



Critical analysis of ecuadorian legislation on domestic violence: Challenges and Contradictions

Análisis crítico de la legislación ecuatoriana sobre violencia intrafamiliar: Desafíos y contradicciones

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ABSTRACT

Through this analysis, the relevant Ecuadorian legal provisions will be critically examined, identifying their notable achievements, possible shortcomings and challenges in practical implementation, with the aim of analysing domestic violence in Ecuadorian legislation. The comprehensive exploration of the topic of study is guided by a descriptive documentary type. Ecuadorian legislation, based on its constitutional principles, has made a clear commitment to the protection of fundamental rights, especially in the fight against gender-based violence. However, when we analyse the criminalisation of physical violence, ambiguities and contradictions emerge that challenge the effectiveness of this legal framework.

Descriptors: parent child relationship; domestic violence; gender-based violence. (Source: UNESCO Thesaurus).

RESUMEN

A través de este análisis, se examinarán críticamente las disposiciones legales ecuatorianas pertinentes, identificando sus logros notables, posibles deficiencias y los desafíos en la implementación práctica, mediante el objetivo de analizar la violencia intrafamiliar en la legislación ecuatoriana. La exploración exhaustiva del tema de estudio se rige por un tipo descriptivo documental. La legislación ecuatoriana, fundamentada en sus principios constitucionales, ha marcado un compromiso claro con la protección de los derechos fundamentales, especialmente en la lucha contra la violencia de género. Sin embargo, al adentrarnos en el análisis de la tipificación de la violencia física, emergen ambigüedades y contradicciones que desafían la efectividad de este marco legal.

Descriptores: relación padres-hijos; violencia doméstica; violencia de género. (Fuente: Tesoro UNESCO).

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Sección artículos de investigación



INTRODUCTION

Domestic violence, a disturbing phenomenon that undermines the integrity of the most intimate spaces (Rodríguez-Tapia, et al. 2021), has been a persistent and complex issue in all societies, and Ecuador is no exception (Ortega-Pérez, & Peraza-de-Aparicio, 2021). This scientific article dives into the intricate labyrinth of Ecuadorian legislation addressing violence within the family setting, with the purpose of shedding light on the legal structures, their advances and limitations, and the effectiveness of their application in the protection and prevention of domestic violence.

In the last decade, global awareness of the magnitude of domestic violence has grown exponentially, prompting nations to review and strengthen their legal frameworks to address this scourge. Ecuador, committed to the protection of human rights and the eradication of gender-based violence, has enacted significant legislation that attempts to address this social challenge (Lara-Tello, 2020). However, the actual effectiveness of these measures and their ability to address the complexity of domestic violence are crucial questions that deserve detailed investigation.

Domestic violence stands as an integral transgression aimed at undermining the dignity of the victim, manifesting itself in various dimensions that include psychological, sexual, economic and affective aspects, with detrimental consequences for the harmony and assertive coexistence of the family nucleus (Ortega-Pérez & Peraza-de-Aparicio, 2021). This phenomenon manifests itself within the home, constituting any act that undermines the fundamental rights of family members, unfolding in the most intimate sphere of family coexistence (Mas-Camacho, et al., 2020).

The most significant impact of this form of violence is observed at the psychological level, with consequences that last in the medium and long term for the victims (Mayor-Walton & Salazar-Pérez, 2019). To address this problem, public policies have implemented family training plans aimed at understanding the importance of preventing domestic violence, with a particular focus on its typification, which tends



to focus on gender (women) and, secondly, on children and adolescents (Perala-Larrosa, 2011).

However, the essence of domestic violence can be rooted in couple relationships, where it manifests itself not only to the detriment of the gender, but also the children, directly or indirectly, internalise non-assertive or operative models, thus perpetuating a generational vicious circle that demands criminal classification and consequent reparation (Creagh-Alminán, et al., 2014). In this context, (Tupiza-Villa, 2021), adds an additional perspective by indicating that women who suffer violence in their second home (intimate partner) have experienced violence in their family of origin. This view suggests that the problem of domestic violence requires a multidisciplinary approach including psychological, cultural and, of course, legal or legislative aspects.

Through this analysis, the relevant Ecuadorian legal provisions will be critically examined, identifying their notable achievements, possible shortcomings and challenges in practical implementation (Lanchimba, et al. 2023), (Sabina, et al. 2023). Furthermore, it will explore how these laws have adapted to evolving family dynamics and the different types of violence that can manifest in this context (Pilozo, & Cedeño, 2023). A thorough understanding of current legislation is essential in order to propose concrete recommendations that contribute to strengthening the protection of victims and prevent the perpetuation of this devastating phenomenon within the Ecuadorian family.

