

Corporal punishment of children in Ecuador

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Child population 5,588,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Ecuador's commitment to prohibiting corporal punishment

Ecuador expressed its commitment to prohibiting all corporal punishment of children by accepting clearly the recommendations to do so made during the Universal Periodic Review of Ecuador in 2012 and again in 2017. A Bill prohibiting all corporal punishment of children is currently being examined by the National Assembly.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and as a sentence for crime.

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. 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.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Sentence for crime – Corporal punishment as a sentence should be unlawful in all justice systems, including among indigenous communities.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 67 of the Children and Adolescents Code 2003 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” (art. 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, however light, in childrearing. Provisions against violence and abuse in the Law against Violence against Women and the Family 1995, the Childhood and Adolescence Code 2003 and the Criminal Code 1991 do not include clear prohibition of all corporal punishment in childrearing.

The Constitution 2008 states that the State, society and the family shall guarantee the full exercise of the rights of children and adolescents and that their best interests shall be always upheld (art. 44). Article 45 states: “Children and adolescents shall enjoy the rights that are common to all human beings, in addition to those that are specific to their age.... Children and adolescents have the right to physical and psychological integrity; ... to respect for their freedom and dignity.” Article 46 states: “The State shall adopt, among others, the following measures that safeguard children and adolescents: ... (4) protection and care against all forms of violence, mistreatment, sexual exploitation or exploitation of any other kind or against neglect leading to these situations....” However, the Constitution does not send a clear message that all forms of corporal punishment are prohibited.

The Government signalled its commitment to prohibition by clearly accepting the recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Review of Ecuador in 2012.¹ In reporting to the Human Rights Committee in 2016, the Government suggested that corporal punishment in the home is unlawful under articles 156 and 159 of the Comprehensive Criminal Code 2014.² However, reforms to the Penal Code in 2014, addressing violence against women and children in the family, did not prohibit all corporal punishment in childrearing. Article 156 of the Code states (unofficial translation): “Physical violence against women or members of the family - The person who, as a manifestation of violence against women or members of the household, causes injury, shall be punished with the same penalties for the crime of injury increased by one third.”

In November 2016, a Bill prohibiting corporal punishment of children was put before the National Assembly. Article 10 of the Bill states (unofficial translation): “...No corporal punishment shall be qualified as reasonable or moderate and its use is completely forbidden...” and extends the prohibition to (unofficial translation) “...the father, mother, family, legal representatives and persons responsible for the education or care of children and adolescents, people who work in education, social services, health, administration of Justice, in the public or private sector and any other person who has custody or responsibility of a child or adolescent.” In July 2017, the draft Law was still being

¹ 5 July 2012, A/HRC/21/4, Report of the working group, paras. 135(21) and 135(22)

² 3 November 2015, CCPR/C/ECU/6, Sixth state party report, paras. 30

discussed in the second Committee stage – the last phase before the final vote.³ The Government reported in September 2017 that “observations on the bill had recently been submitted by various bodies, including the United Nations Children’s Fund (UNICEF)” and that it was hoped that the Bill “would soon be adopted”.⁴ As of July 2018, no further progress had been made. The Children and Adolescents Code 2003 is under review – the draft new Code was introduced to Parliament in January 2020.⁵

Alternative care settings

There is no explicit prohibition of all corporal punishment in alternative care settings. Children are protected from some corporal punishment under articles 67 and 76 of the Children and Adolescents Code 2003 (see under “Home”).

Day care

Corporal punishment is prohibited in preschool provision in articles 40 and 41 of the Children and Adolescents Code 2003 (see under “Schools”), but it is not explicitly prohibited in other early childhood care and in day care for older children. Articles 67 and 76 of the Code protect children from some but not all corporal punishment (see under “Home”).

Schools

Corporal punishment is explicitly prohibited in schools in articles 40 and 41 of the Children and Adolescents Code 2003: “40: Disciplinary measures. Teaching methods and discipline in educational institutions shall respect the rights and guarantees of children and young persons and shall exclude all forms of abuse, ill-treatment and disrespect, and, accordingly, any form of cruel, inhuman or degrading punishment. 41: Prohibited punishments. Educational institutions are: (1) Prohibited from using corporal punishment; (2) Prohibited from using psychological punishments that offend the dignity of children and young persons....”

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 38 of the Penal Code 2014 states (unofficial translation): “Persons under the age of eighteen - Persons under eighteen years of age in conflict with the criminal law shall be subject to the Organic Code of Children and Adolescents”. This includes articles 40 and 41 (see under “Schools”).

³ Information given by ChildFund Ecuador, January 2017; see also <http://www.asambleanacional.gob.ec/es/blogs/comision-de-justicia-y-estructura-del-estado/50541-traves-de>, accessed 8 August 2017

⁴ 18 September 2017, CRC/C/SR.2223, Summary records of the 2223rd meeting, paras. 50 and 53

⁵ Information given by ChildFund Ecuador, September 2019; see also <https://www.elcomercio.com/actualidad/reforma-codigo-ninez-pension-alimenticia.html>, accessed 13 February 2020

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Constitution 2008, the Criminal Code 1991 and the Criminal Procedure Code, which make no provision for it although do not explicitly prohibit it. The Children and Adolescents Code 2003 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. Media reports suggest that these can include corporal punishments such as whipping and dousing with cold water and other public humiliation.⁶ In 2009, draft laws on indigenous justice were under discussion but we have no further information.

Universal Periodic Review of Ecuador's human rights record

Ecuador was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendations were made specifically concerning corporal punishment of children.

