

ACCESS TO JUSTICE FOR CHILDREN: ECUADOR

This report was produced by White & Case LLP in April 2015 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Ecuador ratified the CRC on 23 March 1990.¹ The CRC has the authority of national law. Under the 2008 Constitution of the Republic of Ecuador (2008 Constitution), international treaties have the force of law upon ratification by the President of Ecuador, except for certain types of treaties that require prior approval by the National Assembly (e.g. when they involve a commitment to enact, amend or repeal a law, or when they refer to the rights and guarantees provided for in the Constitution).²

B. Does the CRC take precedence over national law?

The CRC takes precedence over national law except where there is a conflict between the provisions of the CRC and the 2008 Constitution.³ The Constitution, and international human rights treaties ratified by the State that recognise rights that are more favourable than those enshrined in the Constitution, shall prevail over any other legal regulatory system or action by public power.⁴ The order of precedence for the application of laws is: the Constitution; international treaties and conventions; and all other national laws and actions and decisions taken by public authorities.⁵

C. Has the CRC been incorporated into national law?

The CRC has been incorporated into the national law of Ecuador by virtue of ratification.

Moreover, under Chapter 3, Section 5 of the 2008 Constitution, the Ecuadorian state guarantees specified rights of children and the effective exercise of these rights. Children, amongst other specified vulnerable groups, are given “priority”,⁶ and there are repeated references in the Constitution to children being granted the same rights as adults.⁷

D. Can the CRC be directly enforced in the courts?

¹ See: <http://unchildrights.blogspot.co.uk/2011/01/chronological-order-ratifications-crc.html>

² Article 419, 2008 Constitution, available in English at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

³ Ibid., Article 425.

⁴ Ibid., Article 424.

⁵ Ibid., Article 425.

⁶ Ibid., Article 35.

⁷ Articles 27, 30, 35, 45, 2008 Constitution.

Yes. The rights and guarantees set forth in international human rights instruments shall be directly and immediately enforced by and before any civil, administrative or judicial servant, either by virtue of their office or at the request of the party.⁸ Ecuadorian courts, including the Constitutional Court, can hear complaints brought under treaty obligations. Article 426 states that “the rights enshrined in the Constitution and international human rights instruments shall be for immediate observance *and enforcement*” (emphasis added).

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There are no reported examples of instances whereby the Ecuadorian courts have used or applied the CRC.

However, the Ecuadorian courts do seem to pay regard to international instruments. In a 2011 survey of child and adolescent courts, 24% of respondents claimed always to take international instruments into account, 17% almost always, 32% regularly, 4% almost never and 15% never.⁹

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Under the 2008 Constitution, every person, including every child, has the right to “free access to justice and the effective, impartial and expeditious protection of their rights and interests”.¹⁰ Cases can be brought in domestic courts through the Juvenile Court (*Tribunal de Menores*) or, if they concern violations of constitutional rights, to the relevant court with jurisdiction or the Constitutional Court (see parts III.A and IV.A below).

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children of any age may bring complaints before Ecuadorian courts either in their own name or through an intermediary to the same extent as adults.¹¹

The Civil Procedure Code provides that children cannot appear as claimants or defendants in court proceedings, unless they take part in proceedings through their legal representative.¹² Children are represented by their parents

⁸ Ibid., Article 11.3.

⁹ Consejo Nacional de la Niñez y Adolescencia, *Encuesta a Juzgados de la Niñez y Adolescencia*, p. 7 available in Spanish at: http://www.crin.org/docs/conclusiones_informe_juzgados.pdf

¹⁰ Ibid., Article 75.

¹¹ Article 236, Code of Childhood and Adolescence 2003, available in Spanish at <http://www.mindbank.info/item/3359>; see also <http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/frontpage.htm> for English translation consulted.

¹² Civil Procedure Code, Art. 34, available at: <http://www.wipo.int/edocs/lexdocs/laws/es/ec/ec017es.pdf>.

in legal proceedings.¹³ If a child does not have any parents, he or she may be represented by a special guardian or a guardian ad litem.¹⁴

The Code of Childhood and Adolescence provides for situations where there may be a conflict of interest between the child and his or her representative. If such a conflict of interests exists, legal representation is suspended and the child shall either be represented by the other parent with whom the conflict does not exist or otherwise, if both parents are disqualified, a special guardian is appointed by a judge to represent the child.¹⁵

The Code of Childhood and Adolescence 2003 (the Code) effectively enacts the CRC.¹⁶ According to Article 236 of the Code, under *Administrative Procedure of Protection of Rights*, the “affected child or adolescent” can “propose administrative protection actions”.¹⁷