Based on the above, the aim is to analyse domestic violence in Ecuadorian legislation.

METHOD

The choice of the methodological strategy for the in-depth exploration of the topic of study is governed by a descriptive documentary approach, ethically supported by a bibliographic design that is based on a meticulous and exhaustive review of documentary material. This approach, in accordance with the ethical guidelines proposed by (Posada-González, 2017), aims to provide a detailed and comprehensive view of the topic in question, allowing a thorough interpretation of



the key elements present in the existing literature, always respecting copyright and the integrity of the information collected.

During the development of the research, the analytical-synthetic method was applied with the ethical aim of structuring a theoretical corpus that would enable the systematisation of responses aligned with the objectives set out. This methodological approach, by facilitating the detailed breakdown and analysis of the information extracted from a population of 15 carefully selected articles, was carried out with the utmost respect for the ethical principles of confidentiality and anonymity. Furthermore, the synergy between analysis and synthesis provided a deep and holistic understanding of the subject matter, allowing for a comprehensive approach to the key aspects related to domestic violence in the Ecuadorian legal context.

It is essential to highlight that this methodological approach, in addition to contributing to the construction of knowledge, adheres to rigorous ethical considerations, opening perspectives for future research and reflections in the legal field, always maintaining integrity and respecting the fundamental ethical principles of scientific research.

ANALYSIS OF THE RESULTS

Ecuadorian legislation, in line with its constitutional principles, is at the forefront of the protection of fundamental rights, especially with regard to the eradication of gender-based violence. In the specific analysis of physical violence, Article 11 of the Constitution establishes equal rights for all persons, with special attention to those in vulnerable situations, while Article 66 guarantees people a life free of violence, thus consolidating a legal framework committed to equality and non-discrimination.

However, as we move into the typification of physical violence, legislative ambiguities and contradictions become evident. The Comprehensive Organic Law for the Prevention and Eradication of Gender Violence against Women defines physical violence in a clear and comprehensive manner, incorporating various elements that go beyond obvious injuries. In this context, Ecuadorian criminal legislation, specifically the Comprehensive Organic Criminal Code (COIP), lacks the



same precision in that it does not define exhaustively the factual assumptions that typify the conduct of physical violence.

The main controversy arises when analysing the relationship between the crime of physical violence and the crime of injury. While Article 156 of the COIP criminalises physical violence against women or members of the family, referring the sanctions to the crime of injury, Article 152 of the same code deals with injuries in a general manner, without specifically contemplating gender-based violence. This contradiction creates a legal loophole and hinders the effective application of the law in cases of physical violence.

It is crucial to highlight that, in addressing physical violence as a crime, there is a dissonance with respect to its classification as a contravention under Article 159 of the COIP. This duality, based on the duration of the incapacity generated by the injury, generates legal insecurity by considering the same act as a crime or misdemeanour, depending on the degree of affectation.

The conceptualisation of physical violence as a contravention as well as a crime, without clear criteria for differentiation, raises doubts about the effectiveness of the legislation in addressing the complexity of gender-based violence. This approach seems to overlook the systemic nature of gender-based violence, which goes beyond physical injuries, affecting also the emotional, psychological and moral integrity of the victims (Sabina, et al. 2023).

The discordance between Ecuadorian legislation and the international treaties ratified by the State highlights the urgent need to review and reform regulations to bring them into line with international standards. In this context, the analysis of physical violence cannot be limited to the temporality of injuries, but must address the root of the problem: cultural patterns of subordination and machismo that perpetuate gender-based violence (Romero-Bello, & González-Blanco, 2017).

Based on the above approach, the following Documentary Categories are proposed:

Constitutional Principles and Protection of Rights:

Article 11: Equal rights and attention to persons in vulnerable situations.



Article 66: Guarantee of a life free of violence.

Specific Legislation on Gender Violence:

Analysis of the Comprehensive Organic Law for the Prevention and Eradication of Gender Violence against Women.

Shortcomings in the classification of physical violence:

Ambiguities and contradictions in Ecuadorian criminal legislation, focusing on the Comprehensive Organic Criminal Code (COIP).

Controversies in the Relationship between Crimes:

Contradictions between the crime of physical violence (Art. 156 COIP) and the crime of injury (Art. 152 COIP).

Duality in the criminalisation of physical violence:

Dissonance between the criminalisation of physical violence as an offence (Art. 156 COIP) and contravention (Art. 159 COIP).

