

Corporal punishment of children in Costa Rica

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Child population 1,308,000 (UNICEF, 2015)

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home by Law on the Rights of Children and Adolescents to Discipline Free from Corporal Punishment and Other Forms of Humiliating Treatment 2008.¹ The Law amended article 143 of the Family Code 1974 to state: “Parental authority confers the rights and imposes the duties to orient, educate, care, supervise and discipline the children, which in no case authorises the use of corporal punishment or any other form of degrading treatment against the minors....” The Law also added article 24bis to the Code on Children and Adolescents 1998: “Children and adolescents have a right to receive counselling, education, care and discipline from their mother, father or tutor, as well as from their caretakers or the personnel from educational and health centres, shelters, youth detention or any other type of centres, that in no way represents an authorisation of any sort to these parties for the use of corporal punishment or degrading treatment. The Patronato Nacional de la Infancia shall coordinate with the institutions conforming to the National Integral Protection System and NGOs, for the implementation of educational campaigns and programmes directed to parents and other adults in custodial or caring roles.”

The Early Childhood Policy 2015-2020 highlights the Law on the Rights of Children and Adolescents to Discipline Free from Corporal Punishment and Other Forms of Humiliating Treatment 2008 and promotes positive parenting.

In a 2018 submission to the Universal Periodic Review, the Ombudsman’s Office stated that corporal punishment continued to be considered a valid childrearing practice and called on the Government to raise awareness of the harmful impact of corporal punishment.²

The Government reported in 2019 that the topic of whether “corporal punishment or certain forms of domestic violence that do not constitute a legal offence should incur criminal or other penalties” was under discussion but no decision had been reached.³

¹ Law No. 8654

² 3 October 2018, Submission of the Ombudsman’s Office to the UPR

³ 28 March 2019, CRC/C/CRI/5-6, Fifth/sixth report, para. 131

Alternative care settings

Corporal punishment is prohibited in alternative care settings under article 143 of the Family Code 1974 and article 24bis of the Code on Children and Adolescents 1998 as amended in 2008 (see under “Home”).

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children under article 143 of the Family Code 1974 and article 24bis of the Code on Children and Adolescents 1998 as amended in 2008 (see under “Home”).

Schools

Corporal punishment is prohibited in schools under article 143 of the Family Code 1974 and article 24bis of the Code on Children and Adolescents 1998 (see under “Home”).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 24bis of the Code on Children and Adolescents 1998 as amended in 2008 (see under “Home”) and Act No. 8649 2008 on the Application of juvenile criminal penalties.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not among the permitted sanctions under article 121 of the Juvenile Criminal Justice Law. Article 138 states that the children who are being sanctioned have the “right to life, dignity and physical and moral integrity” and may not be subject to corporal punishment.

Universal Periodic Review of Costa Rica’s human rights record

Costa Rica was examined in the first cycle of the Universal Periodic Review process in 2009. No recommendations were made concerning corporal punishment.

Examination in the second cycle took place in 2014 (session 19). No recommendations were made on corporal punishment of children.

Third cycle examination took place in 2019 (session 33). The following recommendation was extended:⁴

“Take urgent actions to eradicate physical punishment as a valid practice for the upbringing of minors (Nicaragua)”

The Government accepted the recommendation.⁵

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 February 2020, CRC/C/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, paras. 24 and 25)

⁴ 5 July 2019, A/HRC/42/12, Report of the Working Group, para. 111(168)

⁵ 18 September 2019, A/HRC/42/12/Add.1 Advance version, Report of the Working Group: Addendum

“The Committee recommends that the State party: ...

(c) Ensure enforcement of legislation prohibiting corporal punishment, collective sanctions and isolation, and prevent practices of prohibition of family visits to children deprived of liberty;

“The Committee observes with concern that corporal punishment is still a predominant practice in society, despite its legal prohibition. With reference to its 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 recommends that the State party:

(a) Ensure continuity, human, technical and financial resources, and national implementation of programmes to promote positive parenting;

(b) Reinforce the application of the Act No. 8654 (2008) ensuring that perpetrators of corporal punishment are being held criminally responsible.”

Committee on the Rights of the Child

(5 August 2011, CRC/C/CRI/CO/4, Concluding observations on fourth report, paras. 4, 43, 44, 45 and 46)

“The Committee welcomes as positive steps the adoption of the following legislative measures: ...

c) Act No. 8654 on the rights of children and adolescents to be disciplined without physical punishment or degrading treatment, in 2008; ...

“The Committee notes that the National Plan for the Prevention of Violence and the Promotion of Peace (2007) is being evaluated and that a new plan is being drafted to include drug trafficking and consumption. It also welcomes the programme Windows of Peace 2010-2014 including the proclamation of “child-friendly” cantons. However, the Committee notes with concern:

a) tendencies in the media and in the legislature promoting zero tolerance or mano dura policies to prevent delinquency among children and adolescents in vulnerable situations, in particular children in street situations; and

b) continued allegations of ill-treatment of juveniles in detention and in penal institutions, despite the fact that Act No. 8654 (2008) on the rights of children and adolescents to be disciplined without physical punishment or degrading treatment and Act No. 8649 (2008) on the application of juvenile criminal penalties prohibit the use of corporal punishment and degrading treatment by the staff of juvenile detention centres and penal institutions.

“The Committee urges the State party to ensure that plans to prevent violence and promote peace are adequately implemented and evaluated so that they discourage repressive and retrogressive actions against children and adolescents, in particular those in vulnerable situations. It also urges the State party to investigate and prosecute all cases of ill-treatment of children by police officers and prison guards, and bring perpetrators to justice.

