



Global Initiative to  
**End All Corporal Punishment  
of Children**

**BRIEFING ON COLOMBIA FOR THE  
COMMITTEE ON THE RIGHTS OF THE CHILD,  
PRESESSIONAL WORKING GROUP – June 2014**

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**This briefing describes the legality of corporal punishment of children in Colombia. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendations on the issue, the relevant recommendations made during the UPR in 2008 and 2013 (accepted by the Government) and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will:**

- **in its List of Issues for Colombia, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and other settings, including through repeal of the “right of correction” in the Civil Code?**
- **in its concluding observations on Colombia’s fourth/fifth report, recommend that legislation is enacted to explicitly prohibit all corporal punishment in all settings, including through repeal of the “right of correction”, and that indigenous children have the same protection as all other children.**

## **1 Corporal punishment in Colombia’s current and previous reports to the Committee**

- 1.1 Colombia has repeatedly informed the Committee that all corporal punishment of children is prohibited in the state party. Our research suggests, however, that while legislation has been enacted which strengthens children’s protection from corporal punishment, the law as it currently stands does not prohibit all forms of corporal punishment for all children, and that the state party’s reporting to the Committee on this issue has been misleading.
- 1.2 The initial report of Colombia to the Committee, examined in 1994/5, describes the protection of children from cruel or degrading treatment in the now repealed Minors’ Code but it does not

specifically refer to corporal punishment.<sup>1</sup> However, the report does refer to the provisions on parental rights and obligations in the Civil Code, including the right “to punish and correct children”.<sup>2</sup> This appears to be the only time the Government has confirmed the existence of such a “right”, despite repeated questions concerning corporal punishment in subsequent reviews by the Committee. It would seem from the available summary records that the issue was not raised during the review of the initial report, and no recommendations specifically on corporal punishment were made in the Committee’s concluding observations on that report.

- 1.3 The state party’s second report<sup>3</sup>, examined in 2000, makes no reference to corporal punishment. However, the issue was raised during the review.<sup>4</sup> The Government delegation asserted that corporal punishment was “criminalised under Act No. 509 of 1999” and that an awareness campaign had been launched to address its continued use by parents.<sup>5</sup> In fact, Act No. 509 of 1999 concerns social security for “community mothers” and contains nothing relevant to prohibition of corporal punishment.<sup>6</sup> No reference was made by the Government to the right of correction in the Civil Code nor to any steps towards repealing it.
- 1.4 The third periodic report<sup>7</sup>, examined in 2006, again makes no reference to corporal punishment, but again the issue was raised during the review.<sup>8</sup> The delegation reported that corporal punishment was “currently prohibited” and would also be “taken up clearly in the bill before Congress”.<sup>9</sup> The Committee went on to recommend that the law prohibiting corporal punishment be enforced.<sup>10</sup> Once more, official records show no discussion of the “right of correction” in the Civil Code.
- 1.5 The fourth/fifth state party report, to be examined in 2015, refers to legislative and other measures aimed at protecting children from abuse, including from corporal punishment.<sup>11</sup> It draws attention in this respect to article 12 of the Constitution 1991, which protects every person from cruel, inhuman or degrading treatment or punishment, and to provisions in the Children and Adolescents Code 2006 protecting children from mistreatment and abuse, noting that this includes all forms of “punishment”. There is no reference to the “right of correction” in the Civil Code.
- 1.6 Since the state party’s initial examination 20 years ago, there has been no discussion about the prohibition of corporal punishment of children in indigenous communities.
- 1.7 While we welcome the significant advances in child protection legislation in Colombia, including to protect children from “punishment”, we are concerned that the Civil Code still confirms a “right of correction”, providing a potential legal justification for some degree of physical punishment in childrearing. We are also concerned that children in indigenous communities appear to have weaker protection from corporal punishment than other children, including in the penal system. **We hope the Committee will examine the state party in detail on this matter, emphasising that prohibition cannot be said to have been achieved while the law enshrines a “right of correction” and that indigenous children should have the same protection as all other children.**

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<sup>1</sup> 10 June 1993, CRC/C/8/Add.3, Initial state party report, para. 95

<sup>2</sup> 10 June 1993, CRC/C/8/Add.3, Initial state party report, 108

<sup>3</sup> 5 January 2000, CRC/C/70/Add.5, Second state party report

<sup>4</sup> 9 February 2001, CRC/C/SR.656, Summary record of 656<sup>th</sup> meeting, para. 26

