



ngo group for the crc

## STATE PARTY EXAMINATION OF THE ECUADOR FOURTH PERIODIC REPORT

53<sup>RD</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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*Ecuador ratified the Convention on the Rights of the Child (CRC) on 23 March 1990. On 15 January 2009, the Committee on the Rights of the Child (the Committee) examined the fourth periodic report of Ecuador. It was last examined on 23 May 2005. The State party has reservations on the interpretation of articles 24 and 38.*

### Opening Comments

The delegation of Ecuador was led by Mr Fernando Sanchez Cobo, Vice-Minister of Social and Economic Inclusion. He was supported by a large delegation consisting of representatives of the Ministry of Education, National Council of Childhood and Adolescents, Ministry of Labour Relations, Ministry of Foreign Affairs and the Permanent Mission to the UN in Geneva.

Mr Sanchez Cobo noted the difficulties in complying with international obligations during the democratic crisis (1996 to 2006). The previous focus had been on repaying the national debt rather than promoting equity. The new Constitution (2008) significantly increased coverage and social inclusion. As a result there was sustained progress in implementing the CRC, including doubling school attendance since 1990, reducing infant mortality, strengthening institutions for children and specialised courts for children. The Constitution mirrored the Childhood and Adolescents Code (2003), as it adopted measures that were in the Code to provide integral protection to children. Other achievements included the increase of the age of marriage from 12 to 14, social investment, the participation of children in drawing up the public agenda, a reduction in the number of working children as well as a programme to eradicate begging. A national development plan was set up to professionalise the social sector (although it was still not nationwide). In addition, the 2010 national census would include questions on education and child labour to help develop programmes. However, many

challenges still needed to be address, but thanks to the political will and good social model the State would continue expanding opportunities for children in the country.

The Country Rapporteur, Ms Marta Mauras Perez, welcomed the delegation and requested information on the changes that had taken place in recent years, such as the National Assembly and the new Constitution. She congratulated the delegation on the stability, the investment in social changes and the significant increase in social investment. However, it was hard to see change to some of the most sensitive indicators, which could be related to problems in data collection. For instance, there were many issues related to quality of education, inequality in school and economic, gender-based and ethnic discrimination. She noted that not only did the Constitution enshrine the CRC in national legislation, but it also compelled them to ensure that legislation was in line with the CRC (e.g. the best interests of the child). She welcomed the positive context and the Childhood and Adolescents Code.

## **General Measures of Implementation**

### ***Legislation***

Legislation and institutional measures needed to reflect the constitutional measures. However, other sources of information indicated that there were concerns about the risk of childhood losing visibility, so the Committee emphasised the importance of maintaining this specialisation. With the new Constitution, the State was in the process of harmonising its former legislation. In addition, many new laws had been introduced. There were therefore problems of inconsistencies between the civil code penal code and other laws. The Committee therefore asked how they were ensuring the harmonisation of legislation at all these different levels. It also wanted to know who was involved in the process to identify where conflicts lie. The Committee asked if the new legal framework was taking into account the rights of adolescents, as they had specific needs. The Committee also asked if judges received specific training to work on children's issues. It also wanted to know if they received the same salaries as other judges, as they are often lower.

The Committee asked for more information on the traditional indigenous system and the national justice system. It also wanted to know how often the CRC was used to hand down decisions in judicial proceedings. Concerning the National Human Rights Institute, the Committee noted that it appeared to have special directorates defending women and children's rights. However, its mandate was not clear and a new Ombudsman had not yet been appointed. It therefore asked when the Ombudsman would be appointed and what procedure would be followed. The delegation explained that the first Ombudsman was appointed in 1998, but a provisional Ombudsman had been appointed after 2008. Ombudsman offices (*Defensoria del Pueblo*) in each province dealt with children's rights and they included specialized personnel, such as lawyers who worked as human rights defenders. The Ombudsman's functions and responsibilities included visit to prisons, collaboration with civil society, initiate actions and help bring complaints.

The Committee was also interested in the Equity Councils and asked how this principle was applied to new institutions and at local level. The delegation answered that these Equity Councils were divided into different foundations specialized in women, disabled persons and children's rights. These Equity Councils helped restore power at municipal power.

