

Ending family violence in Colombia – challenging physical punishment of girls and boys



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 72nd session, from the *Global Initiative to End All Corporal Punishment of Children* (www.endcorporalpunishment.org), June 2018

Introduction: family violence in Colombia and CEDAW's examination of the ninth state party report

Law No. 294 of 1996 on intra-family violence provides some protection from family violence to women and girls but the existence of a right of parents and others with authority over children to “correct them and sanction them moderately” in the Civil Code 1883 undermines those provisions by allowing the use of violent punishment in the home.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Colombia. In particular, we hope the Committee will:

- **in its list of issues for Colombia, ask what progress is being made on enacting legislation prohibiting all physical punishment of children as a matter of priority, and**
- **in its concluding observations on the ninth state party report, recommend that Colombia ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys, and to repeal the “right of correction”.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Colombia.
 2. Treaty body and UPR recommendations on the issue made to Colombia to date.
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1 Laws on domestic violence and corporal punishment of children in Colombia

Summary

1.1 Though Law No. 294 of 1996 on intra-family violence provides general protection from violence to family members, article 262 of the Civil Code 1883 confirms the right of parents and others with authority over children to “correct them and sanction them moderately”. A 1994 Constitutional Court ruling possibly excludes the use of violence from this right of correction (information unconfirmed), but clarity in legislation is necessary.

Detail

1.2 Despite significant law reform and favourable case law, complete prohibition of corporal punishment in childrearing has not yet been achieved. 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.¹

1.3 A 1994 Constitutional Court judgment² 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.³

1.4 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.⁴ Previous case law has established that physical punishment in indigenous communities which is not considered to be torture or to be degrading punishment does not violate the Constitution.⁵ Children in the homes of indigenous communities thus apparently have less legal protection from corporal punishment than other

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

² Sentence C-371/94

³ UNICEF, correspondence with the Global Initiative, 23 June 2015

⁴ Sentence T-002/12

⁵ Sentence T-523/97

children.

1.5 A 2010 study of the relationship between gender and physical punishment, which used interviews with mothers, fathers and children aged 7-10, found that in Colombia 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) by someone in their household in the past month. Smaller percentages of parents believed it was necessary to use corporal punishment to bring up their child: for girls, 14% of mothers and 13% of fathers believed it was necessary; for boys, 19% of mothers and 8% of fathers.⁶

1.6 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Colombia to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal the “right to correct” from the Civil Code 1883.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 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 2006⁷ and in the concluding observations to the fourth-fifth report in 2015.⁸

2.2 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.⁹

2.3 Colombia accepted recommendations made during the first and the second cycle of the *Universal Periodic Review* in 2008¹⁰ and 2013¹¹ relating to the protection of children’s rights and the protection of children from violence. The third cycle examination in 2018 was the first time Colombia received specific recommendations on corporal punishment of children; the Government noted (did not support) them.¹²

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁶ 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*

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

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

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

¹⁰ 9 January 2009, A/HRC/10/82, Report of the working group, para. 87(16)

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

¹² 23 May 2018, A/HRC/WG.6/30/L.7 Unedited version, Draft report of the working group, paras. 121(24) and 121(26)