C. In the case of infants and young children, how would cases typically be brought?

Infants and young children would typically bring cases through their parents or another intermediary, such as an NGO.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

According to the Constitution, every person has the right to free access to justice and the effective, impartial and expeditious protection of their rights and interests, and in no case shall there be lack of a proper defence.¹⁸ The Organic Law on Jurisdictional Guarantees and Constitutional Control further defines that the constitutional justice process shall be free for all to access and use, but subject to any cost orders stemming from regulations enacted by the Constitutional Court.¹⁹

The Ministry of Justice, via its human rights subsection, runs a Legal Aid Advisory Service (Asesoría Jurídica Gratuita) which can be contacted by telephone, email, in writing or verbally by citizens seeking free legal advice on the court system and where to bring a claim.²⁰

Yet, there appear to be issues in the implementation of legal aid in practice. A World Bank assessment of Ecuador’s judicial sector found significant shortcomings in legal aid provision for indigent children.²¹ It appears that

¹³ Ibid., Art. 34.

¹⁴ Ibid.

¹⁵ Code of Childhood and Adolescence, Art. 108.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Constitution, Art. 75.

¹⁹ *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*, Article 4(3), available at: https://www.corteconstitucional.gob.ec/images/contenidos/normativa/Ley_organica_de_garantias_jur.pdf.

²⁰ Asesoría Jurídica Gratuita, see: <http://www.justicia.gob.ec/asesoria-juridica-gratuita/>.

²¹ See: http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2003/10/08/000012009_20031008144152/Rendered/PDF/269150English01of0Legal0Aid0score09.pdf.

legal aid in Ecuador does not extend to paying court fees.²² There does not seem to be any more recent evidence to suggest that this is no longer the case.

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There do not appear to be any other such conditions or limits. Parents/guardians do not have to consent to children bringing cases in Ecuadorian courts.

III. **How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Under the 2008 Constitution, “[p]ersons, communities, peoples, nations and communities are bearers of rights and shall enjoy the rights guaranteed to them in the Constitution and in international instruments”.²³ “Rights can be exercised, promoted and enforced individually or collectively before competent authorities” and are “fully actionable”.²⁴ The rights enshrined in the 2008 Constitution and in international human rights instruments, including the CRC, can be directly and immediately enforced before any judge or court, even if there is no law to regulate their exercise.²⁵

Any “person, group of persons, community, people or nation” can bring actions regarding actual or threatened violations of their constitutional rights.²⁶ Specifically, individuals may apply for any of the following six legal remedies under the 2008 Constitution:

(1) *Protection proceedings*: This remedy seeks to provide protection of fundamental rights enshrined in the Constitution. Such proceedings may be filed when there is a breach of a child's or group of children's constitutional rights as a result of acts or omissions by any public authority or due to public policies. They may also be filed against a non-state actor if the violation causes severe damage, if it provides improper public services, if it acts by delegation or concession, or if the affected person is in a status of subordination, defenselessness or discrimination.²⁷

(2) *Habeas corpus proceedings*: Children (and/or their representatives) can

²² Ibid.

²³ Article 10, 2008 Constitution.

²⁴ Ibid., Article 11.

²⁵ See Ibid.; see generally M. Miño, ‘UPDATE: The Basic Structure of the Ecuadorian Legal System and Legal Research’, 2009, available at: <http://www.nyulawglobal.org/globalex/Ecuador1.htm>.

²⁶ Article 87, 2008 Constitution; Article 9, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

²⁷ Article 88, 2008 Constitution; Chapter III, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

file habeas corpus proceedings in instances of unfair deprivation of personal liberty before any judge. The judge must hold a hearing within 24 hours to determine the legality of the detention.²⁸

- (3) *Petition for access to public information*: This petition seeks to provide access to public information when a request has been wrongly denied or ignored.²⁹
- (4) *Habeas data proceedings*: Every person has the right to access documents and personal data held by public and private entities, and can file a complaint if their request is ignored.³⁰
- (5) *Non-compliance proceedings*: This petition filed with the Constitutional Court seeks to oblige authorities to comply with national law, rules and regulations, as well as decisions of international tribunals when such decisions are enforceable.³¹
- (6) *Special proceedings for protection*: These proceedings filed with the Constitutional Court are brought against final decisions of national courts that have violated constitutional rights. This appeal is admissible only once all other appeals have been exhausted, unless the failure to file these appeals is not attributable to the applicant's negligence.³²