### ***National plans and resources***

The Committee noted that public planning was an important tool for development and asked how it related to the social agenda for children and adolescents (2007-2010). It encouraged the State to continue its policy on social investment to guarantee all rights and asked how it ensured that adolescents were not invisible in the planning and budgeting. The Committee noted the increase in revenues and budget as well as its position on the Human Development Index, but wanted to know if the increase in social spending had been disaggregated. It also asked if they used a rights-based approach to tracking the budget. The delegation confirmed that there was an increase in the budget for social spending across the board.

The Committee wanted more details on the funding of the National Institute for Children and the Family (INNFA). The delegation explained that the INNFA was going to change name, as it would focus exclusively on children's rights and include a special focus on adolescents. A new Secretary for social inclusion would be created and this institution would have more social expenditure, which would benefit children.

### ***Data collection***

While the State party report showed an improvement in the collection of data, the Committee noted that there was no national data collection system. It asked about plans to strengthen the existing systems, as disaggregated data was essential to develop programmes, indicators and budgets. The delegation replied that every six months, the implementation of the national action plan was being monitored and statistical information on healthcare, justice and education was available on line. There were also initiatives to develop indicators. Two pilot projects were being developed to get disaggregated data from the census. The latter would include a breakdown by age group, nationality, ethnic group, etc.

### ***Coordination and monitoring***

The Committee asked how they ensured coordination between the national, cantonal and municipal level, including the dissemination of funds. It also asked whether the cantonal councils for children and adolescents were financially autonomous. The delegation responded that there were national development plans which included the municipal plans. They were trying to ensure that all the plans were consistent with each other and would include follow-up. They were also trying to improve indicators.

In response to the concerns about children becoming invisible without the specification, the delegation replied that the constitutional change could lead to children becoming invisible. They had merged the four large children's institutions into one and had invested over £\$ 181 million in children. They were trying to preserve the structural change while maintaining the specificity of different groups. The Committee noted that they should maintain the specific focus on different groups like children, beyond the financial focus. The delegation responded that specificity was part of the new approach to children's development, victims of violence, child labour, and so on. They were changing the entire system and training relevant people. Furthermore, the visibility of children had been reinforced by the enormous increase in the financial investment in children. There were programmes in place for children throughout the country as well as plans to increase the budget for children over the next few years. The cantonal councils for children and adolescents implementing the laws at local level and were streamlining and reorganising their work to optimise the use of resources. Each region had its own financial plan linked to the national development plan.

### ***Dissemination***

The Committee asked about the dissemination of the CRC, as well as the existence of training programmes for the personnel working with children given their decentralised system. The delegation replied that the new candidates who become juvenile judges and police officers had to follow workshops on the CRC. Each canton had a judge specialized in juvenile justice. Meanwhile the convention had been disseminated to the general public through information campaigns.

## **Definition of the Child**

The Committee noted that Ecuador's reservations on the minimum age of marriage to the CRC. It argued that the minimum age should be raised and as it was different for girls and boys, this led to a situation of discrimination. The delegation stated that it was priority legislation for the parliament, but there had been a delay as they were trying to incorporate the age of marriage into a more comprehensive reform. The Assembly was currently working on the constitutional changes brought by the ratification of the new Constitution; the reform of the civil code was not on the agenda. Marriage at the age of 12 or 14 required parental consent, otherwise it set at the age of 18. The civil registrar could forbid a marriage. The Committee also noted that there appeared to be three categories of children 0-5, 5-11 and 11-17. This categorisation weakened children who were in the older group.

## **General Principles**

### ***Non-discrimination***

The Committee asked about the measures taken to address the discrimination against indigenous and afro-Ecuadorian children as well as other vulnerable groups. It noted that indigenous children were discriminated against in areas such as social investment, education, birth registration and healthcare. The delegation responded that they had taken many initiatives to redress this discrimination, particularly in health and education.

### ***Right to life***

The Committee asked about the measures to decrease the infant mortality rate through better access to health care. The delegation responded that measures had been taken to improve access for young children.

