



## ECUADOR

<b>REPORT N°</b>	N° 5-6 periodic report for the CRC
<b>PRE-SESSION/SESSION</b>	Pre-session: 76 (February 2017) – Session: 76 (September 2017)
<b>LAWS (THC-1993, GUIDELINES, DOMESTIC LAWS)</b>	<ul style="list-style-type: none"> <li>• CRC ratified on March 23, 1990</li> <li>• Optional Protocol on the sale of children, child prostitution and child pornography was ratified on January 30, 2004</li> <li>• 1993 HC came into force on September 7, 1995</li> <li>• 1996 HC came into force on September 1, 2003</li> <li>• Inter-American Convention on Conflicts of Laws concerning the Adoption of Minors, signed May 24, 1984</li> <li>• Inter-American Convention on International Traffic in Minors ratified May 20, 2002</li> <li>• Constitution of the Republic of Ecuador, 2008</li> <li>• Code on Childhood and Adolescence, 2003</li> </ul>
<b>GENERAL SITUATION OF CHILDREN DEPRIVED OF THEIR FAMILY</b>	<ul style="list-style-type: none"> <li>• <b>Statistics</b> (2014 report): 7 % of Ecuadorian children do not live with both biological parents; 5 % are deprived of parental care during first years of life; great regional disparities: regions with higher migration present much higher rate (10-14 %).</li> <li>• <b>Children’s rights issues:</b> related to chronic malnutrition, inequality, access to school education (88,000 children had no access in 2013), violence (44 % of children in 2010), labour exploitation (360,000 in 2012) and poverty (in 2011, 47% of all children and adolescents lived in households with monetary poverty and 19.3% lived in households with extreme monetary poverty).</li> <li>• In April 2016, the country was hit by an <b>earthquake</b> measuring 7.8 degrees that left many children and adolescents affected: estimations talk about some 88,000 children were, for example, deprived of schools, and about 30 orphaned and unaccompanied children were detected in the regions of the epicentre.</li> <li>• <b>Public policies and legal provisions:</b> Children and adolescents fall under this priority groups and benefit from two specific policy areas - Life-circle and Family Inclusion [<i>Inclusion al Ciclo de Vida y la Familia</i>] and Quality Social Mobility [<i>Aseguramiento para la Movilidad Social</i>], which include programs such as the Integral Development Program [<i>Programa sobre Desarrollo Integral</i>] and Special Protection [<i>Proteccion Especial</i>]. Articles 190 ff. Code on Childhood and Adolescence [CNA - <i>Código de la Niñez y Adolescencia</i>] establishes the <b>National Decentralised Comprehensive Child and Adolescent Protection System</b> (connected and coordinated network of entities and public and private services, destined to ensure the comprehensive protection and care of children).</li> <li>• <b>Family support programs</b> are numerous.<sup>1</sup> MIES<sup>2</sup> website: there are also so-called <i>Centros Infantiles del Buen Vivir (CIBV)</i> for smaller children, which can be qualified as day-care centres; there are different types of social benefits for different circumstances of vulnerability: the so-called benefit for human development and allowances [<i>Política de Bono de Desarrollo Humano</i>] - both granted to mothers/other adults living in precarious situations and to persons with disabilities. Changed focus regarding the combat against poverty through a programme called “Family Unity” [<i>Unidad de la Familia</i>] focusing on the socio-economic situation of a family.</li> </ul>

<sup>1</sup> E.g. *Programa Creciendo con Nuestros Hijos; Programa de Centros Infantiles del Buen Vivir; Proyecto Alimentario Nutricional Integral (PANI); Programa de Formación en Desarrollo Infantil.*

<sup>2</sup> Ministerio de Inclusión Económica y Social responsible to implement public policies and strategies regarding children and adolescents. The Decree dissolved the Institute for Childhood and Family [Instituto de la Niñez y la Familia], a public entity attached to the MIES, endowed with legal personality and technical, administrative and financial independence that had prior, since 2008, been competent public authority with regard to programs destined to children.