Alternatively, children or their representatives may file a complaint with the Office of the Human Rights Ombudsman. The Ombudsman's duties include protecting the rights of the inhabitants of Ecuador and supporting the constitutional actions above. It is empowered to investigate and rule on the acts or omissions of natural persons or legal entities that provide public services. It can issue measures of mandatory and immediate compliance for the protection of rights and request trial and punishment from the competent authority for their violations.³³

Regional mechanisms

Individuals or groups of individuals, including children, and NGOs may submit petitions to the Inter-American Commission on Human Rights (IACHR),³⁴ on their behalf or on behalf of third persons, regarding alleged

²⁸ Article 89, 2008 Constitution; Chapter IV, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

²⁹ Article 91, 2008 Constitution; Chapter V, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

³⁰ Article 92, 2008 Constitution; Chapter VI, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

³¹ Article 93, 2008 Constitution; Chapter VII, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

³² Article 94, 2008 Constitution; Chapter VIII, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

³³ *Ibid.*, Article 215.

³⁴ The Inter-American Commission on Human Rights is one of two bodies within the Organisation of American States (OAS) for the promotion and protection of human rights. The other human rights body is the Inter-American Court of Human Rights. The Commission benefits from a "dual role" as its mandate is found in both the Charter of the Organisation of American States, and in the American Convention on Human Rights (ACHR). As an OAS Charter organ, the IACHR performs functions in relation to all OAS Member States. As an organ of the Convention, its functions are applicable only to States that have ratified the ACHR: Charter of the Organisation of American States, Chapter XV, available at: http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm; American Convention on Human Rights, 'Pact of San Jose, Costa Rica', Chapter VII, available at:

violations of the American Convention on Human Rights.³⁵ A petition can only be lodged after domestic remedies have been exhausted, and normally must be filed within six months after the final judgment.³⁶ The petition must include, amongst other things, the name of the person filing it or, in the case of an NGO, the name of the legal representative, the name(s) of the victim(s) if possible, and whether the petitioner wishes to remain anonymous and the respective reasons.³⁷ The victim may designate a lawyer or other person to represent him/her before the IACHR, but this is not compulsory.³⁸ When a petition is declared admissible, the IACHR attempts to reach a “Friendly Settlement” between the parties concerned. If this is not possible, the IACHR will reach a decision on the merits, which consists of non-binding recommendations to the violating State, aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If the State does not comply with the recommendations of the IACHR, the IACHR may refer the case to the Inter-American Court of Human Rights (IACtHR).³⁹ Individuals do not have direct recourse to the Court, and must submit their petitions to the IACHR. The IACtHR interprets and applies the ACHR and other Inter-American human rights treaties and issues a judgment, which may include an order to pay reparations to the victim(s) of human rights violations.⁴⁰ The Court’s judgments are legally binding on the State against which they are made.

As at the date of this report, there are eight cases regarding the admissibility of Ecuadorian child claims to the IACtHR listed on the Organisation of American States’ website.⁴¹ All cases were deemed admissible only after the domestic remedies were exhausted and a right guaranteed under the American Convention of Human Rights had been breached.⁴²

B. What powers would courts have to review these violations, and what remedies could they offer?

The Constitutional Court is the supreme body for interpreting the Constitution and international human rights treaties ratified by the Ecuadorian State through its rulings and judgments. It has the power to declare regulatory acts, norms and administrative acts as unconstitutional, which invalidates the act or norm.⁴³

Any judge with jurisdiction in the place where the violation occurred or where its impacts were exerted may hear a constitutional action. If a judge

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

³⁵ American Convention on Human Rights, Article 44.

³⁶ Rules of Procedure of the Inter-American Commission on Human Rights, Articles 31-32, available at: <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

³⁷ Ibid., Article 28.

³⁸ Ibid., Article 23.

³⁹ Ibid., Article 45.

⁴⁰ American Convention on Human Rights, Article 63.

⁴¹ See: <http://www.oas.org/en/iachr/children/decisions/iachr.asp>.

⁴² Article 46(1)(a) of the American Convention on Human Rights, "PACT OF SAN JOSE, COSTA RICA" (B-32).