The second cycle UPR of Ecuador took place in 2012 (session 13). The following recommendations were made:⁷

“... Introduce legislation to prohibit corporal punishment in all areas, including in the family, school and all places of deprivation of liberty, taking into account general comment No. 8 of the Committee (Uruguay);

“Take steps to prohibit corporal punishment of children in all settings (Slovenia); Pursue their policies to combat child labour and ill-treatment of children in all its forms (Djibouti); Take appropriate legislative measures to ban violence against children, including corporal punishment (France); Introduce and enforce legislation prohibiting corporal punishment of children in all settings, including in the family, schools and all places of deprivation of liberty (Liechtenstein)”

The Government accepted the recommendations, stating that they are already implemented or in the process of implementation.⁸

Ecuador was examined in the third cycle in 2017 (session 27). The Government accepted the following recommendations, again stating they were already implemented or in the process of implementation:⁹

“Prohibit corporal punishment of children in all settings (Iceland);

“Introduce and enforce legislation prohibiting corporal punishment of children in all settings, including in the family, schools and all places of deprivation of liberty (Liechtenstein);

“Enact legislation to explicitly prohibit corporal punishment of children in all settings (Montenegro)”

⁶ See, for example, *The Star*, 11 May 2003; *Hemisphere*, 22 March 2004; *IPSNews.net*, 26 May 2010

⁷ 5 July 2012, A/HRC/21/4, Report of the working group, paras. 135(21) and 135(22)

⁸ 5 July 2012, A/HRC/21/4, Report of the working group, para. 135

⁹ 3 May 2017, A/HRC/WG.6/27/L.2, Draft report of the working group, unedited version, paras. 7(137), 7(138) and 7(139)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(29 September 2017, CRC/C/ECU/CO/5-6, Concluding observations on fifth/sixth report, Advance unedited version, paras. 23 and 24)

“With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to expedite the adoption of the draft Organic Law for a Childhood and Adolescence Free of Physical Punishment and Degrading Treatment, criminalizing corporal punishment in all settings, including the home.”

“The Committee remains extremely concerned about: ... (c) The continued use of violence and corporal punishment against children as a form of discipline at home, in school and other settings”

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/third report, paras. 37, 38, 39, 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).

“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 Argentina between 30 May and 1 June 2005. In particular, the Committee recommends that the State party pay particular attention to the following recommendations:

- (i) to prohibit all violence against children, including corporal punishment in all settings....

“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

(7 December 2010, CAT/C/ECU/CO/4-6, Concluding observations on fourth-sixth report, para. 18)

“... The Committee is also concerned that corporal punishment is legal within the home (arts. 1, 2, 4 and 16).

“The Committee urges the State party, in view of the seriousness of the acts concerned, to: ...

h) expressly prohibit corporal punishment of children in the home.”

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.”

Committee on the Rights of Persons with Disabilities

(21 October 2019, CRPD/C/ECU/CO/2-3, Concluding observations on second-third report, paras. 31 and 32)

“The Committee is concerned because:

(a)Ecuadorian law lacks specific provisions for the prevention of gender-based violence, neglect and abuse directed at persons with disabilities that take into account multiple and intersectional discrimination, especially such discrimination against girls and women with psychological or intellectual disabilities, Montubio persons, indigenous persons, migrants, asylum seekers and refugees with disabilities in the public and private institutional and other spheres;

(b) Persons with disabilities who are still living in institutions, particularly women with intellectual or psychosocial disabilities, continue to be exposed to harassment, abuse and acts of sexual and other types of violence;

(c)Ecuadorian law does not explicitly prohibit the corporal punishment of children, including children with disabilities, in all settings;

(d)No data disaggregated by sex, age and ethnic origin are available on cases and complaints of violence or abuse committed in the public and private spheres against persons with disabilities, especially girls and women, and there is a lack of information on preventive, case management, protective and reparative measures, including sanctions.

“Taking into account the recommendation made in paragraph 32 of its concluding observations on the State party’s initial report (CRPD/C/ECU/CO/1), the Committee recommends that the State party:

(a) Adopt all necessary measures, and review those measures already in place, to ensure that gender and disability are mainstreamed in its legislation on the prevention of violence and reinforce existing mechanisms and protocols by incorporating specific measures for preventing, eliminating, monitoring, penalizing and providing redress for all forms of violence, exploitation or abuse of persons with disabilities, especially children, women and older adults with disabilities, persons with psychosocial or intellectual disabilities, indigenous persons, migrants and refugees, persons of African descent and persons in poverty and persons living in rural areas who have disabilities;

(b) Guarantee full access for all girls and women with disabilities to assistance programmes for victims of gender-based violence, including shelters that ensure the accessibility of the physical environment and of information and communications and that are staffed by trained personnel;

(c) Introduce legislation that explicitly prohibits the corporal punishment of children, especially indigenous children with disabilities, both in the home and in shelters, in line with targets 5.2 and 16.2 of the Sustainable Development Goals;

(d) Compile data, disaggregated by sex, age, disability and ethnic origin, on complaints of violence and abuse committed in the public and private spheres against persons with disabilities and on preventive, protective, follow-up and reparative measures.”

Prevalence/attitudinal research in the last ten years

A 2012 study by the Observatorio de los Derechos de la Niñez y la Adolescencia, UNICEF, Plan International and other NGOs found that 44% of children experienced being punished by being beaten, compared to 40% in a similar study in 2000. The reasons for punishment included not obeying rules (47%), poor grades (14%), not doing housework (12%) and being late (8%).

(Reported in *La Hora*, 30 May 2012)