	<p>Sources: UNICEF Ecuador, <a href="http://www.unicef.org/ecuador/spanish/index.html">http://www.unicef.org/ecuador/spanish/index.html</a>; Instituto Nacional de Estadísticas INEC: Censo 2010 y Proyecciones de Población 2013; La niñez y adolescencia en el Ecuador contemporáneo: alcances y brechas en el ejercicio de derechos, 2014, CNII-PLAN Internacional-Observatorio Social del Ecuador-UNICEF; Es necesario proteger a los niños y niñas afectados por el terremoto de Ecuador, PLAN Internacional, April 2016, <a href="https://plan-internacional.es/plan-internacional-alerta-de-la-necesidad-de-proteccion-de-ninos-y-ninas-tras-el-terremoto-de-">https://plan-internacional.es/plan-internacional-alerta-de-la-necesidad-de-proteccion-de-ninos-y-ninas-tras-el-terremoto-de-</a>; La Vanguardia, 19/04/2016, <a href="http://www.lavanguardia.com/vida/20160419/401216919098/el-terremoto-de-ecuador-deja-a-88-000-ninos-sin-escuela-segun-unicef.html">http://www.lavanguardia.com/vida/20160419/401216919098/el-terremoto-de-ecuador-deja-a-88-000-ninos-sin-escuela-segun-unicef.html</a>.</p>
<p><b>ALTERNATIVE CARE OPTIONS</b></p>	<ul style="list-style-type: none"> <li>• Protection measures may be of a <b>judicial or an administrative</b> nature (art. 217 CNA):       <ul style="list-style-type: none"> <li>→ <b>Administrative measures</b> are decided upon by Judges for Children and Adolescents, the Cantonal Commissions for the Protection of Rights and care institutions themselves (art. 218 CNA) and include, <i>inter alia</i>, actions of an educational, therapeutic, psychological or material character (support the family group, and are aimed at preserving, strengthening or restoring its ties in the child's interests); care order for the child's care within his home; family reintegration or the child's return to his biological family; the child's emergency care in a family home or a care institution (maximum 72 hours)</li> <li>→ <b>Judicial measures</b> may only be ordered by Judges for Children and Adolescents and their implementation is proceeded by the Subsecretary of Special Protection within the MIES [<i>Subsecretaría de Protección Especial</i>] and are: <b>foster care, residential care and adoption</b>.</li> </ul> </li> <li>• <b>Foster Care:</b> temporary protection measure (art. 220); Poverty can in itself not be sole reason for having recourse to foster care (art. 221); Efforts are undertaken to promote the quality recourse to this alternative care option. In 2014, the Directorate for Special Protection Services, with the technical assistance of UNICEF and RELAF, started elaborating technical regulations [<i>Norma Técnica de Servicios de Acogimiento Familiar. Familia Ampliada</i>], foreseeing minimum standards for quality foster care (e.g. accreditation of families). Since 2007, MIES is implementing a project called "<i>Acogimiento Familiar: niños libres</i>"<sup>3</sup> (foster care by extended family members for children whose parent(s) are incarcerated, to avoid children living in detention centres). Since 2014, 3 local NGOs<sup>4</sup> have been launching and implementing together with the MIES, a <i>pilot project</i> concerning foster care by non-relatives in different provinces of the country, with the purpose to sensitize and train professionals and foster families.</li> <li>• <b>Residential Care:</b> Historically first response to children deprived of their family (in 2009, there were 10 943 children in private institutional care). Since then, increased deinstitutionalisation efforts and the efforts to improve the quality of rendered services in state-run and private institutions, reflected in decreasing numbers of institutionalised children (recent data<sup>5</sup>: a total of 2,688 children were placed in institutions in 2014). Civil society voices estimate that numbers are higher. Among the different reasons for children being institutionalised, cases of abuse and negligence are frequently to be found (45 %) as well as cases of abandonment (19%). Other frequent reasons are sexual abuse, children living in street situations or orphaned children (36%). To improve the quality care standards: development of residential care model, "<i>Modelo y Metodología de Atención en Protección Especial aplicado al Acogimiento Institucional</i>", and adoption of new regulations "<i>Norma técnica de Protección Especial de Servicios de Acogimiento institucional</i>" in 2014. Ministerial Agreement n° 194 that regulates proceedings for the child's socio-legal and psychosocial evaluations: after 90 days, definitive long-term decisions must be taken, especially with regard to the child's adoptability.</li> </ul> <p>Sources: Una aproximación a la situación de los niños, niñas y adolescentes en cuidados alternativos en el marco de la construcción del Sub-sistema de protección integral de derechos de niños, niñas y adolescentes privados de cuidado parental en Ecuador (Informe preliminar), RELAF, February 2016, <a href="https://www.relaf.org/Documento.pdf">https://www.relaf.org/Documento.pdf</a> ; Observatorio de los Derechos de la Niñez y Adolescencia, <a href="http://www.odna.org">http://www.odna.org</a>; Consejo Nacional de la Niñez y Adolescencia, <a href="http://www.cna.gov.ec">http://www.cna.gov.ec</a>; SOS Children's Villages – Ecuador, <a href="https://www.aldeasinfantiles.org.ec/site/index.php?pag=PAG0000054">https://www.aldeasinfantiles.org.ec/site/index.php?pag=PAG0000054</a>; RELAF, <i>Latin American Dissemination Document, Children and adolescents without parental care in Latin America</i>, <a href="http://www.relaf.org/material_eng.html">http://www.relaf.org/material_eng.html</a>; <i>La Niñez y Adolescencia en el Ecuador contemporáneo: avances y brechas en el ejercicio de derechos</i>, September 2013, CNII- UNICEF-Observatorio Social del Ecuador, Plan Internacional, <a href="http://www.odna.org.ec/ODNA-PDF/NA_EcuadorContemporaneo.pdf">http://www.odna.org.ec/ODNA-PDF/NA_EcuadorContemporaneo.pdf</a>; MIES, <a href="http://www.inclusion.gob.ec/mies-ejecuta-proyecto-acogimiento-familiar-ninos-libres/">http://www.inclusion.gob.ec/mies-ejecuta-proyecto-acogimiento-familiar-ninos-libres/</a> ;</p>

