

Corporal punishment of children in Cuba

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Child population 2,269,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools.

The Family Code 1975 permits “moderate” punishment of children by parents (art. 86) and guardians (art. 152). These provisions should be repealed. 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 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.

Alternative care settings – 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 – Prohibition should be enacted of corporal punishment in all education settings, public and private.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Family Code 1975 permits “adequate and moderate correction” of children by parents (art. 86) (unofficial translation): “Parents are empowered to reprimand and moderately and adequately correct children under their guardianship.” There is a similar provision in relation to guardians (art. 152): “All children under guardianship must give respect and obedience to the tutor. He/she will rebuke and correct them moderately.” Provisions against violence and abuse in the Family Code, the Criminal Code 1987, the Children and Youth Code and the Constitution do not include prohibition of all corporal punishment in childrearing.

In 2011, in response to the recommendations on the issue by the Committee on the Rights of the Child,¹ the Government asserted that “corporal punishment is not allowed in any law, or lower-ranking legal rules, or family practice, school or social institutions”.² The Government repeated this assertion to the Committee in 2018, stating “corporal punishment is not allowed in the law or lower-ranking norms, nor in family or school practice, and they are not socially tolerated” (unofficial translation).³ In fact, there is no explicit prohibition in current law of all corporal punishment in childrearing and it appears that the “right of correction” is still on the statute books.⁴

The Government had initially indicated its commitment to prohibiting all corporal punishment of children, by adopting in 2011 the Regional Roadmap on Violence against Children along with the Central American Governments of Mexico and the Dominican Republic. The Roadmap included a recommendation to adopt national legislation to explicitly prohibit all corporal punishment and to repeal provisions allowing for “moderate” punishment/correction.⁵ In the same year, the Government had reported that a draft new Family Code was under discussion that would remove the provision for “adequate and moderate correction”.⁶ However the Global Initiative no longer considers Cuba committed to prohibiting all corporal punishment of children without delay, as the Government has not taken any clear action since then to indicate that it intends to pursue law reform.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right of correction of parents and guardians in articles 86 and 152 of the Family Code 1975 (see under “Home”). In 2011/2012 the Government stated to the Committee on the Rights of the Child that corporal punishment is prohibited in institutions but cited only the Resolution relating to education (see under “Schools”).⁷

¹ 20 June 2011, CRC/C/CUB/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 36 and 37

² Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contenido de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8

³ [2018], CRC/C/CUB/3-6, Initial report, para. 120

⁴ <http://www.gacetaoficial.cu/html/codigo%20de%20lafamilia.html#T2>, accessed 28 March 2014

⁵ Regional Road Map on Violence against Children, adopted in 2011, 1 and 2 December in Santo Domingo, as a follow-up to the recommendations of the UN Study on Violence against Children, available at http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Hoja%20de%20Ruta%20Final%20EVCN%20Centroamericano%20Dic%202012.pdf, accessed 21 February 2015

⁶ 27 April 2011, CRC/C/CUB/Q/2/Add.1, Written replies to the Committee on the Rights of the Child, para. 36

⁷ <http://www.gacetaoficial.cu/html/codigo%20de%20lafamilia.html#T2>, accessed 28 March 2014

Day care

Corporal punishment is lawful in day care under the right of correction of parents and guardians in articles 86 and 152 of the Family Code 1975 (see under “Home”). In 2011/2012 the Government stated to the Committee on the Rights of the Child that corporal punishment is prohibited in institutions but cited only the above mentioned Resolution relating to education (see under “Schools”).⁸ We have been unable to examine the text of this Resolution but any prohibition would presumably apply only to educational provision (preschools, etc) and not to all forms of early childhood care and day care for older children.

Schools

The Government has stated that corporal punishment is prohibited in schools,⁹ but we have yet to verify that prohibition is explicit. In commenting on recommendations issued in 2011 by the Committee on the Rights of the Child, the Government stated that Resolution 165/2006 of the Ministry of Education approving the Regulations on the discipline of work in educational activities (Resolución 165 de 2006 del Ministerio de Educación que aprueba el Reglamento Ramal de la disciplina del trabajo en la actividad educacional) prohibits corporal punishment in schools.¹⁰

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions under article 6 of the prison regulation. Article 30(11) of the Criminal Code 1987 states that “those sanctioned may not be subjected to corporal punishment, nor is it admissible to employ against them any measure entailing humiliation or a loss of dignity”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under article 30(11) of the Criminal Code 1987 (see under “Penal institutions”).