⁴³ Article 429, 2008 Constitution.

finds that a violation of constitutional rights has occurred, they must declare the violation and attribute responsibility to the State or a private person. It may order reparations, full compensation for pecuniary and non-pecuniary damage and/or restitution, and impose obligations on the perpetrator of the violations and the circumstances under which they must be complied with. If a ruling is not complied with by a public servant, the judge must order their dismissal from their job or employment. Preventive measures can be ordered either jointly or independently of the constitutional actions for the protection of rights, for the purpose of avoiding or ceasing the violation or threat of violation of a right.⁴⁴

In habeas corpus proceedings, in the event of illegitimate or arbitrary detention, a judge may order the victim's immediate release from prison. If any kind of torture, inhumane, cruel or degrading treatment is found to have occurred, a judge may order the release of the the victim, provision of care, and alternative measures to imprisonment.⁴⁵

The Juvenile Court has the power to protect children from abusive situations and provide children with food, housing, protection or other immediate remedies.⁴⁶

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It appears that Ecuador does not allow cases to be brought without named plaintiffs. However, certain cases involving minors may be sealed to protect the identities of victims. Additionally, requests for advisory opinions may be brought before the IACtHR without naming individual victims.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Yes, class action lawsuits are permitted in Ecuador.⁴⁷ Collective and class action lawsuits have been recognised in Ecuador courts since 1999.⁴⁸ Furthermore, a group of persons (including children) or a community may bring an action regarding violations of constitutional rights under the 2008 Constitution (see part III.A above).

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

It appears that NGOs can bring actions to challenge violations in Ecuadorian

⁴⁴ Article 86, 2008 Constitution; Articles 18-22, Chapter II, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

⁴⁵ *Ibid.*, Article 89.

⁴⁶ *Código de Menores*, available in Spanish at: <http://www.cetid.abogados.ec/archivos/100.pdf>.

⁴⁷ See: <http://www.business-humanrights.org/Documents/Oilpollution/Ecuador/Lawsuit>.

⁴⁸ *Acciones Colectivas*, p. 18, Jorge E. de Hoyos Walter and Juan M. Alcalá, available in Spanish at: <http://www.anadenet.com/docs/cn11/9%20LIC%20ARTURO%20ALVARADO%20HERNANDEZ.pdf>

courts,⁴⁹ though NGOs are heavily regulated within Ecuador and are subject to government supervision and approval of their activities (see part V below).⁵⁰

Any person or group of persons as third parties with an interest in a constitutional action may submit an *amicus curiae* brief to be admitted to the court record for adjudication before a decision is made.⁵¹ It is unclear whether this would entitle NGOs to intervene as third parties.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Regarding proceedings concerning violations of constitutional rights, the judge with jurisdiction in the place where the act or omission originated or where its impacts were exerted is the competent authority to hear such actions.⁵² Generally for all actions concerning rights violations, proceedings may “be proposed verbally or in writing, without formalities and without the need to quote the rule that was infringed”. Furthermore, an attorney is not needed to file the action. Proceedings must be “simple, quick and efficient”, “effective at all times” and “verbal in all of its stages”, and procedural rules that tend to delay the efficient processing of such actions will not be applicable.⁵³

Non-compliance proceedings and special proceedings for protection, however, must be filed with the Constitutional Court. An application for non-compliance proceedings must contain, amongst other things, the full name of the plaintiff.⁵⁴ An application for special protection proceedings must, amongst other things, include the capacity in which the plaintiff appears, and demonstrate an exhaustion of remedies, unless they are ineffective or the failure to file is not attributable to the applicant’s negligence.⁵⁵

The Juvenile Court has primary jurisdiction over children in civil and criminal proceedings in Ecuador. The Juvenile Court also rules in domestic

⁴⁹ For example, Fundamedios, Ecuador’s largest independent news media NGO, (unsuccessfully) challenged a 2013 presidential decree in court that regulates the activities of NGOs: Pachamama Alliance, ‘Human Rights Watch criticises Ecuador’s strict NGO policy’, 2013, available at: <http://www.pachamama.org/news/human-rights-watch-criticizes-ecuadors-strict-ngo-policy>; civil society groups (unsuccessfully) challenged in the Constitutional Court Ecuador’s controversial Organic Law on Communications, approved by the National Assembly in June 2013, which imposes overly broad restrictions on the media: Freedom House, ‘Ecuador’, 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/ecuador#.VUJH5Phx0xA>.

⁵⁰ See: <http://www.icnl.org/research/monitor/ecuador.pdf>.

⁵¹ Article 12, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

⁵² Article 86(2), 2008 Constitution.

⁵³ Article 86, 2008 Constitution; see also Articles 7-8, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

⁵⁴ Article 55, *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*.

