BRIEFING ON ECUADOR FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 110th session (Mar 2014)

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1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in Ecuador. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to Ecuador by the Committee on the Rights of the Child and other treaty bodies, and the recommendations to prohibit made during the Universal Periodic Review in 2012 (accepted by the Government), we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Ecuador, in particular asking what measures are being taken to ensure legislation explicitly prohibits corporal punishment in the home and all other settings, and

- recommend to Ecuador, following its examination of the state party’s report, that legislation is enacted which clearly prohibits all corporal punishment of children in all settings, including the home.
2 Legality of corporal punishment of children in Ecuador

2.1 Corporal punishment of children in Ecuador is unlawful in schools, preschool provision, penal institutions and as a sentence for crime under state law, but it is lawful in the home, alternative care settings, day care and possibly as a sentence in indigenous systems of justice.

2.2 Home (lawful): Article 67 of the Children and Adolescence 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” (article 67). 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, the Criminal Code 1991 and the Constitution 2008 are not interpreted as prohibiting all corporal punishment in childrearing. Laws are being harmonised with the Convention on the Rights of the Child: we do not know if explicit prohibition of corporal punishment has been proposed in this context.

2.3 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

2.4 Alternative care (lawful): Children are protected from some corporal punishment under articles 67 and 76 of the Children and Adolescence Code 2003 (see para. 2.2) but there is no explicit prohibition of all corporal punishment, however light.

2.5 Day care (partial prohibition): Corporal punishment is prohibited in preschool provision in articles 40 and 41 of the Childhood and Adolescence Code 2003 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.

2.6 Schools (unlawful): Corporal punishment is explicitly prohibited in schools in articles 40 and 41 of the Childhood and Adolescence Code 2003.

2.7 Penal institutions (unlawful): Corporal punishment is considered unlawful but is not explicitly prohibited except in institutions providing education, where children are protected from corporal punishment under article 41 of the Childhood and Adolescence Code 2003.

2.8 Sentence for crime (partial prohibition): There is no provision for judicial corporal punishment in criminal law. The Childhood and Adolescence 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

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1 5 July 2012, A/HRC/21/4, Report of the working group, paras. 135(21) and 135(22)
public humiliation. In 2009, draft laws on indigenous justice were under discussion but we have no further information.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 HRC: In 2009, the Human Rights Committee expressed concern at corporal punishment of children in the family and other contexts in Ecuador and recommended that steps be taken to put an end to it, including the promotion of non-violent discipline and public information campaigns.

3.2 CRC: The Committee on the Rights of the Child has twice recommended to Ecuador that corporal punishment of children be prohibited in all settings, including the home – in its concluding observations on the state party’s second/third report in 2005 and on the fourth report in 2010.

3.3 CAT: In 2010, the Committee Against Torture recommended to Ecuador that corporal punishment of children be prohibited in the home.

3.4 UPR: The Government accepted recommendations to prohibit corporal punishment in all settings including the family, made during the Universal Periodic Review of Ecuador in 2012.

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

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2 See, for example, The Star, 11 May 2003; Hemisphere, 22 March 2004; IPSNews.net, 26 May 2010
3 4 November 2009, CCPR/C/ECU/CO/5, Concluding observations on fifth/sixth report, para. 14
4 13 September 2005, CRC/C/15/Add.262, Concluding observations on second/third report, paras. 37, 38, 39, 73 and 74; 2 March 2010, CRC/C/ECU/CO/4, Concluding observations on fourth report, paras. 7, 8, 9, 10, 45, 46, 47, 64 and 65
5 7 December 2010, CAT/C/ECU/CO/4-6, Concluding observations on fourth-sixth report, para. 18