

**BRIEFING ON COLOMBIA FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 60th session (April/May 2017)**

*From the Global Initiative to End All Corporal Punishment of Children,* [*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

**This briefing describes the legality of corporal punishment of children in Colombia. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the relevant recommendations made to Colombia during the UPR, as well as by the Committee on the Rights of the Child in 2006 and 2015 and by the Committee on the Rights of Persons with Disabilities in 2016, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Colombia, in particular asking what measures are being taken to repeal the “right of correction” contained in the Civil Code, and**
* **recommend, in the concluding observations on the sixth state party report, that Colombia enact legislation as a matter of priority which clearly prohibits corporal punishment in the home and all other settings and repeal all legal defences, including in indigenous communities.**

**1 The legality of corporal punishment of children in Colombia**

1.1 ***Summary:***Corporal punishment of children is lawful in the home, some alternative care settings, day care and as a sentence for crime. Prohibition in schools and penal institutions requires confirmation.

1.2 ***Home (******lawful):*** 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.

1.3 A 1994 Constitutional Court judgment[[1]](#footnote-1) 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.[[2]](#footnote-2)

1.4 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.[[3]](#footnote-3) 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 Constitution[[4]](#footnote-4) (see para. 1.9). Children in the homes of indigenous communities thus apparently have less legal protection from corporal punishment than other children.

1.5 ***Alternative care settings (?lawful):***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.

1.6 ***Day care (?lawful):***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.

1.7 ***Schools (?unlawful):***Corporal punishment is considered unlawful in schools under article 18 of the Children and Adolescents Code 2006 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.

1.8 ***Penal institutions (?unlawful):*** 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. We do not know if this applies in indigenous communities.

1.9 ***Sentence for crime (partially lawful):*** 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[[5]](#footnote-5) 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.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CRC:*** The Committee on the Rights of the Child has recommended explicit legal prohibition of corporal punishment in all settings in its concluding observations to Colombia’s third periodic report in 2006[[6]](#footnote-6) and in the concluding observations to the fourth-fifth report in 2015.[[7]](#footnote-7)

2.2 ***CRPD:*** In 2016, the Committee on the Rights of Persons with Disabilities recommended prohibition of corporal punishment in all settings including within indigenous and remote communities.[[8]](#footnote-8)

2.3 ***UPR:*** Colombia accepted recommendations made during the first and the second cycle of the Universal Periodic Review in 2008[[9]](#footnote-9) and 2013[[10]](#footnote-10) relating to the protection of children’s rights and the protection of children from violence.

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* [*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

*January 2017*

1. Sentence C-371/94 [↑](#footnote-ref-1)
2. UNICEF, correspondence with the Global Initiative, 23 June 2015 [↑](#footnote-ref-2)
3. Sentence T-002/12 [↑](#footnote-ref-3)
4. Sentence T-523/97 [↑](#footnote-ref-4)
5. Sentence T-523/97 [↑](#footnote-ref-5)
6. 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, paras. 61 and 62 [↑](#footnote-ref-6)
7. 4 February 2015, CRC/C/COL/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 27 and 28 [↑](#footnote-ref-7)
8. 30 September 2016, CRPD/C/COL/CO/1, Concluding observations on initial report, paras. 18 and 19 [↑](#footnote-ref-8)
9. 9 January 2009, A/HRC/10/82, Report of the working group, para. 87(16) [↑](#footnote-ref-9)
10. 4 July 2013, A/HRC/24/6, Report of the working group, paras. 116(48), 116(53) and 116(56) [↑](#footnote-ref-10)