<sup>5</sup> 10 June 1993, CRC/C/8/Add.3, Initial state party report, para. 39

<sup>6</sup> The full text of the Act is at <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=183> (accessed 31 January 2014); see also 24 August 2005, CRC/C/129/Add.6, Third state party report, para. 168

<sup>7</sup> 24 August 2005, CRC/C/129/Add.6, Third state party report

<sup>8</sup> 7 June 2006, CRC/C/SR. 1147, Summary record of 1147<sup>th</sup> meeting, para. 55; 4 July 2006, CRC/C/SR.1148, Summary record of 1148<sup>th</sup> meeting, para. 2; see also 15 February 2006, CRC/C/COL/Q/3, List of issues, part IV(6)

<sup>9</sup> 4 July 2006, CRC/C/SR.1148, Summary record of 1148<sup>th</sup> meeting, para. 14

<sup>10</sup> 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, para. 62

<sup>11</sup> 25 October 2013, CRC/C/COL/4-5, Fourth/fifth state party report, paras. 124-128, at the time of briefing available only in Spanish

## 2 The legality of corporal punishment of children in Colombia

- 2.1 **Summary:** Despite significant law reform and positive case law, it appears that complete prohibition of corporal punishment in childrearing has not yet been achieved in Colombia. Corporal punishment is unlawful in schools, penal institutions and as a sentence for crime, but possibly not for indigenous children; it is not yet fully prohibited in the home, alternative care settings and day care.
- 2.2 **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”.<sup>12</sup>
- 2.3 A 1994 Constitutional Court judgment<sup>13</sup> 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 right of every person not to be submitted to torture or cruel, inhuman, or degrading treatment or punishment (art. 12), the right of the family to protection from any form of violence (art. 42) and the right 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. Furthermore, article 3(2) of the Children and Adolescents Code 2006 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.” 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<sup>14</sup> (see below, para. 2.8). Children in the homes of indigenous communities apparently have less protection from corporal punishment than other children.
- 2.4 **Alternative care settings (?partial prohibition):** Corporal punishment is possibly considered unlawful in care institutions under article 18 of the Children and Adolescents Code 2006 (see para. 2.2), but the prohibition is undermined by the right to correct/sanction children in article 262 of the Civil Code 1883.
- 2.5 **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.
- 2.6 **Schools (?unlawful):** Corporal punishment is considered unlawful in schools under article 18 of the Children and Adolescents Code 2006, though it is not explicitly prohibited (see para. 2.2). We do not know its legality in relation to indigenous communities.
- 2.7 **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 (see para. 2.2). We do not know if this applies in indigenous communities.

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<sup>12</sup> Article 262 states: “Los padres o la persona encargada del cuidado personal de los hijos, tendrán la facultad de vigilar su conducta, corregirlos y sancionarlos moderadamente.”

<sup>13</sup> Sentence C-371/94

<sup>14</sup> Sentence T-523/97

2.8 ***Sentence for crime (partial prohibition)***: 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<sup>15</sup> 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.

### **3 Recommendations by human rights treaty bodies and during the UPR**

3.1 ***CRC***: In 2006, in its concluding observations on Colombia’s third report, the Committee on the Rights of the Child recommended that the state party “enforce legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home”.<sup>16</sup> As already noted (see above, paras. 1.1-1.7), we believe the Committee had mistakenly been led to believe that prohibition had been achieved.

3.2 ***UPR***: Colombia was examined in the first cycle of the UPR in 2008 (session 3). No recommendations were made specifically concerning corporal punishment of children but the Government accepted a recommendation to “ensure the full protection of children’s rights”.<sup>17</sup> The second cycle review took place in 2013 (session 16). Again, there were no recommendations on corporal punishment of children, but the Government accepted recommendations to strengthen children’s protection from violence, including through legislative measures.<sup>18</sup>

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February 2014

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<sup>15</sup> *ibid.*

<sup>16</sup> 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, para. 62

<sup>17</sup> 9 January 2009, A/HRC/10/82, Report of the working group, para. 87(16)

<sup>18</sup> 4 July 2013, A/HRC/24/6, Report of the working group, paras. 116(48), 116(53) and 116(56)