### ***Right to be heard***

The Committee requested information on the steps to ensure that the right to be heard was fully respected at home, in schools and in judicial and administrative procedures. The delegation stated that children were being heard through children's councils. Some ninety consultative boards for children and adolescents had been created. They organized themselves and held their own elections. They met with the local authorities to discuss relevant issues.

### ***Best interest of the child***

The Committee asked how they took into account the best interest of the child, as it required a change of mentality and required capacity building and awareness of professionals and parents. It asked if policies and decisions referred to the best interest of the child and whether judges applied it. In addition, it asked if persons working with children were trained to apply this principle.

## **Civil Rights and Freedoms**

### ***Right to nationality***

While the Constitution stipulates that everyone has the right to nationality if they were born in Ecuador, it appeared to be denied to certain children if their parents did not have the right to be there or if they were asylum seekers, as their identity cards were not recognised (this was also applicable to indigenous parents). The Committee asked what they were doing to ensure that all of these children received Ecuadorian nationality regardless of their parents' migratory or other status. The delegation stated that in 2006 a national programme was designed based on the right to identity. As a result, 450'000 children were registered and 14 registry units were set up in maternity centres and hospitals. As a result, no mother could leave one of these centres without registering her child (she would have not right to social assistance if she did not register her child). The Committee asked what they did if women gave birth outside a formal setting. It wanted to know how long it would take until there was universal registration, especially for indigenous women. The delegation responded that the registration process had changed, and the identity cards now contained a chip to enable access to social services. However, purging operations were needed due to the fact that a mafia system in the northern part of the country delivered identity cards to the indigenous population for a high price. To reach all those who were unregistered, they had set up mobile units and special brigades. In addition, based on the 2007 education census they could check the registration of children.

In response to questions about the registration of refugee children, the delegation noted that according to the refugee's policy, they had expanded the registry to refugee children. The Ministry of Social Inclusion had a database with the names of refugee children. It sought to ensure that all children born in Ecuador could integrate society. It had also started to conduct studies and encourage different institutions to protect refugees. The agreement 337 (2008) aimed to remove all the barriers that prevented refugee or indigenous children from entering the education system. Thus, they provided provisional certificates if children did not have an identity card. There were also initiatives to register children in the north and as a result ensure their access to healthcare and education.

The Committee asked what happened if there was a delay in birth registration. The delegation replied that in the past there was a 30-day deadline and after that registration had to be done through a lawyer, which excluded certain sections of the population. They amended the law, so people now had a year to register their children.

### ***Access to information***

Regarding the access to appropriate information, the Committee asked about the existence of school libraries. It emphasised the importance of this information for their development, education and cultural activities. It also asked if children had access to the internet and the coverage in the country. Moreover, it asked whether children were effectively protected from harmful television programmes beyond the 9 o'clock watershed.

### ***Freedom of association***

The Committee noted that children had the right to form sports, cultural and leisure associations, but asked if for more information on working children's organisations (e.g. like a union). It also asked if there were similar associations for indigenous children or Afro-Ecuadorian children. Finally it wanted to know if these associations made demands to the government and whether the latter took into account their views and supported them.

## **Family Environment and Alternative Care**

### ***Children deprived of a family environment***

The Committee asked about the average stay in institutions or residential settings, as well as the age range of the children and their age when they left. It wanted more information on the recruitment and support provided to foster parents. The delegation states that 5'000 children had been returned to their families following a period in State institutions.

### ***Adoption***

The Committee had found adverts for the adoption of children on the internet and wanted to know why they were being advertised in this way and what was being done to follow-up children who were adopted. The delegation noted that it was difficult to monitor the internet. The official adoption agencies had web pages, but these were allowed.