Systemic Nature of Gender Violence:

Focus on the systemic nature of gender-based violence and its impact beyond physical injuries.

Discordance with international treaties:

Inconsistencies between Ecuadorian legislation and international standards on the eradication of gender-based violence.

Challenges in criminalisation and punishment:

Obstacles and problems in Ecuadorian legislation to typify and sanction physical violence.

Legal Uncertainty and Effectiveness of the Legal Framework:

Lack of clarity and coherence in the regulations, generating legal uncertainty and questioning the effectiveness of the legal framework.



Need for Comprehensive Review of Legislation:

Urgency to review and reform legislation to align it with international standards and address the complexity of gender-based violence.

Protection of Rights and Eradication of Violence:

Reflection on the importance of comprehensive review of legislation to ensure full protection of rights and eradication of gender-based violence.

In consideration of the proposed categories, it is a precedent that Ecuadorian legislation faces significant challenges in the criminalisation and punishment of physical violence. The lack of clarity and coherence in the regulations generates legal uncertainty and calls into question the effectiveness of the legal framework in the eradication of gender-based violence. The comprehensive revision of legislation, considering the complexity and continuity of gender-based violence, is an imperative need to guarantee the full protection of victims' rights and the eradication of this problem, which is deeply rooted in Ecuadorian society.

Taking into account that the legal definition of physical violence, according to the Comprehensive Organic Law for the Prevention and Eradication of Gender Violence against Women, is clear and comprehensive, addressing various forms of aggression that go beyond obvious injuries. This definition provides a solid basis for the criminalisation of this offence in adjective criminal law.

However, a legal contradiction arises in classifying the same act as a crime and contravention, differentiating them only by recovery times. This distinction seems to overlook the complexity of crimes of violence against women, which, in many cases, are not isolated events, but manifestations of an ongoing violation of multiple fundamental human rights.

The referral of the punishment of the crime of physical violence to a blank criminal norm, as is the case with the crime of assault and battery, creates loopholes and raises questions about the adequacy of the punishment to the gravity of the crime. This lack of specificity in the legislation could compromise the fair and effective application of the law in cases of physical violence.



Furthermore, it highlights the need not to underestimate the seriousness of the crime of physical violence by treating it as a mere contravention. The consequences of this crime, which affect fundamental rights such as personal integrity, liberty, protection of the family and even life, suggest the importance of considering it as a crime of medium to high gravity. In this sense, the associated penalty should reflect the seriousness of the specific circumstances of each case.

It therefore points to the urgency of legislative reform to address these contradictions and shortcomings in the criminalisation and punishment of physical violence. This reform must guarantee coherence in the classification of crimes, specificity in sanctions and, above all, it must be designed to prevent and eradicate violence against women in Ecuador. The search for justice and the protection of victims' rights require a comprehensive and careful review of current legislation.

CONCLUSIONS

Ecuadorian legislation, based on its constitutional principles, has made a clear commitment to the protection of fundamental rights, especially in the fight against gender-based violence. However, when we analyse the criminalisation of physical violence, ambiguities and contradictions emerge that challenge the effectiveness of this legal framework.

The Comprehensive Organic Law for the Prevention and Eradication of Gender Violence against Women establishes a clear and comprehensive definition of physical violence, addressing multiple forms of aggression. However, Ecuadorian criminal legislation, in particular the Comprehensive Organic Criminal Code (COIP), lacks the same precision as it does not define in detail the factual assumptions that typify this conduct.

The discordance between the classification of physical violence as a crime and a contravention, based on the duration of the incapacity generated by the injury, generates legal uncertainty and raises questions about the effectiveness of the legislation in addressing the complexity of gender-based violence. This duality seems to overlook the systemic nature of gender-based violence, which goes beyond physical injuries, affecting the emotional, psychological and moral integrity of victims.



A comprehensive revision of the legislation, considering the complexity and continuity of gender-based violence, appears as an imperative need. The proposed documentary categories highlight the challenges and obstacles present, from the lack of clarity in typification to the discordance with international standards. The urgency of reforming the law is highlighted by the legal gaps that compromise justice and the protection of victims' rights.

In this context, the conceptualisation of physical violence cannot be limited to the temporality of injuries, but must address the root of the problem: cultural patterns of subordination and machismo. The legislative review must go beyond the surface and delve into the complexity of gender-based violence to guarantee the full protection of rights and the eradication of this deep-rooted problem in Ecuadorian society.

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CONFLICT OF INTEREST

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