

Corporal punishment of children in Colombia: Briefing for the Universal Periodic Review, 30th session, 2018

*From the Global Initiative to End All Corporal Punishment of
Children, September 2017*



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

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 Colombia, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities.

We hope the Working Group will note with concern the legality of corporal punishment of children in Colombia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Colombia draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children in every setting of their lives, including in indigenous communities, and repeal any legal defences for its use.

1 Review of Colombia in the 2nd cycle UPR (2013) and progress since

1.1 Colombia was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16).

The issue of corporal punishment of children was raised in the summary of stakeholders' information.¹ No recommendations were made specifically on corporal punishment of children but the Government accepted recommendations on children's protection from violence.² However, since the review in 2013 and despite the Government's international obligations, no progress has been made towards a legal ban of corporal punishment.

1.2 We hope the Working Group will note with concern the legality of corporal punishment of children in Colombia. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Colombia draft and enact legislation as a matter of priority to clearly prohibit all corporal punishment of children in every setting of their lives, including in indigenous communities, and repeal any legal defences for its use.

¹ 7 February 2013, A/HRC/WG.6/16/COL/3, Summary of stakeholders' views, para. 40

² 4 July 2013, A/HRC/24/6, Report of the working group, paras. 116(48), 116(53) and 116(56)

2 Legality of corporal punishment in Colombia

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Colombia is lawful in the home, some alternative care settings, day care and as a sentence for crime in indigenous communities. Prohibition in schools and penal institutions in indigenous communities requires confirmation in legislation. Legislation should also be enacted to explicitly prohibit corporal punishment in all settings, including within indigenous communities, and to repeal article 262 of the Civil Code 1883.

2.1 **Home (lawful):** Article 18 of the Children and Adolescents Code 2006 states that children have a right to “protection from maltreatment and abuse of all kinds by their parents, their legal representatives, persons responsible for their care and members of their families, school and community” and defines child abuse as “any form of injury, *punishment*, humiliation or physical or psychological abuse, neglect, omission or negligent treatment, maltreatment or exploitation, including sexual abuse and rape and generally all forms of violence or aggression against children and adolescents by their parents, legal guardians or any other person” (unofficial translation, emphasis added). While this seems to prohibit all corporal punishment of children including in the home, it conflicts with article 262 of the Civil Code 1883 (as amended 1974), which confirms the right of parents and other carers to “correct” children and “sanction them moderately”. Article 39(9) of the Children and Adolescents Code puts an obligation on families to “refrain from any act or conduct involving physical, sexual or psychological maltreatment” but it does not clearly prohibit all corporal punishment. In reporting to the Committee on the Rights of the Child in 2013, the Government stated that “national law, policy and practice protect children from all forms of corporal punishment, physical and mental violence and any other types of abuse irrespective of the situation in which they occur”, but the report made no reference to the “right of correction” in Colombian law.³

2.2 A 1994 Constitutional Court judgment⁴ appears to rule that the right of correction excludes the use of physical violence because it is incompatible with the Constitution 1991, which provides for the rights of every person not to be submitted to torture or cruel, inhuman, or degrading treatment or punishment (art. 12), of the family to protection from any form of violence (art. 42) and of children to protection from all forms of violence and to other rights upheld in international treaties (art. 44). However, article 262 of the Civil Code has not been amended in light of this judgment to explicitly state that the right of correction excludes the use of all corporal punishment. Past attempts to repeal article 262 have failed.⁵

2.3 Also of concern is article 3(2) of the Children and Adolescents Code 2006, which states: “In the case of indigenous peoples, the ability to exercise rights shall be governed by their own standards, which should be in harmony with the Constitution.” In a 2012 judgment, the Constitutional Court confirmed that the Constitutional superiority of the rights of children must be interpreted in relation to indigenous communities in the context of each case.⁶ Previous case law has established that physical punishment in indigenous communities which is not

³ 25 October 2013, CRC/C/COL/4-5, Fourth/fifth state party report, para. 209

⁴ Sentence C-371/94

⁵ UNICEF, correspondence with the Global Initiative, 23 June 2015

⁶ Sentence T-002/12

considered to be torture or to be degrading punishment does not violate the Constitution⁷ (see below). Children in the homes of indigenous communities thus apparently have less legal protection from corporal punishment than other children.

- 2.4 **Alternative care settings (?partially lawful):** Corporal punishment is possibly unlawful in care institutions under article 18 of the Children and Adolescents Code 2006, but the prohibition is undermined by the right to correct/sanction children in article 262 of the Civil Code 1883.
- 2.5 **Day care (?partially lawful):** Corporal punishment is possibly unlawful in day care under article 18 of the Children and Adolescents Code 2006 but this is undermined by the right to correct/sanction children in article 262 of the Civil Code 1883.
- 2.6 **Schools (?unlawful):** Corporal punishment is considered unlawful in schools under article 18 of the Children and Adolescents Code 2006 and article 45, which states: “Directors and educators, formal and informal, of public or private institutions of formal education may not impose penalties involving physical or psychological abuse of students in charge, or take action that affects their dignity.” We have yet to confirm that corporal punishment is unlawful in relation to indigenous communities.
- 2.7 **Penal institutions (?unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 18 of the Children and Adolescents Code 2006, though it is not explicitly prohibited. We do not know if this applies in indigenous communities.
- 2.8 **Sentence for crime (partially unlawful):** Corporal punishment is unlawful as a sentence for crime under state law: there is no provision for judicial corporal punishment in the Criminal Code or in the Children and Adolescents Code 2006. But it is lawful for children and adolescents in indigenous communities. Under article 246 of the Constitution (on special jurisdictions), 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 judgment⁸ on a case concerning the sentence of whipping in the Paez indigenous community concluded that its infliction was symbolic, not degrading punishment and not severe enough to be torture, and therefore did not violate the prohibition of torture in the Constitution and international human rights instruments. With regard to juvenile justice, article 156 of the Children and Adolescents Code 2006 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.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has recommended explicit legal prohibition of corporal punishment in all settings in its concluding observations to Colombia’s third periodic report in 2006⁹ and in the concluding observations to the fourth-fifth report in 2015.¹⁰

⁷ Sentence T-523/97

⁸ Sentence T-523/97

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

3.2 **CRPD**: In 2016, the Committee on the Rights of Persons with Disabilities recommended prohibition of corporal punishment in all settings including within indigenous and remote communities.¹¹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 since 2011 the Committee on the Rights of Persons with Disabilities.

¹⁰ 4 February 2015, CRC/C/COL/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 27 and 28

¹¹ 30 September 2016, CRPD/C/COL/CO/1, Concluding observations on initial report, paras. 18 and 19