⁵⁵ *Ibid.*, Article 61.

disputes between children and adults and is the court that governs adoptions of Ecuadorian children.⁵⁶ The judges in the Juvenile Court are specialised to deal with children and adolescents. They are organised in fields corresponding to those of the National Court of Justice.⁵⁷

- B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a *pro bono* basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

Numerous law firms, NGOs and private international aid organisations in Ecuador provide pro bono legal advice and representation to children and indigent persons, and in cases of human rights violations. The Sub-Secretariat of Human and Cultural Rights of the Ecuadorian Ministry of Justice and Human Rights also sponsors a “Directory of Relationship with the Citizenry”, which provides legal advice in various areas of law.⁵⁸

Free legal assistance can also be obtained through the following organisations. The Ecuadorian Center for the Promotion and Action for Women (CEPAM) offers legal assistance to women and girls through legal clinics across Ecuador, especially regarding civil claims resulting from domestic violence, criminal cases resulting from sexual violence, and general family law issues.⁵⁹ Free legal advice on refugee and asylum issues is offered to the many refugees from Colombia residing in Ecuador by mobile legal clinics run by the Ecuadorian Department of Refugees.⁶⁰

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The 2008 Constitution prohibits statutes of limitations for crimes against humanity, violations of humanitarian law and gross human rights violations in Ecuador.⁶¹ However, for cases that do not rise to the level of such international crimes, statutes of limitations tend to range from five to over 10

⁵⁶ See: http://www.ecuador.org/nuevosite/Otros_adoption.php.

⁵⁷ Article 186, 2008 Constitution.

⁵⁸ Available in Spanish at: <http://www.justicia.gob.ec/asesoria-juridica-gratuita/>.

⁵⁹ See: <http://www.cepamecuador.org/#!asesora-legal/c1e74>.

⁶⁰ See: <http://asylumaccess.org/AsylumAccess/news-and-updates/archives/bringing-refugee-legal-aid-to-remote-areas-in-ecuador>.

⁶¹ See: <http://www.nyulawglobal.org/globalex/Ecuador1.htm>

years, depending on the circumstance. For example, the statute of limitations for domestic violence is five years, for homicide it is 10 years, and for certain sexual offences it is over 10 years.⁶²

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Ecuador permits compelled testimony of witnesses and other physical evidence to be presented in civil and criminal cases. The 2008 Constitution guarantees the right to “submit verbally or in writing the reasons or arguments of those who are being assisted and to respond to the arguments of the other parties; to submit evidence and challenge the evidence that is submitted against them”.⁶³ In cases involving sensitive allegations, evidence can be presented under seal only to a judge.

According to the Civil Procedure Code, children cannot testify under oath,⁶⁴ and children may not be witnesses in proceedings, unless they are over 14 years of age.⁶⁵

The Code of Childhood and Adolescence provides that the child has the right to be heard and express his or her views in any proceedings affecting him or her.⁶⁶ Child protective proceedings take place before specialised judges and the judge can ask the child directly for his or her opinion.⁶⁷ The Code also provides that adolescents shall be heard in all court hearings concerning protective proceedings which relate to them, and children can be heard if they are able to express an opinion of their own.⁶⁸

When taking testimony from a child, any judge or competent authority taking the testimony is tasked to ensure that the best interests of the child are respected.⁶⁹ Testimony is to be taken in the presence of the child’s parents or guardian. Otherwise a judge shall appoint a special guardian and preference should be given a person trusted by the child.⁷⁰ Testimony by a child must be performed in confidence and under conditions which respect the privacy and physical and emotional integrity of the child. Other parties may only be present during the child’s statement if the judge finds that this does not undermine the interests of the child. The judge may authorise other parties to question the child, but only questions which do not violate the best interests of the child will be allowed.⁷¹

⁶² See: *Help for American Victims of Crime in Ecuador*, U.S. Embassy in Quito, Ecuador, <http://photos.state.gov/libraries/quito/153436/ACS/Ecuador%20Victim%20Assistance%20Handout%20-%20FINAL.pdf>.

⁶³ Article 76(7)(h), 2008 Constitution.

⁶⁴ Civil Procedure Code, Art. 156.

⁶⁵ *Ibid.*, Art. 213.

⁶⁶ Code of Childhood and Adolescence, Art. 12, 60, 314.

⁶⁷ See: <http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/frontpage.htm>.

⁶⁸ Code of Childhood and Adolescence, Art. 238.