Universal Periodic Review of Cuba’s human rights record

Cuba was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:¹¹

“Continue its action to align, to strengthen and to make compatible national legislation with its international obligations in accordance with the treaties to which it is a party (United Arab Emirates; Trinidad and Tobago; Ghana; Uzbekistan)

“Conduct a study on the need for legislative and administrative adjustments for the domestic implementation of human rights (Mexico)

⁸ <http://www.gacetaoficial.cu/html/codigo%20de%20lafamilia.html#T2>, accessed 28 March 2014

⁹ See for example [2018], CRC/C/CUB/3-6, Initial report, para. 125

¹⁰ <http://www.gacetaoficial.cu/html/codigo%20de%20lafamilia.html#T2>, accessed 28 March 2014

¹¹ 3 March 2009, A/HRC/11/22, Report of the working group, para. 130(2), 130(3), 130(4) and 130(6)

“Continue to take measures to honour its human rights obligations and to advance the promotion and protection of human rights and freedoms (Jamaica)

“Continue its implementation of measures designed to further promote and protect the rights of children and to intensify its efforts aimed at providing greater opportunity for higher education (Malaysia)”

The second cycle review of Cuba took place in 2013 (session 16). No recommendations were made concerning corporal punishment of children.

Third cycle examination took place in 2018 (session 30). The following recommendation was extended:¹²

“Revise current legislation in order to explicitly prohibit a corporal punishment of children in all settings, including at home (Montenegro)”

The Government noted this recommendation, declaring generally that (unofficial translation) “Many of the issues [the recommendations] address are applied by Cuba or steps are being taken or foreseen to comply with them. Due to the manner in which some of them have been drafted, it is not possible to ensure compliance for the time being. These will continue to be analyzed in accordance with Cuban laws, the country's institutional processes and the principles that govern the political system sovereignly chosen by the Cuban people.”¹³

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 August 2011, CRC/C/CUB/CO/2, Concluding observations on second report, paras. 36 and 37)

“While taking note that the provision on ‘adequate and moderate’ punishment will be removed from the new draft Family Code, as indicated during the dialogue, the Committee is concerned that provisions allowing for such punishment of children by their parents and guardians (arts. 86 and 152 of the Family Code) are still in force in the State party. The Committee is further concerned that corporal punishment is often used at school and in social institutions as a measure of ‘discipline’.

“The Committee recommends that corporal punishment, in any form, be explicitly prohibited and that the State party conduct public awareness campaigns and provide information on alternative non-violent forms of discipline, parental guidance and counselling with a view to eliminating all forms of corporal punishment of children. The Committee urges the State party to prioritize the adoption of the draft Family Code. In this regard, the Committee draws the State party’s attention to its general comment no. 13 (2011) on the right of the child to freedom from all forms of violence, and its general comment no. 8 (2006) on corporal punishment.”

Committee on the Rights of the Child

(18 June 1997, CRC/C/15/Add.72, Concluding observations on initial report, paras. 19 and 35)

“While the Committee takes note of the State party’s efforts to deal with the issue of child abuse, including through the establishment of an early warning system for violence against children, it is of

¹² 11 July 2018, A/HRC/39/16, Report of the Working Group, para. 24(317)

¹³ 18 September 2018, A/HRC/39/16/Add.1 Advance unedited version, Report of the Working Group: Addendum, paras. 8 and 9

the view that these measures are insufficient to fully protect children from such violations. Furthermore, serious concern remains in relation to a child's opportunity to report abuse and other violations of his/her rights in the family, schools or other institutions and to have a complaint taken seriously and responded to effectively.

"The Committee recommends that further measures to protect children from abuse and maltreatment be undertaken, in particular through the development of a widespread public information campaign for the prevention of corporal punishment and bullying of children, whether by adults or by other children."

Committee on the Rights of Persons with Disabilities

(10 May 2019, CRPD/C/CUB/CO/1, Concluding observations on initial report, paras. 17 and 18)

"The Committee is concerned about: ... (c) Article 86 of the Family Code, under which "parents are entitled to reprove and correct [children], in an adequate and moderate manner", resulting in corporal punishment of children with disabilities;

"The Committee recommends that the State party take measures to develop and strengthen respect for the rights of children with disabilities in society, particularly children with disabilities living in rural areas, and enhance support for families of children with disabilities. The Committee also recommends that the State party: ... (c) Expedite the revision of the Family Code to explicitly prohibit corporal punishment of children, including children with disabilities, in all settings, particularly at home and in institutions where children still live"

Prevalence/attitudinal research in the last ten years

According to adult respondents in a 2014 survey, 36% of children aged 1-14 years were subjected to some form of violent discipline (psychological or physical punishment) by household members during the month preceding the survey; 28% were said to be physically punished, 2% severely physically punished (hit on the head, bottom, ears or face or hard and repeatedly – most common for 10-14 year olds). Children in the central and eastern regions and children whose head of household has lower education were more likely to experience physical punishment. In contrast to the actual prevalence, just 4% of respondents stated they believe physical punishment is needed to raise a child properly. Only 37% of children experienced only non-violent discipline; this was more common in the western region and in households where the head of household has higher education.

(Dirección de Registros Médicos y Estadísticas de Salud & UNICEF (2015), *Encuesta de Indicadores Múltiples por Conglomerados. Cuba, 2014. Informe final*, La Habana, Cuba: Dirección de Registros Médicos y Estadísticas de Salud & UNICEF)