

# Corporal punishment of children in Panama

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Child population 1,275,000 (UNICEF, 2015)

## Panama's commitment to prohibiting corporal punishment

Panama expressed its commitment to prohibiting all corporal punishment by accepting clearly recommendations to do so made during the Universal Periodic Review of Panama in 2010 and again in 2015.

## 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 1994 (arts. 319 and 443) confirms the right of parents, teachers and others with parental authority to “moderately” correct children. Laws against violence and abuse prohibit only corporal punishment which causes injury. Children have a right to protection from all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful, however light. The legal defences of “moderate correction” should be repealed and prohibition should be enacted of all corporal punishment, in the home and all other settings where adults have parental authority.

**Alternative care settings** – Prohibition of all corporal punishment 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 all corporal punishment in schools (public and private), not only that understood to cause injury.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Under article 319 of the Family Code 1994 those with parental authority over children have a duty and power “to reasonably and moderately correct them”, and there is a similar provision in article 443 in relation to guardians/tutors. The Family Code 1994 (art. 501) and the Criminal Code 2007 (art. 198) protect children from corporal punishment which causes physical injury but do not prohibit all corporal punishment. Other legal provisions against violence and abuse in the Family Code 1994, Law No. 38 on Domestic Violence and Abuse of Children and Adolescents 2001, the Criminal Code 2007 and the Constitution 1972 are not interpreted as prohibiting all corporal punishment.

In 2007 a project for a comprehensive law on children’s rights was submitted to Congress but as at October 2011 it had not been approved. A draft law on the promotion and integral protection of the family is under discussion, but we have no further information. The Government signalled its commitment to prohibition by accepting recommendations made during the Universal Periodic Review of Panama in 2010 to prohibit all forms of corporal punishment of children.<sup>1</sup> At the second cycle UPR in 2015, the Government again accepted a recommendation to prohibit in all settings, and to repeal the power to correct in the Family and Civil Codes.<sup>2</sup> In September 2015, the Government reported to the Human Rights Council that a high-level inter-institutional commission had been established to draft a comprehensive law for the protection of children.<sup>3</sup> Reporting to the Committee on the Rights of the Child in November 2017, the Government stated that the draft law was in consultations phase and would shortly be presented to the Cabinet for approval.<sup>4</sup> It was introduced to Parliament in 2018.<sup>5</sup>

In August 2017, the Government reported to the Committee Against Torture that a technical commission (the Commission on the Prevention of Violence Against Children, COPREVINA) had been established to remedy the lack of an explicit prohibition of corporal punishment.<sup>6</sup> It was specified in November 2017 that the commission would “address the updating of current legislation in the field of childhood and adolescence” within the National Strategy on the Prevention of Violence Against Children.<sup>7</sup>

### Alternative care settings

Corporal punishment is lawful in alternative care settings under the right of correction in the Family Code 1994 (see under “Home”).

### Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the right of correction in the Family Code 1994 (see under “Home”).

### Schools

Corporal punishment is lawful in schools under the right of persons with parental authority to correct children in articles 319 and 443 of the Family Code (see under “Home”; information unconfirmed).

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<sup>1</sup> 4 January 2011, A/HRC/16/6, Report of the working group, paras. 70(15) and 70(16)

<sup>2</sup> 8 July 2015, A/HRC/30/7, Report of the working group, para. 90(75)

<sup>3</sup> 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 350

<sup>4</sup> 1 November 2017, CRC/C/PAN/Q/5-6/Add.1, Reply to List of issues, paras. 1 and 2

<sup>5</sup> Communication with IDEMI, June 2018

<sup>6</sup> See <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21943&LangID=E>, accessed 21 August 2017

<sup>7</sup> 1 November 2017, CRC/C/PAN/Q/5-6/Add.1, Reply to List of issues, para. 34

## Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. It is explicitly prohibited in article 144 of Law No. 40 on the Special regime of criminal responsibility regarding adolescents. Law No. 55 2003 provides for respect of human rights within the penitentiary system.

## Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Criminal Code 2007 and Law No. 40 on the special regime of criminal responsibility regarding adolescents 1999.

