

**BRIEFING ON COLOMBIA FOR THE
COMMITTEE AGAINST TORTURE – 54th session April/May 2015**

*From Dr Sharon Owen, Research and Information Coordinator, Global Initiative,* *sharon@endcorporalpunishment.org*

**This briefing describes the legality of corporal punishment of children in Colombia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary-General’s Study on Violence against Children, the repeated recommendations to Colombia by the Committee on the Rights of the Child, and the questioning of Colombia regarding violence against women in the LOIPR adopted by the Committee Against Torture, we hope the Committee, in its concluding observations on Colombia’s fifth report, will:**

* **express concern at corporal punishment of boys and girls in Colombia and recommend that law reform be undertaken to clearly prohibit all forms of corporal punishment in the home and all other settings, including for children in indigenous communities.**

**1 Colombia’s report to the Committee**

1.1 The List of Issues Prior to Reporting adopted by the Committee Against Torture before the submission of Colombia’s fifth report does not specifically refer to corporal punishment of children, but it does ask for information regarding violence against women, in the context of war and in the wider context.[[1]](#footnote-1) In reply, Colombia’s report describes a number of measures aimed at tackling violence against women, including the Comprehensive Plan to Guarantee a Life Free from Violence.[[2]](#footnote-2) But the report makes no mention of efforts to address corporal punishment of children, the legality of which means that girls may lawfully subjected to “disciplinary” violence in the home and that in the home and in other settings where it is not prohibited, no child is fully protected from violent punishment. This is despite the fact that studies in Colombia have shown strong links between corporal punishment of children and violence against women (see below, para. 2.4).

**1.2 We hope the Committee will recommend to Colombia that law reform be undertaken to clearly prohibit all forms of corporal punishment in the home and all other settings, including for children in indigenous communities.**

**2 The legality and practice of corporal punishment of children in Colombia**

2.1 ***Summary:*** Corporal punishment of children in Colombia is appears to be unlawful in schools and penal institutions (unconfirmed) but it is not fully prohibited in the home, alternative care settings, day care and as a sentence for crime. The law recognises a “right of correction”, and case law of the Constitutional Court has been contradictory.

2.2 ***Home (lawful):*** Despite significant law reform and some favourable case law, complete prohibition of corporal punishment in childrearing has not yet been achieved. 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” (art. 18, unofficial translation). But this 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”.

2.3 A 1994 Constitutional Court judgment[[3]](#footnote-3) 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. Furthermore, article 3(2) of the Children and Adolescents Code 2006 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.” Case law has established that physical punishment in indigenous communities does not necessarily violate the Constitution[[4]](#footnote-4) (see para. 2.9, below). Children in the homes of indigenous communities thus apparently have less legal protection from corporal punishment than other children.

2.4 A number of research studies have been conducted on the issue in Colombia. In one study in 2005, 64% of parents of 5-6 year olds reported using physical punishment; children themselves reported a higher incidence, including 83% being smacked. Children reported being hit with a belt (70%), the hand (31%), a slipper (27%), whip (5%), paddle (5%), shoe (5%), and switch (3%).[[5]](#footnote-5) Other research has shown the links between corporal punishment of children in the home and violence against women. A large-scale study involving 26,060 women aged 15-49 with children, 62.6% reported that children in their home were physically punished (61.4%% by being hit, beaten, spanked or slapped, 1.2% by other physical punishment). Women who had experienced partner violence were more likely to report that children in their home were physically punished (69.2% of women who had experienced partner violence compared to 57.6% of women who had not).[[6]](#footnote-6) Another study which looked at the relationship between gender and physical punishment in a number of countries found that in Colombia girls were more likely than boys to be physically punished: in the month before the study, 68% of girls and 63% 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 or beating the child repeatedly with an implement).[[7]](#footnote-7)

2.5 ***Alternative care settings (?partially prohibited):***Children in alternative care settings have some protection under article 18 of the Children and Adolescents Code 2006, but this is undermined by the right to correct/sanction in article 262 of the Civil Code 1883 (see para. 2.2, above).

2.6 ***Day care (lawful):***Children in early childhood care and in day care for older children have some protection under article 18 of the Children and Adolescents Code 2006, but this is undermined by the right to correct/sanction in article 262 of the Civil Code 1883 (see para. 2.2, above).

2.7 ***Schools (?unlawful):*** Corporal punishment is considered unlawful in schools under article 45 of the Children and Adolescents Code 2006: “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.

2.8 ***Penal institutions (?unlawful):***Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under article 18 of the Children and Adolescents Code 2006, but it is not explicitly prohibited. We do not know if this applies in indigenous communities.

2.9 ***Sentence for crime (partially prohibited):*** 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 judgment[[8]](#footnote-8) 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 and during the UPR**

3.1 ***CRC:*** The Committee on the Rights of the Child first raised the issue of corporal punishment in Colombia in 2006, when it was led to believe that prohibition was achieved and so recommended implementation of this.[[9]](#footnote-9) In 2015, the Committee expressed concern that corporal punishment is not yet explicitly prohibited in law and recommended to Colombia that the “right of correction” be repealed from the Civil Code and that legislation explicitly prohibit corporal punishment in all settings, including for indigenous children.[[10]](#footnote-10)

3.2 ***UPR:*** Colombia was reviewed in the first cycle of the Universal Periodic Review in 2008 and in the second cycle in 2013. No recommendations were made specifically on corporal punishment of children, but the Government accepted recommendations to protect and strengthen children’s rights, including to protection from violence.[[11]](#footnote-11)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* *info@endcorporalpunishment.org*

*March 2015*

1. 11 July 2012, CAT/C/COL/Q/5, List of issues prior to reporting, para. 9 [↑](#footnote-ref-1)
2. 23 May 2014, CAT/C/COL/5, Fifth state party report, paras. 40-55 [↑](#footnote-ref-2)
3. Sentence C-371/94 [↑](#footnote-ref-3)
4. Sentence T-523/97 [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)
6. Bott, S. et al (2012), *Violence Against Women In Latin America And The Caribbean: A Comparative Analysis Of Population-based Data From 12 Countries*, Washington DC: Pan American Health Organisation & Centers for Disease Control and Prevention [↑](#footnote-ref-6)
7. 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* [↑](#footnote-ref-7)
8. Sentence T-523/97 [↑](#footnote-ref-8)
9. 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, paras. 61 and 62 [↑](#footnote-ref-9)
10. 4 February 2015, CRC/C/COL/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 27 and 28 [↑](#footnote-ref-10)
11. 9 January 2009, A/HRC/10/82, Report of the working group, para. 87(16); 4 July 2013, A/HRC/24/6, Report of the working group, paras. 116(48), 116(53) and 116(56) [↑](#footnote-ref-11)