<sup>3</sup> Approximately 500 children benefit from this program annually; it includes psychological, social and financial support for concerned families.

<sup>4</sup> Danielle Children's Fund Ecuador, Fundación Cristo de la Calle and Fundación Inés Chambers.

<sup>5</sup> Statistics presented at the Third National Adoption Council - Tercer Congreso Nacional Adopciones Ecuador in July 2014.

<http://www.inclusion.gob.ec/mies-realiza-taller-para-analizar-el-acogimiento-institucional/>; UNICEF, La situación de niños, niñas y adolescentes en las instituciones de protección y cuidado de América Latina y el Caribe, December 2013, [http://www.unicef.org/ecuador/libro\\_NNA\\_REGION.pdf](http://www.unicef.org/ecuador/libro_NNA_REGION.pdf); *Los Olvidados: niños y niñas en "hogares". Macroinstituciones en América latina y el Caribe*, RELAF-UNICEF, 2015; Sistemas nacionales de protección integral de la infancia: fundamento jurídico y aplicación en América Latina y el Caribe, Alejandro Morlachetti, CEPAL, UNICEF, 2013, [http://www.academia.edu/17900443/RELAF\\_UNICEF\\_2015\\_Los\\_olvidados\\_ni%C3%B1os\\_y\\_ni%C3%B1as\\_en\\_hogares\\_Macro-instituciones\\_en\\_Am%C3%A9rica\\_Latina\\_y\\_el\\_Caribe.RELAF\\_UNICEF\\_2015\\_Forgotten\\_children.Macro-institutions\\_in\\_Latin\\_America\\_and\\_the\\_Caribbean](http://www.academia.edu/17900443/RELAF_UNICEF_2015_Los_olvidados_ni%C3%B1os_y_ni%C3%B1as_en_hogares_Macro-instituciones_en_Am%C3%A9rica_Latina_y_el_Caribe.RELAF_UNICEF_2015_Forgotten_children.Macro-institutions_in_Latin_America_and_the_Caribbean); Manual de Acogimiento Familiar, Danielle Children's Fund, MIES, December 2014, [http://www.daniellechildrensfund.org/fileadmin/downloads/Manual\\_Acogimiento\\_Familiar-DCF.pdf](http://www.daniellechildrensfund.org/fileadmin/downloads/Manual_Acogimiento_Familiar-DCF.pdf).

**ADOPTION**

- **Principle of subsidiarity:** all measures of family support and family reintegration must have been exhausted; domestic adoption will be given priority over intercountry adoption (only exceptional); preference is given to legitimately constituted, heterosexual couples compared to unmarried couples, to the adoption by an extended family member (up to the fourth degree of kinship) and to adoption candidates from the same culture in case of the adoption of an indigenous or Afro-Ecuadorian child; Intercountry intra-familial adoptions are permitted and given priority (e.g. Ecuadorian national living abroad and being related to the child up to the fourth degree of kinship). **Technical Adoption Unit, the Specialised Police for Children and Adolescents, and the Technical Office** carry out the investigations aimed at locating relatives of the child, within the fourth degree of kinship, and who may be able to be entrusted with his permanent and stable care.
- **Pre-condition for intercountry adoption:** there must exist an international treaty or agreement on adoption between Ecuador and the country of residence or origin of the applicants.
- **Adoption of children with special needs:** pre-allocations are made to AABs in order to expedite ICA processes.
- **Consent:** The child, whenever he is able to do so, must be heard in the process of adoption (administrative and judicial stage), and his opinions will be assessed, in accordance with his level of development, including emotional development. The adolescent's consent is compulsory.
- **Matching:** The matching is a decision of the Family Matching Committee, issued via an administrative resolution, through which an adequate family is matched with a specific child or adolescent, in accordance with his needs, characteristics and conditions. A harmonised national system of information is created; it includes a register of adoption applicants and a register of children and adolescents, who are eligible for adoption. The prior matching of a family and a child – except in cases of difficult adoption, either due to an illness, disability, an age over four years or any other due justification – as well as the matching of a child before the judicial declaration of adoptability, the preparation, presentation and approval of the report on his physical, psychological, legal, family and social situation, and the adopters' declaration of eligibility and suitability, are prohibited.
- The country introduced this **limit of 9 foreign accredited adoption agencies** due to studies made in 2011, which state that there are children whose domestic adoption might be difficult.
- **Variety of foreseen sanctions** to help prevent and combat illicit and irregular adoption practices (e.g. prohibition of undue financial gains, annulment actions)