The Committee asked how the State coordinated the six adoption agencies and why they had gone from 34 to 6 agencies for international adoption. It requested information on the procedure for adoption. It also asked how long the adoption procedure took and if the Hague Convention was the basis for agreements between countries. The delegation responded that they had reduced the number of agencies following the new code. Since 2003, no private institutions could carry out adoptions without going through the central authority. They had conventions with certain countries that were most likely to adopt Ecuadorian children. The national institute for childhood and family had a central authority to coordinate with these 6 adoption agencies. This adoption unit ensured the compliance with The Hague Convention and ensured that the private interest of these agencies did not prevail over the public interest. They first ensured that there were no other possibilities before resorting to adoption. It added that its policy focused on national rather than international adoption, trying to promote adoption with the extended family, then people from the same language, culture or geographical region and as a last resort international adoption. The Childhood and Adolescents Code included provisions for a two-year follow-up procedure. The Committee asked what it did when faced with cases like the website. The delegation responded that they would look into this website.

## **Basic Health and Welfare**

The Committee noted that there were many deficits in the healthcare system. As the national plan (2004) aimed at improving access to healthcare for children under the age of five, the Committee wanted information on the outcome of this plan and the measures to reduce the mortality rate.

### ***Survival and development***

The Committee noted that one child in five suffered from malnutrition and asked about the measures to eradicate malnutrition. The delegation replied that infant mortality had been reduced to 12 per 1000 by 2008. A national programme for maternal and child care was set up to combat childhood diseases, including through an increase in human resources in hospitals, especially in neonatal departments. There were already positive results from this programme, even if its real impact would only be seen in the medium or long term. There was also a programme on traditional medicine in line with the cultural models of giving birth, such as vertical labour. They were providing kits for safe and clean births to indigenous midwives. In relation the malnutrition, there was a problem with the statistics. There was a decrease in

child malnutrition, especially through breastfeeding as well as special programmes for children from 0 to 3, 3 to 5 and a school nutrition programme. The Committee asked if there were laws or a code to promote breastfeeding and to limit the use of formula unless absolutely necessary. It emphasised that mothers needed good food as well in order to have sufficient nutrients to pass on to their children through their milk. The delegation stated that they had laws on breastfeeding for 20 years (although it needed revising) as well as a code on the use of formula.

### ***Adolescent health***

The Committee stressed that the pregnancy rate among adolescents was high (20% of girls 15 to 18 get pregnant), often due to the lack of reproductive information and gender violence. It asked about the measures to prevent sexual violence. It wanted to know how they were reducing pregnancy, especially if it was related to rape. It noted that a comprehensive approach was needed to reduce teenage pregnancy. The delegation highlighted that pregnant girls often ended up dropping out of school. Teachers were trained in the area of reproductive health and girls were part of networks of peers to discuss these issues. There was also a National Plan for Adolescent Pregnancy Prevention (CEPAR) since 2007 to prevent and reduce pregnancy. It provided contraception free of charge. However, abortion was quite a controversial issue, so the morning after pill was banned by the Constitutional Court. The Committee asked about the measures taken to reduce the number of cases of rape, as this seemed to be one of the factors leading to teenage pregnancy as well as being a crime. It also asked religious guided their approach to reproductive health. The delegation responded that while the Constitutional Court had banned the morning after pill, other contraception was available for free. There was also a Presidential decree to eliminate violence against women, including radio and television campaigns directed at limiting machismo and gender violence. The aim was to facilitate access to female victims to complaints procedures (many were to scared to complain). A comprehensive system of protection had been set up involving the prosecutors' office, the police and other professionals.

In relation to the suicide of adolescents, the delegation responded that it did not have a specific programme, but it did have a national directorate for mental health. It included mental health problems of children and suicide. Children could also call the helpline at the number 123 and speak to professionals that could deal with all sorts of issues.

## **Education, Leisure and Cultural Activities**

### ***Education***

The Committee noted that the access to school, enrolment rates and completion rates were still not satisfactory. There were still many disparities, especially between boys and girls, urban and rural areas as well as indigenous or minority groups. There was also a high dropout rate. In relation to the quality of teaching, the Committee asked if the State had the capacity to train 12'000 new teachers, as it intended, in such a short period of time. It also asked about the measures in place to address the harassment of girls. The delegation stated that the situation of teachers had improved and in addition to the 12'000 another 20'000 would be joining the profession. They would receive ongoing training throughout their career and were going to have an increase in their wages. The delegation also outlining that the budget allocation in the educational sector had greatly increased. There had been many educational programmes which had impacted on indigenous children, including free textbooks, free school uniforms and voluntary contributions. There was a major investment in bilingual and

multicultural education (e.g. textbooks in indigenous languages). However, the Committee noted that bilingual intercultural education required a different approach, as indigenous people related to education in a different way. It was not just a question of increasing the resources. The delegation responded that there was an increase in the registration of indigenous children, adapted teaching methods and schools closer to where they lived.

