



Global Initiative to  
End All Corporal Punishment  
of Children

## **BRIEFING ON COLOMBIA FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN PRESESSIONAL WORKING GROUP – Feb/Mar 2013**

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### **The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence**

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006),<sup>1</sup> addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

**This briefing describes the legality of corporal punishment of children in Colombia. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence and the recommendations of treaty monitoring bodies, we hope the Committee on the Elimination of Discrimination Against Women will:**

- **raise the issue of corporal punishment of girls in its List of Issues for Colombia, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home and for children in indigenous communities, and**
- **recommend to Colombia, in the concluding observations on the seventh/eighth state party report, that legislation be strengthened to explicitly prohibit corporal punishment in all settings, including the home and in indigenous communities, as a matter of priority.**

<sup>1</sup> General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at [www2.ohchr.org/english/bodies/crc/comments.htm](http://www2.ohchr.org/english/bodies/crc/comments.htm).

## 1 Colombia's seventh/eighth report to CEDAW

- 1.1 The seventh/eighth report of Colombia to CEDAW (3 November 2011, CEDAW/C/COL/7-8) provides information concerning violence against women and girls but appears to make no reference to the violence that may lawfully be inflicted on girls and boys within the family and other settings in the guise of "discipline".<sup>2</sup>

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

- 2.1 *Summary:* In Colombia corporal punishment is unlawful as a sentence for crime under state law but permitted in traditional justice systems; it is not explicitly prohibited in the home, schools, penal institutions or alternative care settings. Despite Government assertions that all corporal punishment of children is prohibited,<sup>3</sup> law reform is, in fact, not yet complete. Legislation and case law possibly rule out the use of violence in childrearing, but there is no explicit prohibition of all corporal punishment; moreover, existing legislation appears not to apply to children in indigenous communities. Research shows a higher prevalence of corporal punishment for girls than for boys.
- 2.2 *Home:* Article 18 of the Children and Adolescents Code 2006 states that children have a right to protection from maltreatment and abuse by all persons including parents, and includes "punishment" and "all forms of violence or aggression against children and adolescents by their parents, legal guardians or any other person" in the definition of child abuse. At the same time, article 262 of the Civil Code 1883 (as amended 1974), confirms the right of parents and other carers to "correct" children and "sanction them moderately". A 1994 Constitutional Court judgment<sup>4</sup> appears to rule that the right of correction excludes the use of violence, but the ruling has not been confirmed through law reform to explicitly prohibit all corporal punishment. The legal protection afforded to children is further weakened by the fact that it apparently does not apply to children in indigenous communities: article 3(2) of the Children and Adolescents Code states that for indigenous peoples "the ability to exercise rights shall be governed by their own standards". Such standards must be "in harmony with the Constitution", but case law has established that a certain degree of physical punishment in indigenous communities, even when imposed as a sentence for crime, is not considered to violate the Constitution (see below).
- 2.3 Research has shown that corporal punishment is commonly used in childrearing in Colombia. Most recently, comparative research found that in Colombia 68% of girls and 63% of boys had experienced "mild" corporal punishment (spanking, hitting, or slapping with a bare hand; hitting or slapping on the hand, arm, or leg; shaking; or hitting with an object), and 15% of girls and 4% of boys severe corporal punishment (hitting or slapping the child on the face, head, or ears; beating the child repeatedly with an implement) by someone in their household in the past month.<sup>5</sup> In interview research in Bogotá 63% of parents reported seldom using physical punishment and 1% reported using it a lot – of those who smacked their children, 47% said they used their hand, 44% a belt, 10% a slipper or shoe, and 2% a paddle or broom; interviews with the children revealed higher incidences of corporal punishment, including 83% reporting punishment by smacking,

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<sup>2</sup> As at 22 January 2013, report available only in Spanish

<sup>3</sup> 4 July 2006, CRC/C/SR.1148, Summary record, para. 14; [December 2011], CRC/C/COL/3-4, Third-fourth state party report, para. 209ff

<sup>4</sup> Sentence C-371/94

<sup>5</sup> Lansford, J. et al (2010), "Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender", *International Journal of Pediatrics*

with 70% being hit with a belt, 31% the hand, 27% a slipper, 5% a whip, 5% a paddle, 5% a shoe, and 3% a switch.<sup>6</sup>

- 2.4 *Schools*: Corporal punishment is considered unlawful under article 18 of the Children and Adolescents Code 2006, though it is not explicitly prohibited (see above). We do not know its legality in relation to indigenous communities.
- 2.5 *Penal system – sentence for crime*: There is no provision for judicial corporal punishment in criminal law, but its legality in relation to children and adolescents in indigenous communities is unclear. Under article 246 of the Constitution, 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>7</sup> concluded that the imposition of the sentence of whipping in the Paez community was symbolic, not degrading punishment and not severe enough to be torture, and therefore did not violate the Constitution and international human rights instruments. Concerning 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.
- 2.6 *Penal system – disciplinary measure in penal institutions*: 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 above). We do not know if this applies in indigenous communities.
- 2.7 *Alternative care settings*: There is no explicit prohibition of all forms of corporal punishment in alternative care settings.

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

- 3.1 *CRC*: As noted above, in examining the third periodic report of Colombia in 2006, the Committee on the Rights of the Child was led to believe that all corporal punishment in all settings was prohibited in law: the Committee expressed concern that it nevertheless continued to be used and recommended proper enforcement of the law.<sup>8</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
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<sup>6</sup> Pineda, N. et al. (2005), *Evaluación de Algunas Modalidades de Atención a la Primera Infancia en el ICBF y el DABS*, Bogotá, Cinde, Save the Children UK, UNICEF, Colombian Institute for Family Welfare and Bogotá Social Welfare Department, reported in International Save the Children Alliance (2005), *Ending Physical and Humiliating Punishment of Children – Making it Happen: Global Submission to the UN Study on Violence against Children*, Save the Children Sweden

<sup>7</sup> Sentence T-523/97

<sup>8</sup> 8 June 2006, CRC/C/COL/CO/3, Concluding observations on third report, paras. 61 and 62