## Universal Periodic Review of Panama's human rights record

Panama was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). The following recommendations were made:<sup>8</sup>

“Prohibit all forms of corporal punishment of children (Brazil);

“Make efforts to include in its legislation a prohibition of all forms of corporal punishment of children (Costa Rica)”

The Government accepted the recommendations, stating: “The possibility of forthcoming legislation prohibiting all forms of corporal punishment against children is being considered.”<sup>9</sup>

Examination in the second cycle took place in 2015 (session 22). During the review the following recommendation was made and was accepted by the Government:<sup>10</sup>

“Explicitly prohibit all corporal punishment of children in all settings, including in the home, and repeal the power to ‘correct’ in the Family Code and the Civil Code (Sweden)”

## Recommendations by human rights treaty bodies

### *Committee on the Rights of the Child*

(2 February 2018, CRC/C/PAN/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 21)

“The Committee is concerned at indications in the State party report that 44.9 per cent of children under 14 years of age have experienced some form of violent discipline in the months before 2013 and urges the State party, 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, to its previous concluding observations (CRC/C/PAN/CO/3-4, para. 46), as well as to the State party's commitments under both cycles of the Universal Periodic Review, to:

(a) Revise articles 319 and 443 of the Family Code and explicitly prohibit, through legislative and administrative provisions, the use of corporal punishment in all settings, namely in schools, childcare institutions, including early childhood care institutions, alternative care settings, in the home and in juvenile detention centres;

(b) Reinforce measures to raise the awareness of parents, professionals working with children and the public in general on the harm caused by corporal punishment and promote positive, non-violent and participatory forms of child-rearing and discipline;

(c) Seek technical assistance from UNICEF in that regard, including on the child-friendly school programme.”

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<sup>8</sup> 4 January 2011, A/HRC/16/6, Report of the working group, paras. 70(15) and 70(16)

<sup>9</sup> 17 February 2011, A/HRC/16/6/Add.1, Report of the working group: Addendum

<sup>10</sup> 8 July 2015, A/HRC/30/7, Report of the working group, para. 90(75)

### Committee on the Rights of the Child

(21 December 2011, CRC/C/PAN/CO/3-4, Concluding observations on third/fourth report, paras. 45 and 46)

“The Committee is concerned that the law does not expressly prohibit corporal punishment in the home and in schools. Furthermore, the Committee is concerned that the Family Code (1994, art. 319) and the Civil Code (art. 188) confer the right of parents and guardians in alternative care settings to ‘correct’ children ‘reasonably and moderately’ and that the Family Code (art. 443) authorizes guardians to ‘moderately correct’ their wards.

“The Committee reiterates its recommendations to explicitly prohibit in the State party’s legislation all forms of corporal punishment of children and to promote alternative forms of discipline. In this sense the Committee recommends that articles 319 and 443 of the Family Code and article 188 of the Civil Code be revised taking into account the Committee’s General comment number 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”

### Committee on the Rights of the Child

(30 June 2004, CRC/C/15/Add.233, Concluding observations on second report, paras. 33, 34 and 40)

“While welcoming the prohibition of corporal punishment and other forms of violence against children by the adoption of the Law 38 on domestic violence and mistreatment of children and adolescents, which allows for the removal of the alleged perpetrator of violence against the child from the home, the Committee is concerned at the lack of specific measures for its full implementation.

“The Committee recommends that the State party takes the necessary measures:

- a) for the full implementation of the Law 38, inter alia, through public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes about corporal punishment, and promote positive, non-violent forms of discipline in the family, the schools and other institutions as an alternative to such punishment;
- b) to strengthen complaints mechanisms for children in institutions to ensure that complaints of ill-treatment are dealt with effectively and in a child-sensitive manner by an independent body;
- c) to ensure sufficient financial and other resources for the effective implementation of this law.

“The Committee reiterates the following recommendation to the State party:

- a) that effective public awareness campaigns be developed and that measures be adopted to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against their children, including the use of corporal punishment....”