“The Committee welcomes the adoption of Act No. 8654 (2008) on the rights of children and adolescents to be disciplined without physical punishment or degrading treatment, prohibiting corporal punishment and degrading treatment of children or adolescents by parents, guardians, alternative caregivers and the staff of educational, health and day-care centres and juvenile detention centres. However, it remains concerned that: corporal punishment is still perceived as sometimes necessary by a large percentage of the population; the Office of the Ombudsman has received a high number of complaints and queries from children and adolescents regarding mistreatment by teachers; and perpetrators are only being held criminally responsible when the corporal punishment has resulted in physical injuries.

“In light of article 28, paragraph 2, of the Convention and 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 recommends that the State party:

a) ensure the full implementation of Act No. 8654 prohibiting corporal punishment and ensure that all cases of corporal punishment are effectively investigated and prosecuted and that perpetrators, including teachers, are being held criminally responsible, irrespective of whether or not such punishment has resulted in physical injuries of the child;

- b) continue to take appropriate measures to raise the awareness of the general public, including children, on the unlawfulness and the negative consequences of corporal punishment and other forms of violence in the upbringing of children; and
- c) sensitize parents, teachers and others working with and for children about alternative, non-violent forms of discipline.”

Committee on the Rights of the Child

(21 September 2005, CRC/C/15/Add.266, Concluding observations on third report, paras. 31 and 32)

“The Committee welcomes the efforts made by the State party to sensitize the different actors involved on the need to eradicate corporal punishment in the family, in school and in other institutions, and the fact that the Legislative Assembly is examining a bill prohibiting corporal punishment. The Committee remains however concerned at the fact that corporal punishment is still not explicitly prohibited in domestic law, as recommended by the Committee in its previous concluding observations, and still perceived as ‘sometimes necessary’ by a large portion of the population (CRC/C/15/Add.117, para. 17).

“The Committee reiterates its recommendation that the State party should incorporate the prohibition of corporal punishment in its legislation and continue to take appropriate measures to raise the awareness of the general public on the negative consequences of corporal punishment and other forms of violence in the upbringing of children, and to sensitize parents, teachers and others working with and for children about the alternative, non-violent means of discipline in the light of article 28 (2) of the Convention.”

Committee on the Rights of the Child

(24 February 2000, CRC/C/15/Add.117, Concluding observations on second report, para. 17)

“The Committee expresses its concern about the inadequate enforcement of the prohibition on the use of corporal punishment in schools and other institutions and in the penal system. In addition, the Committee expresses its concern that the practice of physical punishment of children in the home is not expressly prohibited by law and remains regarded as socially acceptable. The Committee recommends that the State party prohibit the use of corporal punishment in the home and take effective measures to enforce the legal prohibition of corporal punishment in schools and other institutions and in the penal system. The Committee further recommends that the State party undertake educational campaigns for the development of alternative disciplinary measures for children at home, in schools and other institutions.”

Committee Against Torture

(7 July 2008, CAT/C/CRI/CO/2, Concluding observations on second report, para. 23)

“The Committee notes with satisfaction that corporal punishment is banned in education and in juvenile prisons. However, in the family, article 143 of the Family Code states that parents have the right to correct children in a moderate manner, which has been interpreted as allowing the use of corporal punishment (art. 16).

The Committee takes note of the bill to abolish physical punishment of children and young people submitted to the Legislative Assembly by the Ombudsman, and the setting up of a group to discuss the issue. It encourages the State party to expedite the complete prohibition of corporal punishment of children.”

Committee on Economic, Social and Cultural Rights

(4 December 2007, E/C.12/CRI/CO/4, Concluding observations on combined second, third and fourth report, paras. 23 and 44)

"The Committee is concerned about the fact that corporal punishment within the family, in the form of 'moderate correction', is still allowed under article 143 of the State party's Family Code.

"The Committee encourages the State party to expedite the adoption of currently existing proposals to amend article 143 of the Family Code and the law providing for an explicit prohibition of all corporal punishment that is currently under consideration."

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected in 2011, 46% of children aged 2-14 experienced violent "discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. More than two thirds (73%) experienced physical punishment and 88% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A smaller percentage (39%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), Hidden in Plain Sight: A statistical analysis of violence against children, NY: UNICEF)

In a 2009 study involving interviews with 1,201 people responsible for the care of a child aged 2-17, 86.6% knew of the 2008 law banning physical and other humiliating punishment of children and nearly two thirds (64.4%) totally agreed or somewhat agreed with the law. When asked the reason for their response, a quarter said they agreed because bringing up children should not be based on physical punishment. Over half (56%) totally disagreed or somewhat disagreed that "if a child is disobedient it is acceptable for the parent to hit him or her" and 78.8% totally disagreed or somewhat disagreed that "if a child is violent it is acceptable for the parent to hit him or her". Around half (48.7%) of respondents said the child they cared for had been spanked by them or another adult in their household during the past year: 21.2% said the child had been spanked once or twice, 16.6% three to five times and 10.9% six or more times; 77.2% said they had been spanked when they were children.

(Consejo Nacional de La Niñez y la Adolescencia & Pani (2009), Estudio de Conocimientos, Actitudes y Prácticas en materia de Patrones de Crianza en Costa Rica: Informe Técnico De La Encuesta Nacional Sobre Patrones De Crianza)

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