

# **COLOMBIA**

## **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16<sup>th</sup> session, 2013**

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Global Initiative to  
**End All Corporal Punishment  
of Children**

*Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.*

*In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.*

*The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.*

**Corporal punishment of children is lawful in Colombia, despite the recommendation of the Committee on the Rights of the Child to prohibit it in all settings, the Government’s acceptance of the recommendation to ensure the full protection of children’s rights made during the UPR in 2008, and the Government’s repeated assertions that law reform to prohibit all corporal punishment has been achieved.**

**We hope the Working Group will note with concern the legality of corporal punishment in Colombia. We hope states will raise the issue during the review in 2013 and recommend to Colombia that legislation is enacted to explicitly prohibit corporal punishment of children in all settings, including the home, and for all children, including those growing up in indigenous communities.**

## **1 The initial review of Colombia by the Human Rights Council (2008)**

1.1 Colombia was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 3). No recommendation was made specifically concerning corporal punishment of children, though the issue was included in the summary of stakeholders' information.<sup>1</sup> However, the following recommendation was made and was accepted by the Government:<sup>2</sup>

“Ensure the full protection of children’s rights, in particular of children who are victims of the internal armed conflict, and adequately address all situations of violence against women (Romania)”

1.2 Prohibiting all corporal punishment of children in all settings, including the home, is an obligation on states under the Convention on the Rights of the Child and other human rights treaties, yet it is one frequently ignored or evaded by governments. Furthermore, the right to protection from all forms of corporal punishment in all settings belongs to *all* children, including children in indigenous communities.

1.3 The Government of Colombia has repeatedly asserted to the Committee on the Rights of the Child that all corporal punishment of children is prohibited – under examination by the Committee in 2006<sup>3</sup> and in its third/fourth periodic report to the Committee dated December 2011 and scheduled for future examination.<sup>4</sup> However, law reform to date is incomplete. While legislation and case law possibly rule out the use of violence in childrearing, there is no explicit prohibition of all corporal punishment. Moreover, the existing legislation appears not to apply to children in indigenous communities. No progress has been made to reform the relevant legislation since the initial UPR of Colombia in 2008.

## **2 Legality and practice of corporal punishment in Colombia**

2.1 Corporal punishment of children is not fully prohibited in the home. Article 18 of the Children and Adolescents Code (2006) states that children have a right to protection from maltreatment and abuse by all persons including parents, and includes “punishment” and “all forms of violence or aggression against children and adolescents by their parents, legal guardians or any other person” in the definition of child abuse. At the same time, article 262 of the Civil Code (1883, as amended 1974), confirms the right of parents and other carers to “correct” children and “sanction them moderately”. A 1994 Constitutional Court judgment (Sentence C-371/94) appears to rule that the right of correction excludes the use of violence, but the ruling has not been confirmed through law reform to explicitly prohibit all corporal punishment. The legal protection afforded to children is further weakened by the fact that it apparently does not apply to children in indigenous communities: article 3(2) of the Children and Adolescents Code states that for indigenous peoples “the ability to exercise rights shall be governed by their own standards”. Such standards must be “in harmony with the Constitution”, but case law has established that a certain degree of physical punishment in indigenous communities, even when imposed as a sentence for crime, is not considered to violate the Constitution (see below).

2.2 Research has shown that corporal punishment is commonly used in childrearing in Colombia. Most recently, comparative research found that in Colombia 68% of girls and 63%

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<sup>1</sup> 19 September 2008, A/HRC/WG.6/3/COL/3, Summary of stakeholders' information, para. 23

<sup>2</sup> 9 January 2009, A/HRC/10/82, Report of the Working Group, para. 87(16)

<sup>3</sup> 4 July 2006, CRC/C/SR.1148, Summary record, para. 14

<sup>4</sup> [December 2011], CRC/C/COL/3-4, Third-fourth state party report, para. 209ff

of boys had experienced “mild” corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object), and 15% of girls and 4% of boys severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement) by someone in their household in the past month.<sup>5</sup> In interview research in Bogotá 63% of parents reported seldom using physical punishment and 1% reported using it a lot – of those who smacked their children, 47% said they used their hand, 44% a belt, 10% a slipper or shoe, and 2% a paddle or broom; interviews with the children revealed higher incidences of corporal punishment, including 83% reporting punishment by smacking, with 70% being hit with a belt, 31% the hand, 27% a slipper, 5% a whip, 5% a paddle, 5% a shoe, and 3% a switch.<sup>6</sup>

2.3 Corporal punishment is considered unlawful in **schools** under article 18 of the Children and Adolescents Code, though it is not explicitly prohibited (see above). We do not know its legality in relation to indigenous communities.

2.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime under state law: there is no provision for judicial corporal punishment in criminal law. But its legality in relation to children and adolescents in indigenous communities is unclear. Under article 246 of the Constitution, the authorities of indigenous people can exercise jurisdictional functions within their territory in accordance with their own rules and procedures, when these do not contravene the Constitution and the laws of the Republic. In 1997, a Constitutional Court judgment (Sentence T-523/97) concluded that the imposition of the sentence of whipping in the Paez community was symbolic, not degrading punishment and not severe enough to be torture, and therefore did not violate the Constitution and international human rights instruments. Concerning juvenile justice, article 156 of the Children and Adolescents Act states that adolescents in indigenous communities “will be judged according to the rules and procedures in their own communities as indigenous special legislation in Article 246 of the Constitution, international treaties on human rights ratified by Colombia and the law. Provided that the penalty imposed is not contrary to their dignity, nor allows him/her to be subjected to abuse....” (unofficial translation). It is not clear whether or not the exclusion of abusive penalties under this provision is intended to prohibit corporal punishment, but there is no explicit prohibition.

2.5 Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 18 of the Children and Adolescents Code, though it is not explicitly prohibited (see above). We do not know if this applies in indigenous communities.

2.6 There is no explicit prohibition of all forms of corporal punishment in **alternative care settings**.

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 As noted above, in examining the third periodic report of Colombia in 2006, the **Committee on the Rights of the Child** was led to believe that all corporal punishment in all

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<sup>5</sup> Lansford, J. et al (2010), “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, *International Journal of Pediatrics*

<sup>6</sup> Pineda, N. et al. (2005), *Evaluación de Algunas Modalidades de Atención a la Primera Infancia en el ICBF y el DABS*, Bogotá, Cinde, Save the Children UK, UNICEF, Colombian Institute for Family Welfare and Bogotá Social Welfare Department, reported in International Save the Children Alliance (2005), *Ending Physical and Humiliating Punishment of Children – Making it Happen: Global Submission to the UN Study on Violence against Children*, Save the Children Sweden

settings was prohibited in law: the Committee expressed concern that it nevertheless continued to be used and recommended proper enforcement of the law.<sup>7</sup>

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<sup>7</sup> 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, paras. 61 and 62