

Corporal punishment of children in Bolivia

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Child population 4,138,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

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. In 2014, a new Children and Adolescents Code was enacted which came into force on 6 August 2014. Chapter 8 of the Code provides for the right to personal integrity and protection from violence, including in article 146 explicit prohibition of all corporal punishment (unofficial translation): “Right to good treatment. (1) The child and adolescent has the right to good treatment, comprising a non-violent upbringing and education, based on mutual respect and solidarity. (2) The exercise of the authority of the mother, father, guardian, family members and educators should use non-violent methods in parenting, education and correction. Any physical, violent and humiliating punishment is prohibited.” Article 147 states that where violence against a child constitutes a criminal offence it will be punished under criminal law; where violence breaches the Children and Adolescents Code but does not constitute a criminal offence, it will be sanctioned according to the Code. Article 153 confirms that this includes the “subjection to physical punishment or other forms that degrade or adversely affect the dignity of the child or adolescent, whether by way of disciplinary or educational measures, unless the lesions are classified in criminal legislation”.

Alternative care settings

Corporal punishment is prohibited in article 146 of the Children and Adolescents Code 2014 (see under “Home”, above).

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children under article 146 of the Children and Adolescents Code 2014 (see under “Home”, above).

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 109 of the Children and Adolescents Code 1999 stated that “a child or adolescent is the victim of abuse when ... school discipline fails to respect his or her dignity and integrity”. This has been replaced by the Children and Adolescents Code 2014, which explicitly prohibits corporal punishment in article 146 (see under “Home”, above) and article 117 (unofficial translation): “Rules of conduct and peaceful and harmonious coexistence must be administered in compliance with the rights and interests of children and adolescents, considering their duties, which must conform to the following provisions.... (d) Physical punishments are prohibited.”

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in specialised centres (orientation centres and social reintegration centres) in article 338 of the Children and Adolescents Code 2014 (unofficial translation): “Disciplinary regime. ... (2) Specialised centres where custodial measures are met should have internal regulations that respect the rights and guarantees recognised by this Code, and include as a minimum the following: ... (b) Exhaustive regulatory sanctions that may be imposed on the adolescent and for compliance with the measure. Under no circumstances may be applied cruel, inhuman or degrading disciplinary measures, including corporal punishment and confinement in dark and filthy cells....” Article 342 reiterates the right of children and adolescents deprived of their liberty not to be subjected to corporal punishment.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime: there is no provision for judicial corporal punishment in criminal law and in the Children and Adolescents Code 2014. Sentences of corporal punishment are traditionally ordered by community elders in indigenous justice systems, but the Children and Adolescents Code 2014 is clear that it applies to all children and adolescents within the national territory (art. 4).

Universal Periodic Review of Bolivia’s human rights record

Bolivia was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendation was made and was accepted by the Government:¹

“To adopt specific measures to protect boys, girls and adolescents from all violence against them, to eradicate child labour, to combat the exploitation of boys, girls and adolescents and to prohibit all forms of corporal punishment (Costa Rica)”

The Government’s review of implementation of the recommendations reported on efforts to address child labour and slavery but did not refer to corporal punishment.²

Examination in the second cycle took place in 2014 (session 20). No recommendations were made specifically on corporal punishment of children.

¹ 15 March 2010, A/HRC/14/7, Report of the working group, para. 98(36)

² Mid-term report on implementation of the recommendations, June 2010

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 (*Codigo 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.”

Human Rights Committee

(6 December 2013, CCPR/C/BOL/CO/3, Concluding observations on third report, para. 16)

“The Committee is concerned by the fact that there is no explicit prohibition of corporal punishment as a disciplinary measure in the home or in institutional settings. The Committee is also concerned that corporal punishment continues to be used as a punishment in the community-based justice system (arts. 7, 24 and 27).

The State party should take steps to put an end to corporal punishment in all domains. It should also encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns in the native indigenous campesino and other jurisdictions in order to raise awareness among the general public of the prohibition and harmful effects of corporal punishment.”

Prevalence/attitudinal research in the last ten years

In a 2008 study involving 10,092 women aged 15-49 with children, 48.7% reported that children in their home were physically punished (47.6% by being hit, beaten, spanked or slapped; 1.1% by other physical punishment). In a similar 2003 study, women who had experienced partner violence were more likely to report that children in their home were physically punished (66% of women who had ever experienced partner violence compared to 50.9% of women who had not).

(Bott, S. et al (2012), *Violence Against Women In Latin America And The Caribbean: A Comparative Analysis Of Population-based Data From 12 Countries*, Washington DC: Pan American Health Organisation & Centers for Disease Control and Prevention)