### Committee on the Rights of the Child

(24 January 1997, CRC/C/15/Add.68, Concluding observations on initial report, paras. 16 and 30)

“The Committee is concerned by the persistence of violence against children within the family, including the use of corporal punishment. In the light of article 17 of the Convention, the Committee is also concerned about the need for further measures to protect children from media information and material injurious to their well-being.

“The Committee recommends that effective public awareness campaigns be developed and that measures be adopted by the State party to provide appropriate assistance to the family in the performance of its child-rearing responsibilities, including parental guidance and counselling, with a view, inter alia, to preventing domestic violence and to prohibiting the use of corporal punishment as well as to preventing early pregnancies....”

### Committee Against Torture

([August 2017], CAT/C/PAN/CO/4, Concluding observations on fourth report, Advance unedited version, in Spanish only, paras. 48 and 49)

“El Comité toma nota sobre los trabajos del Comité Nacional Intersectorial para la Prevención de la Violencia contra Niños, Niñas y Adolescentes, pero observa con preocupación que el Estado parte no cuenta todavía con legislación específica que prohíba expresamente los castigos corporales en todas las circunstancias (art. 16).

“El Estado parte debe dotarse de una legislación que prohíba el castigo corporal a menores en todas las circunstancias, emprender campañas de sensibilización pública sobre sus efectos perjudiciales y promover formas positivas no violentas de disciplina como alternativas al castigo corporal.”

### *Committee on the Rights of Persons with Disabilities*

(29 August 2017, CRPD/C/PAN/CO/1 Advance unedited version, Concluding observations on initial report, in Spanish only, paras. 22 and 23)

“El Comité está preocupado por el hecho de que la legislación no prohíbe expresamente todos los castigos corporales en el hogar, las escuelas, las guarderías, y entornos de cuidado alternativo.

“El Comité urge al Estado parte a derogar las disposiciones en el Código Civil y el Código de la Familia que otorgan a los adultos cuidadores de niños y niñas la facultad de “corregir” y sancionarlos moderadamente, y recomienda que elabore legislación prohibiendo absolutamente el castigo corporal en cualquier entorno, incluyendo el familiar y en las comunidades indígenas y afrodescendientes, y que haga todos esfuerzos necesarios para asegurar la implementación de esta legislación. ”

## Prevalence/attitudinal research in the last ten years

Research conducted in 2013 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme found 45% of 1-14 year-old children experienced some form of violent “discipline” (psychological aggression and/or physical punishment) in the month prior to the survey. The survey found 33% of children experienced psychological aggression, 27% physical punishment and 2% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 36% of children experienced only non-violent forms of discipline.

(Contraloría General de la República (2014), Encuesta de Indicadores Múltiples por Conglomerados de Panamá 2013, Resultados Principales, Panamá, Panamá: Contraloría General)

According to UNICEF statistics collected in 2013, 45% of children aged 1-14 experienced “violent discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Twenty-nine per cent experienced physical punishment and 33% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). Seventeen per cent of one year olds had been “spanked”, hit or slapped on the bottom with a bare hand and ten per cent had been hit or slapped on the hand, arm or leg. A smaller percentage (8%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

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

A report on juvenile detention centres in Panama found that the young people were regularly subjected to very severe corporal punishment including beatings, the use of tear gas, being shot with rubber bullets and threatened with rifles. Other cruel and degrading punishments included the denial of family visits and imprisonment in very small cells with little water. The report was based on visits to four detention centres, which together housed 268 juvenile detainees, approximately 82% of the total population of the juvenile detention system.

(Harvard International Human Rights Clinic, Alianza Ciudadana Pro Justicia & Asamblea Ciudadana de Panamá (2011), Preventable Tragedy in Panama: Unnecessary Deaths and Rights Violations in Juvenile Detention Centers, report submitted to the UN Committee on the Rights of the Child for its 57<sup>th</sup> session)

[End Corporal Punishment](#) is a critical initiative of the [Global Partnership to End Violence Against Children](#). Previously known as The Global Initiative to End All Corporal Punishment of Children, we act as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We track global progress, support and hold governments to account, partner with organisations at all levels, and engage with human rights treaty body systems.