

Corporal punishment of children in Ecuador: Briefing for the Universal Periodic Review, 41st session, Oct./Nov. 2022



From the Global Partnership to End Violence Against Children, March 2022

This submission provides an update on the legality of corporal punishment of children in Ecuador since its review in the third cycle UPR in 2017. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care and as a sentence for crime.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Ecuador, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd and 3rd cycle UPR of Ecuador, respectively in 2012 and 2017- which the Government accepted.

We hope the Working Group will note with concern the legality of corporal punishment of children in Ecuador. We hope states will raise the issue during the review this year and make a specific recommendation that Ecuador intensify its efforts to clearly prohibit all corporal punishment of children in every setting of their lives, as a matter of priority.

1 Review of Ecuador in the 3rd cycle UPR (2017) and progress since

1.1 Ecuador was reviewed in the third cycle of the Universal Periodic Review in 2017 (session 27). Recommendations to prohibit corporal punishment in all settings were made and accepted by the Government. The Government stated that the recommendations were already implemented or in the process of implementation. ¹

¹ 9 March 2017, A/HRC/34/11/Add.1, Report of the Working Group, Addendum, para. 5

- 1.2 Since the review, no legislation to explicitly prohibit corporal punishment of children in all settings has been adopted. A Bill to prohibit corporal punishment of children which was put before the National Assembly in 2016 but based on our information, no further progress has been made.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Ecuador. We hope states will raise the issue during the review this year and make a specific recommendation that Ecuador intensify its efforts to enact the Bill prohibiting corporal punishment of children, in order to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Ecuador

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Ecuador is lawful in the home, alternative care, 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. A Bill prohibiting all corporal punishment of children has been examined by the National Assembly since 2018.

2.1 **Home (lawful):** 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.

2.2 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 discussed in the second Committee stage – the last phase before the final vote.² 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”.³ 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 2020.⁴

- 2.3 **Alternative care settings (lawful):** 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”).
- 2.4 **Day care (lawful):** 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”).
- 2.5 **Schools (unlawful):** 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....”
- 2.6 **Penal institutions (unlawful):** 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”).

Sentence for crime (lawful): 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

² 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

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

⁴ Information given by ChildFund Ecuador, September 2019; see also <https://www.elcomercio.com/actualidad/reforma-codigo-ninez-pension-alimenticia.html>, accessed 13 February 2020

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.⁵ In 2009, draft laws on indigenous justice were under discussion but we have no further information.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Ecuador and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s second-third report in 2005,⁶ on the state party’s fourth report in 2010,⁷ and on the state party’s fifth-sixth report in 2017.⁸
- 3.2 **CAT:** In its 2017 concluding observations on the state party’s fourth-sixth report, the Committee Against Torture expressed concern at corporal punishment of children and recommended the Government prohibit corporal punishment of children in the home.⁹
- 3.3 **CRPD:** In its concluding observations on the state party’s second-third report, the Committee on the Rights of Persons with Disabilities recommended that the Government introduce legislation that explicitly prohibits corporal punishment of children, especially indigenous children with disabilities, both in the home and in shelters.¹⁰
- 3.4 **HRC:** The Human Rights Committee expressed concern at the fact that corporal punishment traditionally continues to be accepted and practised as a form of discipline in the family and other contexts. The Committee recommended that the Government take practical steps to put an end to corporal punishment, in its concluding observations on the state party’s fifth-sixth report in 2009.¹¹

⁵ See, for example, *The Star*, 11 May 2003; *Hemisphere*, 22 March 2004; *IPSNews.net*, 26 May 2010

⁶ 13 September 2005, CRC/C/15/Add.262, Concluding observations on second/third report, paras. 37, 38, 39, 73 and 74)

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

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

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

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

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

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