

Corporal punishment of children in Cuba: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023



*From the Global Partnership to End Violence Against Children,
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This submission provides an update on the legality of corporal punishment of children in Cuba since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in day care and schools.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Cuba, corporal punishment of children is still lawful in day care and schools, despite recommendations to prohibit it in all settings, made by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Cuba in 2018.

We hope the Working Group will note the legality of corporal punishment of children in Cuba. We hope states will raise the issue during the review this year and make a specific recommendation that Cuba accelerates its efforts to confirm prohibition of corporal punishment of children in day care and schools, as a matter of priority.

1 Review of Cuba in the 3rd cycle UPR (2018) and progress since

1.1 Cuba was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). A recommendation to prohibit corporal punishment in all settings was made.¹ The Government noted the recommendation, stating generally that it was not possible to ensure compliance for the time being, and recommendations would continue to be analyzed in accordance with Cuban laws, the country's institutional processes and the principles that govern the political system sovereignly chosen by the Cuban people.²

¹ 11 July 2018, A/HRC/39/16, Report of the Working Group, para. 24(317)

² 18 September 2018, A/HRC/39/16/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 8 and 9

1.2 Following the review, a new Family Code was adopted by referendum in September 2022. The Family Code 2022 prohibits corporal punishment in the home and alternative care settings. However, there is no legislation explicitly prohibiting corporal punishment in the education system and childcare.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Cuba. We hope states will raise the issue during the review this year and make a specific recommendation that Cuba enact a legislation to prohibit corporal punishment in day care and schools, so that all forms of corporal punishment of children are prohibited, in every setting of their lives.**

2 Legality of corporal punishment in Cuba

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Cuba is still lawful in day care and schools.

Article 146 of the Family Code 2022 prohibits the use of corporal punishment in any form, humiliating treatment or the use of any other form of violence or abuse against children and adolescents- in the home and alternative care settings. however corporal punishment is not yet expressly prohibited in the education system and childcare.

2.1 ***Home (unlawful):*** Corporal punishment is unlawful in the home under article 146 of the Family Code 2022 which prohibits corporal punishment and humiliating treatment inflicted by adults.

2.2 Article 146 of the Family Code prohibiting the use of inappropriate forms of discipline states: “ (1) Children and adolescents have the right to receive guidance and education from the adults responsible for their care through positive forms of parenting, without in any way authorising the use of corporal punishment in any form, humiliating treatment or the use of any other form of violence or abuse, including abandonment, neglect and negligence, or any act which injures or undermines them physically, morally or psychologically.” (unofficial translation)

2.3 ***Alternative care settings (unlawful):*** Corporal punishment is unlawful in alternative care settings under article 146 of the Family Code 2022 which prohibits corporal punishment and humiliating treatment inflicted by adults. (see under “Home”). Article 348 confirms that the prohibition of corporal punishment applies to alternative care settings (e.g. foster care) as follows: “The duties assumed in foster care are assimilated to the personal care of children and adolescents with the same scope required for the holders of parental responsibility and guardians.” (unofficial translation).

2.4 ***Day care (lawful):*** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. In 2011/2012 the Government stated to the

Committee on the Rights of the Child that corporal punishment is prohibited in institutions but cited only a Ministerial Resolution relating to education (see under "Schools").³

2.5 Schools (lawful): Corporal punishment is not explicitly prohibited in schools. The Government has stated that corporal punishment is prohibited in schools,⁴ but there is no legislation explicitly prohibiting corporal punishment in schools. The Ministerial Resolution 165/2006 (*Resolución 165 de 2006 del Ministerio de Educación que aprueba el Reglamento Ramal de la disciplina del trabajo en la actividad educacional*) only prohibits the use of violence in educational settings. It does not explicitly prohibit corporal punishment in schools.

2.6 Penal institutions (unlawful): Corporal punishment is prohibited as a disciplinary measure in penal institutions under article 6 of the prison regulation. The Criminal Code 1987 which explicitly prohibited corporal punishment in the penal system was repealed and replaced by the Penal Code 2022. Article 1 (d) of the annex to the 2022 Penal Enforcement Law (*Ley de Ejecucion Penal 152/2022*) states: "The person deprived of liberty is treated with respect for their human dignity, physical, mental and moral integrity, and the exercise of their rights and guarantees is respected in accordance with the Constitution of the Republic of Cuba, the legal system and to the provisions of the international treaties in force for the country. No sanctioned person or a person on pretrial detention is subjected to cruel, degrading or inhuman treatment." (unofficial translation).

2.7 Sentence for crime (unlawful): Corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Penal Code 2022. Article 95 (d) of the Constitution of 2019 provides that in criminal proceedings, all people have the rights to "be treated with respect for their dignity and physical, mental and moral integrity, and not be a victim of violence and duress of any kind in order to coerce a testimony..." (unofficial translation). Article 4.1 of the Criminal Procedure Law 2021 (*Ley Del Proceso Penal 143/2021*) states: "Nobody may be subjected to enforced disappearance, torture or cruel, inhuman or degrading treatment or punishment". (unofficial translation).

3 Recommendations by human rights treaty bodies

3.1 CRC: On three occasions, the Committee on the Rights of the Child has recommended to Cuba that legislation be enacted to explicitly prohibit corporal punishment in all settings, including in the home: in its concluding observations on the state party's initial report in 1997,⁵ on the second report in 2011,⁶ and on the state party's third-sixth report on 2022.⁷

3.2 CRPD: In its concluding observations on the state party's initial report in 2019,⁸ the Committee on the Rights of Person with Disabilities recommended that the Government adopt the Family Code to explicitly prohibit all forms of corporal punishment of children, including children with disabilities, in all settings.

³ <http://www.gacetaoficial.cu/html/codigo%20de%20lafamilia.html#T2>, accessed 28 March 2014

⁴ See for example [2018], CRC/C/CUB/3-6, Initial report, para. 125

⁵ 18 June 1997, CRC/C/15/Add.72, Concluding observations on initial report, paras. 19 and 35

⁶ 3 August 2011, CRC/C/CUB/CO/2, Concluding observations on second report, paras. 36 and 37

⁷ 16 June 2022, CRC/C/CUB/CO/3-6, Concluding observations on the combined third to sixth periodic reports, para. 29

⁸ 10 May 2019, CRPD/C/CUB/CO/1, Concluding observations on initial report, paras. 17 and 18

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