⁶⁹ *Ibid.*, Art. 258.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

Court hearings involving children can be heard ‘in camera’, meaning excluding the public from attending the hearing, and the persons allowed to be present are limited to a minimum.⁷² No information which may lead to an identification of a child concerned in any court proceedings or his or her family may be disseminated publicly.⁷³

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Ecuador’s judicial system can be subject to lengthy administrative and political delays. A 2013 report by the US State Department says that, with respect to criminal human rights proceedings, “[d]espite efforts to modernise the court system, the judiciary continued to operate slowly and inconsistently. There were lengthy delays before most cases came to trial. Judges reportedly rendered decisions more quickly or more slowly due to political pressure or, in some cases, the payment of bribes.”⁷⁴ Civil lawsuits seeking damages for alleged human rights breaches were perceived to be burdensome, with the 2013 report noting that such lawsuits were “rarely filed, since such suits were time-consuming and difficult to prosecute, with judges taking up to a decade to rule on the merits of a case.”⁷⁵

However, protective orders are available in emergency situations, particularly where abuse is alleged.⁷⁶ Victims in such situations may have immediate access to shelter, medical care and legal assistance.

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

For cases originating in the Juvenile Court of first instance, the primary appellate courts are the District Juvenile Court (*Corte Distrital de Menores*), which hears cases regionally, and the National Juvenile Court (*Corte Nacional de Menores*), which hears cases in Quito.⁷⁷ The Provincial Court (*Corte Provincial*), National Court of Justice (*Corte Nacional de Justicia*) and Constitutional Court (*Corte Constitucional*) are the primary appellate courts for all other cases, including decisions on violations of constitutional rights.⁷⁸ Decisions of the Constitutional Court are binding.⁷⁹

- H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

There is a possibility of political repercussions from a positive decision against the government, though the lack of judicial independence is the main

⁷² Ibid., 314.

⁷³ Ibid.

⁷⁴ US State Department, *Ecuador 2013 Human Rights Report*, 2013, available at: <http://www.state.gov/documents/organization/220651.pdf>.

⁷⁵ Ibid.

⁷⁶ See in Spanish: <http://victimasportal.org/Paises/Ecuador.html>

⁷⁷ *Código de Menores*, available in Spanish at: <http://www.cetid.abogados.ec/archivos/100.pdf> (Spanish).

⁷⁸ Article 86, 2008 Constitution.

⁷⁹ Ibid., Article 436.

issue of concern. According to a 2015 report by Freedom House, “Ecuador has long been racked by corruption, and the weak judiciary and lack of investigative capacity in government oversight agencies contribute to an environment of impunity.”⁸⁰ Likewise, a 2015 report by Human Rights Watch noted that “[c]orruption, inefficiency, and political influence have plagued Ecuador’s judiciary for years... A report published in July by three international NGOs—the Due Process of Law Foundation, Dejusticia, and the Institute for Legal Defense—documented routine executive interference with judicial decisions.”⁸¹ A 2013 report by Human Rights Watch on Ecuador noted that “a memorandum issued by the transitional council in July [2013] warned judges that they would face sanctions and possible dismissal if they accepted appeals for the protection of constitutional rights against the state.”⁸² A 2013 US State Department report states that “[f]ailures in the justice system contributed to cases in which communities took the law into their own hands and resorted to violence against suspected criminals.”⁸³

- I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

See part IV.H above.

- V. **Additional factors**. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Customary law

Under the 2008 Constitution, indigenous communities and peoples are entitled to “create, develop, apply and practise their own legal system or common law” though such customary laws may not infringe constitutional rights, especially those of children and women.⁸⁴

Restrictions on NGOs

Government interference with NGO activities remains an ongoing problem that undermines access to redress for violations of human rights committed by government authorities. A 2013 presidential decree introduced onerous requirements for forming an NGO, granted officials broad authority to intervene in and NGO operations and dissolve organisations, and obliged NGOs to register all members. Critics contended that the regulations violated international standards, and activists unsuccessfully challenged the constitutionality of the decree in Ecuadorian courts. As of December 2014, however, the government automatically registered all 46,330 social and civil

⁸⁰ Freedom House, *Ecuador*, 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/ecuador#.VUJH5Phx0xA>.

⁸¹ Human Rights Watch, *Ecuador*, 2015, available at: <http://www.hrw.org/world-report/2015/country-chapters/ecuador?page=2>.

⁸² See: <http://www.hrw.org/world-report/2013/country-chapters/ecuador>.

⁸³ US State Department.

⁸⁴ Article 57(10), 2008 Constitution.

organisations.⁸⁵

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁸⁵ Freedom House; Human Rights Watch.