public information campaigns to explain its harmful effects.”

Universal Periodic Review

Ecuador was examined under the Universal Periodic Review process in 2008. No recommendations were made concerning corporal punishment of children.

Report prepared by the Global Initiative to End All Corporal Punishment of Children

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