There was a new education act before the National Assembly, which would ensure greater equality through the bilingual system. A programme was recently launched to integrate new technologies at school, and the “Millennium education units” worked to bring a new teaching approach and make schools more easily accessible, especially in rural areas. Transport to schools was currently not free, but it was cheap. The Committee asked about democratic measures in schools to enable children to express themselves. The delegation replied children in schools could develop plans to address issues such as violence.

In relation to the issue of the access to school of refugee children, the Committee asked if there was an agreement between different institutions to ensure that access to school was not refused if a child did not have an identity card. More precisely, it wanted to know if the certificates for refugees were recognised by all the institutions and what happened if they were not broadly recognised by the authorities. It also wanted to know if a diploma from another country was recognised in Ecuador.

The Committee also asked if the values of human rights and civic duties were included in the curriculum. It also wanted to know if there were more practical types of training such as vocational training. The delegation stated that gender, democracy, the environment and other issues were being included in the curriculum. In addition, the textbooks had been revised in collaboration with NGOs. There were also new “Codes of living together” provided a good framework in this matter. These Codes were good tools to promote a peace culture in schools and brought together headmasters, teachers, parents and family members. It provided a new methodological approach for better cohabitation conditions.

### ***Leisure and recreational activities***

The Committee asked whether children had time and place to play. It asked if playgrounds were included in community planning and whether children were involved in the discussions about community planning.

## **Special Protection Measures**

### ***Juvenile justice***

The Committee recommended raising the age of criminal responsibility from twelve to fourteen. It also asked what had been done to ensure separate areas in prisons for juveniles as well as the existence of alternatives such as prevention, mediation and reintegration. The delegation replied that the age of criminal responsibility in the Childhood and Adolescents Code was still 12 years old. The Ministry of Justice and the Human Rights Council were revising the penal code that would include a section on having a specialized system on juvenile justice. Under the new reform the age of criminal responsibility would probably be raised to 14, but the draft bill had not yet come before the Assembly. Ill-treatment and torture were prohibited in the penal code and detention was a last resort. The Ministry of Justice had produced four reports on care and infrastructure in juvenile justice and found that they were both inadequate. They wanted to create a comprehensive system for protection and rehabilitation of youth offenders. It noted that there were 67 juvenile justice courts in the



country. From 2008 a reintegration programme for minors in conflict with the law had been launched. It included educational measures, services at home, socio-economic measures and family orientation.

### ***Children in detention centres with their mothers***

The Committee asked for more information on children who were in places of detention with their mothers, as the conditions in these centres were very bad. It asked about the measures to ensure that children born in prison could fully enjoy their rights, especially since the families of detainees had to provide them with food.

### ***Child labour***

The Committee noted that many children were still working and requested information on the State's strategy to address child labour in agriculture, mines as well as domestic work. Concerning children working in the mining sector, the Committee noted that there were many violations of children's rights linked to this sector and asked about the measures taken to make private companies comply with the CRC. The delegation declared that it worked closely with private companies to raise awareness on child labour issues. It added that a programme was being launched in 2010 to eradicate child labour in rubbish dumps. Concerning mines, persons under the age of 21 years old were prohibited from working in this sector. The government was currently working on a baseline for urgent interventions, and was trying to raise awareness on the hazardous effects of working in mines.

