Colombia’s commitment to prohibiting corporal punishment

Colombia expressed commitment to prohibiting corporal punishment of children in its National Development Plan 2018-2022 and, in August 2019, the National Alliance against Violence against Children was launched, including another commitment to prohibit all corporal punishment.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, some alternative care settings, day care and as a sentence for crime. Prohibition in schools and penal institutions requires confirmation.

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”, though a 1994 Constitutional Court ruling possibly excludes the use of violence from this (information unconfirmed). The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable, as well as explicit prohibition of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority. Article 262 should be repealed or amended to explicitly exclude the use of corporal punishment from the right to correct/sanction children. A Bill aiming to prohibit all forms of corporal punishment is under discussion in the Congress.

Alternative care settings – Prohibition in care institutions requires confirmation. Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Confirmation is required that legislation is interpreted as prohibiting all corporal punishment in schools and that it is applicable in indigenous communities.

Penal institutions – Confirmation is required that legislation is interpreted as prohibiting corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law and that it is applicable in indigenous communities.

Sentence for crime – Corporal punishment should be prohibited as a sentence within indigenous communities.
Current legality of corporal punishment

Home

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

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

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 Constitution⁵ (see under “Sentence for crime”). Children in the homes of indigenous communities thus apparently have less legal protection from corporal punishment than other children.

Colombia expressed commitment to law reform in its 2018-2022 National Plan for Development, which includes the prohibition of all corporal punishment of children. In 2019, the Alianza Nacional

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
contra la Violencia hacia las NNA was launched by the Government, including a commitment to prohibit corporal punishment, and Colombia became a Pathfinder country with the Global Partnership to End Violence Against Children. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

A Bill “to prohibit all forms of physical punishment and cruel, humiliating or degrading treatment of children and adolescents”, which was drafted in a partnership between civil society and the Colombian Family Welfare Institute, was introduced in the House of Representatives in August 2019. Article 1 of the Bill states that the purpose of the Bill is to “prohibit all forms of physical and psychological punishment, cruel, humiliating or degrading treatment of children and adolescents by their parents, legal representatives or by any other person caring for them in all settings” (unofficial translation). The Bill would amend article 262 of the Civil Code to state (unofficial translation): “Article 262 – Discipline and parenting without violence. The parents or the person in charge of the personal care of the children and adolescents will exercise authority, discipline or upbringing, excluding any form of violence, including all forms of physical and humiliating punishment, and guaranteeing their harmonious and integral development.” Physical punishment is defined as “any action of parenting, guidance or education in which physical force is used and that is intended to cause any state of pain or discomfort, even if it is mild, in order to exercise authority, discipline or correct, provided that it does not constitutes punishable conduct” (unofficial translation) and humiliating punishment is defined as any action which “belittles, humiliates, denigrates, stigmatizes, threatens, frightens or ridicules the child, or adolescents, in order to exercise authority, discipline or correct, provided that it does not constitute punishable conduct” (unofficial translation). The text seems to prohibit corporal punishment in all settings but it is unclear whether the ban would also apply in indigenous communities, as this is not explicitly addressed by the Bill.

Alternative care settings

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 (see under “Home”).

Day care

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 (see under “Home”).

Schools

Corporal punishment is considered unlawful in schools under article 18 of the Children and Adolescents Code 2006 (see under “Home”) 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.
Penal institutions

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 (see under “Home”). We do not know if this applies in indigenous communities.

Sentence for crime

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 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.

Universal Periodic Review of Colombia’s human rights record

Colombia was examined in the first cycle of the Universal Periodic Review in 2008 (session 3). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendation was made and was accepted by the Government:

“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)”

The second cycle review took place in 2013 (session 16). No recommendations were made specifically on corporal punishment of children. However, the following recommendations were made and were accepted by the Government:

“Enhance the protection for children, including by improving the investigation, prosecution and prevention of violence against children (Cyprus);

“Strengthen its efforts in the fight to eliminate violence against women and children (Senegal);

---

6 Sentence T-523/97
7 9 January 2009, A/HRC/10/82, Report of the working group, para. 87(16)
8 4 July 2013, A/HRC/24/6, Report of the working group, paras. 116(48), 116(53) and 116(56)
“Continue to work constructively to implement the laws, decrees and resolutions that have been approved to combat violence against women and girls and to guarantee access to justice for victims of sexual violence (Canada)”

Third cycle examination took place in 2018 (session 30). The Government noted the following recommendations:9

“Prohibit corporal punishment in all settings (Namibia)”

“Prohibit corporal punishment of children in all settings, including at home (Montenegro)”

**Recommendations by human rights treaty bodies**

**Committee on the Rights of the Child**

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

“The Committee is deeply concerned at the high levels of violence which children are confronted with and in particular about: ...

d) reports that corporal punishment remains widespread and that it is not yet explicitly prohibited in all settings, including in the home.

