

Ending family violence in Panama – challenging physical punishment of girls and boys



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 73rd session, from the *Global Initiative to End All Corporal Punishment of Children* (www.endcorporalpunishment.org), September 2018

Introduction: family violence in Panama and CEDAW's examination of the eighth state party report

The Law No. 38 on Domestic Violence and Abuse of Children and Adolescents 2001, the Family Code 1994 and the Criminal Code 2007 provide some protection from family violence to women and girls, but those provisions and others in domestic legislation are not interpreted as prohibiting all corporal punishment of children. A draft comprehensive law for the protection of children is under discussion in Parliament – this provides Panama with an opportunity to enact prohibition of all corporal punishment.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Panama. In particular, we hope the Committee will:

- **in its list of issues prior to reporting for Panama, ask what steps are being taken towards the enactment of legislation explicitly prohibiting all physical punishment of children as a matter of priority, and**
- **in its concluding observations on the eighth state party report, recommend that Panama ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that draft legislation currently under discussion is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys.**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Panama.
 2. Treaty body and UPR recommendations on the issue made to Panama to date.
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1 Laws on domestic violence and corporal punishment of children in Panama

Summary

1.1 Provisions in the Law No. 38 on Domestic Violence and Abuse of Children and Adolescents 2001, the Family Code 1994 and the Criminal Code 2007 provide some protection from family violence, but the law is not interpreted as prohibiting all forms of physical punishment of children. A commission is reportedly working on the prohibition of corporal punishment, and the draft comprehensive law for the protection of children was introduced to Parliament earlier this year – this provides the perfect vehicle for enacting an explicit prohibition of all corporal punishment of children.

Detail

1.2 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.

1.3 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.¹ 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.² 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.³ 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.⁴ It was introduced to Parliament in 2018.⁵

1.4 In August 2017, the Government reported to the Committee Against Torture that a technical commission had been established to remedy the lack of an explicit prohibition of corporal punishment.⁶ 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.⁷ We have no further information.

1.5 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Panama to enact legislation as a matter of urgency to clearly prohibit all corporal punishment of girls and boys.

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

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

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

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

⁵ Communication with IDEMI, June 2018

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

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

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

- 2.1 The *Committee on the Rights of the Child* has on four occasions expressed concern about corporal punishment of children in the family and other settings in Panama and made recommendations to address it – in its concluding observations on the initial report in 1997,⁸ on the second report in 2004,⁹ on the third/fourth report in 2011,¹⁰ and on the fifth/sixth report in 2018.¹¹ In 2011 and in 2018, the Committee specifically recommended revision of articles 319 and 443 of the Family Code and article 188 of the Civil Code, which provide for the “right of correction” of children.
- 2.2 The *Committee Against Torture* recommended in 2017 that Panama adopt legislation explicitly prohibiting corporal punishment of children in all settings, undertake public awareness campaigns on its harmful effects and promote positive non-violent forms of discipline as alternatives to corporal punishment.¹²
- 2.3 Also in 2017, the *Committee on the Rights of Persons with Disabilities* expressed concern that corporal punishment was not explicitly prohibited and urged Panama to repeal the legal defences in the Civil Code and the Family Code. It also recommended that prohibition is enacted of corporal punishment in all settings.¹³
- 2.4 At the first cycle *Universal Periodic Review* in 2010, the Government accepted recommendations to explicitly prohibit all corporal punishment, stating: “The possibility of forthcoming legislation prohibiting all forms of corporal punishment against children is being considered.”¹⁴ In 2015 at the second cycle review, the Government again accepted a recommendation to “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”.¹⁵

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

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

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

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

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

¹² [August 2017], CAT/C/PAN/CO/4, Concluding observations on fourth report, Advance unedited version, paras. 48 and 49

¹³ 29 August 2017, CRPD/C/PAN/CO/1 Advance unedited version, Concluding observations on initial report, paras. 22 and 23

¹⁴ 17 February 2011, A/HRC/16/6/Add.1, Report of the working group: Addendum

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