The Committee wanted information on the prosecution of people who employed children and whether the latter could lodge complaints. It also asked about the ethnic composition of working children. The delegation noted that child labour and economic exploitation of indigenous people had been inherited from colonialism. It had ratified the ILO conventions and had three budgetary programmes on child labour. Since 2007, over 9000 inspections had been carried out by the authorities and 4541 children were no longer working. However, an estimated 665'000 children were still working. The labour code and the mining law prohibited child labour (below the age of 15) and provided sanctions for employing children. It also restricted the conditions for children workings over the age of 15 (i.e. respect their labour rights). The inspector for child labour of the Ministry of Labour regulated local authorities on the monitoring of working adolescents through a registry. A computerised system called CIBOR was a key consultation tool regarding child labour. The delegation also mentioned the preventive and protective measures that they were taking. It used to just be considered an issue linked to education, but they now had a more holistic approach that involved the families, communities, children and employers. A campaign against child labour would be launched in the near future.

### ***Migration***

The Committee noted that there were a lot of migrants who sent money back to Ecuador. Children were often left in the care of other family members or friends who depended on the income of the parents. Given the decrease in money being sent from abroad, the Committee asked for information on the semi-abandonment of these children. It also asked why mothers immigrated and asked if there were any measures in place to encourage mothers to stay at home. The delegation noted that over one million people had left following the 2000 banking crisis. There was a *Plan Retorno* to encourage people to come back, which included no taxes for a period of time and support to set up businesses. There was also a solidarity institution that provided grants to get credit to start micro-enterprises.

### ***Corporal punishment***

The Committee highlighted cases of children escaping their family environment to avoid abuse and asked about the measures to raise awareness and to prevent and punish domestic violence and corporal punishment. It also wanted to know if there were plans to have legislation that banned corporal punishment. The delegation declared that corporal punishment was banned in all spheres and physical and psychological maltreatment was banned in the family environment. The Childhood and Adolescents Code of 2003 prescribed a severe punishment for the offender. For cases of ill-treatment, a protocol obliged a medical examination and a psychological assessment to be carried out.

### ***Street children***

The Committee noted that street children were stigmatised and asked whether there were any reinsertion programmes. The delegation stated that a programme to eradicate child begging was carried out every Christmas, which showed successful results. This programme would eventually become a permanent programme to eliminate begging. The Committee was worried about the term eradication, as it had negative connotations. In response, the delegation said that they focused on providing work and assistance to the families so that their children did not have to work in the street.

### ***Abuse and neglect***

The Committee asked about the measures to strengthen parental responsibility. It also wanted to know about the mechanisms in place to detect abuse or neglect. It specifically wanted to know about the mechanisms to identify child exploitation and sale and how they protected and supported the child victims. It asked if the police and social sector worked together on these cases of abuse.

### ***Child trafficking***

The Committee was concerned by the child trafficking taking place in the region bordering Colombia. It also asked if there were agreements with neighbouring countries on this issue. The delegation stated that they had identified five networks that trafficked children, apparently with parental consent, to go and work in Colombia or Venezuela. They raised awareness amongst families and communities about child trafficking and smuggling and the fact that they were crimes according to the Penal Code. It tried to contain this phenomenon through an integrated approach, such as strengthening local economic institutions, provide work to the exposed communities and support families, including therapy for children. In so doing, it hoped to support families in protecting their children. The Committee asked what they do if a parent sells his child, as imprisonment was not necessarily the best solution.

## **Concluding Remarks**

The Country Rapporteur, Mrs Marta Mauras Perez, noted their commitment and the beneficial and productive exchange. She outlined that Ecuador was in a transition phase and that profound changes could certainly not be achieved in a short period of time. She hoped that the recommendations made would send ripples through the country. It seemed that the key issue was the institutional role for protection of children and the ad hoc plans to set up the Equity Councils. She welcomed the coordination of the National Institute for Children and the Family (INNFA), and its efforts to cover all the vulnerable groups. She highlighted that the lack of disaggregated data was an obstacle to developing programmes and budgets. She

noted that great steps had been made to combat child labour, but argued that the social responsibility of companies was still a big issue to be dealt.

The head of delegation thanked the Committee for the dialogue and invited them to come and see things for themselves. He noted the importance of collaborating with the NGOs in the area of child rights and stated that children were a national priority.