“In the light of its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee urges the State party to prioritize the elimination of all forms of violence against children, and in particular to: ...

e) repeal the Article 262 of the Civil Code on the ‘right of correction’, ensure that its legislation explicitly prohibits corporal punishment in all settings, including for indigenous children, and raise awareness on positive, non-violent and participatory forms of child-rearing....”

**Committee on the Rights of the Child**

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

“The Committee regrets the lack of statistics on the number of reported cases and is concerned that corporal punishment continues to occur in the school, the home and in institutions.

“The Committee recommends that the State party enforce legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. The State party should also conduct awareness-raising and public education campaigns against corporal punishment and promote non-violent, participatory methods of childrearing and education, while taking due account of the general comment No. 8 of the Committee on the Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (2006).”

9 July 2018, A/HRC/39/6, Report of the Working Group, paras. 121(24) and 121(26)
Committee on the Rights of Persons with Disabilities

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

“The Committee is concerned about the limited information available on the situation of children with disabilities, mainly those who have been institutionalized or who are living in poverty or in rural or remote areas, and about the steps taken to protect their rights and facilitate their remaining with or return to their families or foster families. It is also concerned about the lack of a ban on corporal punishment of children with disabilities.

“The Committee urges the State party to more systematically gather data on children with disabilities and to take steps to prevent their abandonment, abuse and institutionalization. It encourages the State party to adopt a plan on the deinstitutionalization of children with disabilities, including those who are institutionalized on the basis of protection measures ordered by the Colombian Family Welfare Institute, and to provide community-based services and support to families, especially households headed by single mothers, in order to ensure the right of children with disabilities to grow up in a family environment and the right to have a family life. The Committee recommends that the State party repeal the provision in the Civil Code that authorizes adult childminders to correct and discipline children moderately and that it ban corporal punishment in any environment, including within the family and within indigenous and remote communities.”

Prevalence/attitudinal research in the last ten years

An evaluation of parent and caregiver support in conflict settings, conducted in 2012–2014 with 176 parents of 3-4 year olds attending child centres, found that violence against children was still common. Over 99% of caregivers in Chocó reported having used physical violence to discipline children. However, six months after the parenting programme was complete, violence against children decreased by 41% and mental health difficulties in parents and carers reduced from 22% to 5%. The study found that in conflict settings with extreme levels of poverty, unemployment, crime and violence, parent and caregiver support can play a crucial role in reducing physical punishment of children.


The first study examining national and regional prevalence and trends of corporal punishment in Colombia, particularly of spanking and hitting with objects, found that 40% of Colombian children younger than five (about 1.7 million children) are exposed to physical punishment. Specifically, 23.8% (more than 1 million children) are hit with objects and 20.4% (887,000) are spanked. It also found a higher proportion of children living in multi-dimensionally poor households and in rural areas were hit with objects than those living in non-poor households and in urban areas, but that overall, physical punishment has steadily declined throughout the country between 2005 and 2015.


A study using a sample of 1,209 children from four major cities of Colombia (Bogotá, Medellín, Cali and Barranquilla) found that around half of children were spanked and one third were hit with objects as a disciplinary method in 2010. Results indicate that exposure to violent crimes, such as homicides and personal injuries, predicts a higher probability of hitting children with objects, even after controlling for a set of individual, family, and neighborhood characteristics.

A study using reports of 620 parents of children aged 5 to 8 years from eight public schools from a rural area north of Bogotá found that two-fifths (41%) of children were exposed to physical punishment as a disciplinary strategy. Family structure was found to be an important variable in the understanding of corporal punishment, especially in regard to nuclear families that have a large number of children and parents who started their parental role early in life.


A study of the relationship between gender and physical punishment in China, Colombia, Italy, Jordan, Kenya, Philippines, Sweden, Thailand and the US, which used interviews with around 4,000 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.


A qualitative research study about children’s ideas, attitudes and feelings about punishment found that parents punish their children by hitting them with objects, spanking them, scolding them, forbidding them things they like and not allowing them to leave their bedrooms. Children said they felt bad, bored, guilty, angry and confused when they were punished. They suggested that instead of hitting or humiliating them, parents should talk to them about their behaviour. The study was carried out in 2006 and involved eight girls and five boys from Bogotá.

(Duque-Páramo, M. C. (2008), “No me gusta, pero está bien si me porto mal”, Investigación en Enfermería: Imagen y Desarrollo, 10(1), 113-134, Bogotá)