Sources: Hague Profile Country Profile, <https://www.hcch.net/en/publications-and-studies/details4/?pid=6221&dtid=42>; articles 152 and following CNA, <http://www.cnaa.gov.ec/pages/interna.php?txtCodilInfo=29>.

**STATISTICS**

The statistics relating to the number of intercountry adoptions undertaken between 2006-2013:

	2013	2012	2011	2010	2009	2008	2007	2006	Total
Canada	1	0	0	0	0	0	0	0	1
Italy	12	0	10	20	2	4	4	2	54
Netherlands	0	0	0	0	0	0	0	1	1
New Zealand	0	0	0	0	0	2	0	0	2
Spain	0	0	0	0	0	0	2	5	7
Sweden	7	4	5	10	5	0	0	0	31
Switzerland	0	2	0	1	0	0	0	0	3
USA	11	15	6	12	13	26	0	0	83

TOTAL	31	21	21	43	20	32	6	8	182
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According to the Hague Country Profile, another receiving country of Ecuadorian children is Belgium. Ecuador cooperates only with contracting states.

Sources: AICAN Adoption Statistics <http://www.aican.org>; Answer 40 of the Hague Country Profile.

**RISKS**

- **Lack of coordinated and inter-sectorial structures** permitting technical, ethical and precise interventions by including the child and his/her family regarding the decision-making process, potentially leading to unnecessary family separations in many cases
- Some issues **once the child has entered the child protection system**: inadequate timeframes (90 days) and lack of resources or expertise; uncertainty/no definition of many children’s individual situation or adoption of inadequate solutions (e.g. parental authority being often easily and permanently removed on emergency grounds); insufficient and inadequate work with concerned families due to prevailing cultural and social mind-sets, prejudices and paradigms within families and professionals.
- **Absence of a nation-wide and effective foster care system**, leading to residential care being still considered as first response for children in need of alternative care. Despite prioritization given to foster care, current numbers of children actually being taken care of remain low as, in practice, the system does not allow direct resort to foster care arrangements. Foster care is currently only envisaged and evaluated, once the judicial measure has been declared and the child been placed in an institution.
- **Persistence of large scale institutions and of private care facilities** in their majority.
- Reports on cases of institutional violence continue appearing (approx. 44% of institutionalized children are subject to corporal punishment), raising questions regarding the accreditation, supervision and monitoring as well as the qualification of their personnel.
- **Placement of small children in institutions**: no official statistics on children under the age of 3 living in residential care, but estimations rank up to approximately 360 children under the age of 4 are currently living in institutions.
- **Prevalence of long-term permanence in institutions**: 54 % of children stay between 1 to 5 years and 16 % up to 5 and more years, compared to 30% staying only for 1-11 months.
- **Due to ongoing restructuration, great risk of losing the needed specialised responses** in the field of child protection (children part of other vulnerable demographic groups).
- **Adoption matters**:
  - Concerning the expedited ICA procedures foreseen for children with special needs, caution must be taken to still respect each step of the adoption procedure.
  - Existence of donations and contributions to children’s institutions – even when occurring after the adoption decision – might still greatly influence ICA practices in a country and requires therefore an effective monitoring process.

**POTENTIAL QUESTIONS**

- What does the government plan to do to establish solid strategies and mechanisms in order to prevent family separations and early child abandonments?
- How does the government plan to ensure a system of co-responsibility with clear roles and responsibilities of all involved actors to provide support to vulnerable families and communities at risk and to ensure quality alternative care?
- What concrete measures and strategies does the government plan to adopt in order to strengthen the deinstitutionalisation process and to actively promote the recourse to foster care by allocating sufficient public means to initiatives such as the joint pilot foster care project in order to develop a systematic and nation-wide quality foster care practice?
- What does the government plan to do to strengthen the proper implementation of the subsidiarity principle in order to ensure that an ICA is in the best interest of the child (e.g. specific regulations relating to the Code, or additional internal resolutions related to psycho-social interventions, probationary period/integration of the child and the adopters, etc.)?