



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

BOLIVIA – COUNTRY REPORT

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Although there appears to be no defence of “reasonable chastisement” or similar enshrined in legislation, article 276 of the Criminal Code allows for aggression against a child which does not cause serious hurt. The prohibition of corporal punishment which causes harm in the Children and Adolescents Code implies that a certain degree or kind of corporal punishment is not harmful. Children have a right to protection from *all* corporal punishment, however light. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Article 276 of the Criminal Code should be repealed and the law should explicitly prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority.

Other legislative measures necessary

Penal system – Explicit prohibition of all corporal punishment should be enacted in legislation applicable to *all* children in conflict with the law, including in traditional justice systems.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to repeal of article 276 of the Criminal Code.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 276 of the Criminal Code states: “No aggression will be punished if the victim of the aggression is not seriously hurt and the aggressor is husband or wife, parent or grandparent, child or grandchild, sibling, close relative, political sibling, and if they are living together.” Article 109 of the Children and Adolescents Code (1999) protects children from corporal punishment which is considered to cause harm but does not prohibit all corporal punishment and is undermined by article 276 of the Criminal Code. Provisions against violence and abuse in the Criminal Code, the Children and Adolescents Code, the Law Against Domestic Violence (1995) and the Family Code Reform Act (1998) are not interpreted as prohibiting all corporal punishment in childrearing. The Constitution (2009) states that no person shall suffer cruel, inhuman, degrading or humiliating treatment (article 15) and “prohibits all forms of violence against children and adolescents in the family and in society” (article 61). Under examination by the Committee on the Rights of the Child in 2009, the Government suggested that this prohibits corporal punishment of children but also confirmed that other legislation should be reformed to achieve full prohibition in law.

Schools

Corporal punishment is unlawful in schools under Supreme Decree No. 212414 of 21 April 1993 on teacher misconduct and punishments, which categorises its use as “serious misconduct”. Article 61 of the Constitution applies (see above), and article 109 of the Children and Adolescents Code states that “a child or adolescent is the victim of abuse when ... school discipline fails to respect his or her dignity and integrity”.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not a permitted sanction under the Criminal Code, the Juvenile Code (1992) or the Law on the Public Ministry (2001). However, sentences of corporal punishment are traditionally ordered by community elders in indigenous justice systems. The Constitution establishes Bolivia as a “plurinational republic” and recognises the right of indigenous peoples to self-determination. We do not know whether corporal punishment under traditional justice systems would be lawful under this right or unlawful under the Constitutional prohibition of cruel, inhuman, degrading or humiliating treatment (see above).

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Article 109 of the Children and Adolescents Code prohibits only corporal punishment which is considered harmful.

Alternative care

Corporal punishment is lawful in alternative care settings. Article 109 of the Children and Adolescents Code prohibits only corporal punishment which is considered harmful.

Prevalence research

None identified in the last ten years.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 October 2009, CRC/C/BOL/CO/4, Concluding observations on fourth report, paras. 6, 7, 8, 40, 41 and 42)

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the third periodic report (CRC/C/15/Add.256) that have not yet been implemented or sufficiently implemented, notably those related to ... corporal punishment....

“The Committee welcomes the new Constitution which includes a section on child rights. However, it regrets that national legislation is not in conformity with the Convention in certain areas, for instance the Child Code (*Código del Niño, Niña y Adolescente*) and civil and penal laws concerning the prohibition of corporal punishment.... The Committee also notes difficulties with the dual legal system and certain incompatibilities between positive law and the indigenous customary law.

“The Committee recommends that the steps taken towards legislative reforms should be part of a comprehensive analysis of the legislative system in order to ensure that both positive law and indigenous customary law meet the obligations under the Convention, in particular regarding ... corporal punishment.... The Committee also recommends that a clear division of the different competencies be established between the judicial bodies and the indigenous local authorities in civil, criminal and administrative matters, and that the State party promote awareness of legislation, in particular among communities which continue to apply customary laws.

“While welcoming that the new Constitution of 2009 prohibits all violence against children, both in the family and society, the Committee is concerned that corporal punishment remains lawful in the home and in residential or institutional care settings, and that there is no explicit prohibition of this form of ‘discipline’ in all settings.

“The Committee recommends that the State party expressly prohibit corporal punishment by law in all settings, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. The Committee further recommends that the State party carry out public education campaigns, including through media, about the negative consequences of corporal punishment of children, and promote positive, non-violent forms of discipline.

“With reference to the United Nations Study on violence against children (A/61/299), the Committee recommends that the State party:

a) take all necessary measures for the implementation of the recommendations contained in the report of the independent expert for the United Nations study on violence against children while taking into account the outcome and recommendations of the regional consultation for Latin America held in Buenos Aires between 30 May and 1 June 2005. In particular, the Committee recommends that the State party pay particular attention to the following recommendations:

(i) prohibit all violence against children, including corporal punishment in all places....”

Committee on the Rights of the Child

(11 February 2005, CRC/C/15/Add.256, Concluding observations on second report, paras. 35 and 36)

“The Committee expresses deep concern that, despite its prohibition in the Code for Children and Adolescents, corporal punishment is still widely used within the family and in schools and other institutions.

“The Committee recommends that the State party take effective measures, including through public awareness campaigns, to promote positive, participatory and non-violent forms of discipline as an

alternative to corporal punishment at all levels of society, and to effectively implement the law prohibiting corporal punishment.”

Committee on the Rights of the Child

(26 October 1998, CRC/C/15/Add.95, Concluding observations on initial report, para. 21)

“While the Committee takes note of existing legislation prohibiting corporal punishment of children, it remains concerned that corporal punishment is still widely used within the family and in schools and institutions. In connection with the child’s right to physical integrity, recognized by the Convention in its articles 19, 28, 29 and 37, the Committee recommends that the State party consider the possibility of undertaking educational campaigns. Such measures would help to change societal attitudes towards the use of physical punishment within the family and in schools and institutions.”

Universal Periodic Review

Bolivia was examined under the Universal Periodic Review process in 2010. The Government accepted the recommendations to prohibit corporal punishment of children.

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