

Corporal punishment of children in Panama: Briefing for the Universal Periodic Review, 36th session, May 2020



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

From the Global Initiative to End All Corporal Punishment of Children, October 2019

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Panama, corporal punishment of children is still lawful despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture and the Committee on the Rights of Persons with Disabilities.

We hope the Working Group will note with concern the legality of corporal punishment of children in Panama. We hope states will raise the issue during the review in 2020 and make a specific recommendation that Panama draft and enact legislation as a matter of priority to explicitly prohibit all corporal punishment of children in all settings.

Panama's commitment to prohibiting corporal punishment

Panama expressed its commitment to prohibiting all corporal punishment by accepting clearly recommendations to do so made during the Universal Periodic Review of Panama in 2010 and again in 2015.

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools.

The Family Code 1994 (arts. 319 and 443) confirms the right of parents, teachers and others with parental authority to “moderately” correct children. Laws against violence and abuse prohibit only corporal punishment which causes injury. Children have a right to protection from all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no degree of corporal punishment is acceptable or lawful, however light. The legal defences of “moderate correction” should be repealed and prohibition should be enacted of all corporal punishment, in the home and all other settings where adults have parental authority.

Alternative care settings – Prohibition of all corporal punishment should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted of all corporal punishment in schools (public and private), not only that understood to cause injury.

Current legality of corporal punishment

Home

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.

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

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

Alternative care settings

Corporal punishment is lawful in alternative care settings under the right of correction in the Family Code 1994.

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the right of correction in the Family Code 1994.

Schools

Corporal punishment is lawful in schools under the right of persons with parental authority to correct children in articles 319 and 443 of the Family Code (information unconfirmed).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. It is explicitly prohibited in article 144 of Law No. 40 on the Special regime of criminal responsibility regarding adolescents. Law No. 55 2003 provides for respect of human rights within the penitentiary system.

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

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under the Criminal Code 2007 and Law No. 40 on the special regime of criminal responsibility regarding adolescents 1999.

Universal Periodic Review of Panama's human rights record

Panama was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). The following recommendations were made:⁸

“Prohibit all forms of corporal punishment of children (Brazil);

“Make efforts to include in its legislation a prohibition of all forms of corporal punishment of children (Costa Rica)”

The Government accepted the recommendations, stating: “The possibility of forthcoming legislation prohibiting all forms of corporal punishment against children is being considered.”⁹

Examination in the second cycle took place in 2015 (session 22). During the review the following recommendation was made and was accepted by the Government:¹⁰

“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 (Sweden)”

Recommendations by human rights treaty bodies

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 1997,¹¹ on the second report in 2004,¹² on the third/fourth report in 2011,¹³ and on the fifth/sixth report in 2018.¹⁴ 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.

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.¹⁵

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.¹⁶

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

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

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

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

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

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

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

¹⁵ [August 2017], CAT/C/PAN/CO/4, Concluding observations on fourth report, Advance unedited version, paras. 48 and 49

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

Prevalence/attitudinal research in the last ten years

Research conducted in 2013 as part of UNICEF's Multiple Indicator Cluster Surveys (MICS) programme found 45% of 1-14 year-old children experienced some form of violent "discipline" (psychological aggression and/or physical punishment) in the month prior to the survey. The survey found 33% of children experienced psychological aggression, 27% physical punishment and 2% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 36% of children experienced only non-violent forms of discipline.

(Contraloría General de la República (2014), *Encuesta de Indicadores Múltiples por Conglomerados de Panamá 2013, Resultados Principales*, Panamá, Panamá: Contraloría General)

According to UNICEF statistics collected in 2013, 45% of children aged 1-14 experienced "violent discipline" (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Twenty-nine per cent experienced physical punishment and 33% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). Seventeen per cent of one year olds had been "spanked", hit or slapped on the bottom with a bare hand and ten per cent had been hit or slapped on the hand, arm or leg. A smaller percentage (8%) of mothers and caregivers thought that physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

A report on juvenile detention centres in Panama found that the young people were regularly subjected to very severe corporal punishment including beatings, the use of tear gas, being shot with rubber bullets and threatened with rifles. Other cruel and degrading punishments included the denial of family visits and imprisonment in very small cells with little water. The report was based on visits to four detention centres, which together housed 268 juvenile detainees, approximately 82% of the total population of the juvenile detention system.

(Harvard International Human Rights Clinic, Alianza Ciudadana Pro Justicia & Asamblea Ciudadana de Panamá (2011), *Preventable Tragedy in Panama: Unnecessary Deaths and Rights Violations in Juvenile Detention Centers*, report submitted to the UN Committee on the Rights of the Child for its 57th session)