

Progress towards prohibiting all corporal punishment of children in Latin America

May 2015 edition

Summary

This briefing highlights the human rights imperative to prohibit all violent punishment of children across Latin America. It summarises progress so far towards prohibition in each state and what remains to be done. Aiming to promote national action for prohibition, it emphasises the many immediate opportunities for working to fulfil children's right to protection in law from all corporal punishment in all settings. Many Latin American states are now reforming their laws to strengthen children's protection from violence. Of the 19 states in Latin America, eight have already prohibited all corporal punishment including within the family home and another nine are committed to doing so. This briefing sets out what needs to be done to make Latin America the first region in the world to fully protect its children from violent punishment.

Why prohibit corporal punishment?

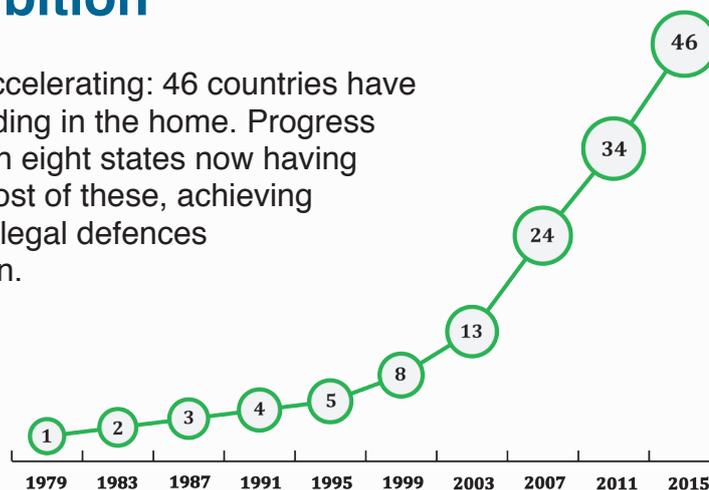
Everyone has a right to protection in law from being hit and hurt, regardless of where they are, who they are with or what the circumstances are. For children – the most vulnerable and dependent of citizens yet also the most susceptible to being assaulted – this right can be particularly difficult to enjoy. In many societies, the belief that physical and other humiliating punishment is a necessary part of “disciplining” children is widely held. Some people view the use of violent punishment in childrearing and education as a religious imperative. But seeing children as human beings in their own right – and due the protection of their human rights in the same way as adults are – means that corporal punishment and other violations of their physical integrity and human dignity cannot be justified.

The UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised – in many cases repeatedly – in the examinations by UN treaty bodies of every Latin American state. Most have also received recommendations to prohibit corporal punishment during the Universal Periodic Review of their overall human rights records.

Legal protection from all corporal punishment is a right in itself. But prohibition is also critical in fulfilling children's rights to health, development and education. Experience of corporal punishment as a child is associated with poor mental health in childhood and adulthood. Physical punishment is linked to increased aggression and antisocial behaviour in children and an increased likelihood of perpetrating, experiencing and accepting violence as an adult. Corporal punishment damages family relationships and teaches children that violence is an acceptable way to resolve conflict.

Progress towards prohibition

Global progress towards prohibition is accelerating: 46 countries have prohibited all corporal punishment, including in the home. Progress in Latin America is fast gaining pace, with eight states now having enacted fully prohibiting legislation: in most of these, achieving prohibition involved repealing/amending legal defences allowing “moderate correction” of children. Governments in a further nine Latin American states have expressed a commitment to law reform.



Laws prohibiting corporal punishment in the home

Argentina 	Civil and Commercial Code 2014, art. 647: “All forms of corporal punishment, ill-treatment and any act that physically or mentally injures or impairs children and adolescents are prohibited...”
Bolivia 	Children and Adolescents Code 2014, art. 146: “(1) The child and adolescent has the right to good treatment, comprising a non-violent upbringing and education, based on mutual respect and solidarity. (2) The exercise of the authority of the mother, father, guardian, family members and educators should use non-violent methods in parenting, education and correction. Any physical, violent and humiliating punishment is prohibited.”
Brazil 	Code on Children and Adolescents 1990, as amended 2014, art. 18A: “Children and adolescents are entitled to be educated and cared for without the use of physical punishment or any other pretext, by their parents, by members of their extended family, by persons responsible for them, by public officials implementing social and educational measures or by any other person entrusted with taking care of them or treating, educating or protecting them...”
Costa Rica 	Family Code 1974, as amended 2008, art. 143: “Parental authority confers the rights and imposes the duties to orient, educate, care, supervise and discipline the children, which in no case authorises the use of corporal punishment or any other form of degrading treatment against the minors...”
Honduras 	Family Code 1984, as amended 2013, art. 191: “... It is prohibited for parents and every person charged with the care, upbringing, education, treatment and monitoring [of children and adolescents], whether on a temporary or permanent basis, to use physical punishment or any type of humiliating, degrading, cruel or inhuman treatment as a form of correction or discipline...”
Nicaragua 	Family Code 2014, art. 280: “The father, mother, or other family members, guardians or other persons legally responsible for the son or daughter have the responsibility, the right and duty to provide, consistent with the child’s evolving capacities, appropriate direction and guidance to the child, without putting at risk his or her health, physical integrity, psychological and personal dignity and under no circumstances using physical punishment or any type of humiliating treatment as a form of correction or discipline...”
Uruguay 	Children and Adolescents Code 2004, as amended 2007, art. 12bis: “It is prohibited for parents, guardians, and all other persons responsible for the care, treatment, education or supervision of children and adolescents, to use physical or any other kind of humiliating punishment as a form of correcting or disciplining children or adolescents...”
Venezuela 	Organic Law for the Protection of Children and Adolescents 1998, as amended 2007, art. 358: “The responsibility for raising children includes the shared duty and right, which is equal and non-derogable, of the father and mother to love, raise, train, educate, and look after their children, sustain and assist them financially, morally and emotionally, using appropriate corrective measures that do not violate their dignity, rights, guarantees or overall development. Consequently, all forms of physical punishment, psychological violence and humiliating treatment, which harm children and young people, are prohibited.”

Opportunities for action in states still to achieve prohibition

Law reform to prohibit corporal punishment is achieved when legislation sends a clear message that corporal punishment, whatever level of severity and regardless of perceived impact in terms of “injury” or “harm”, is prohibited in all settings, including within the family home. The law must be absolutely clear that discipline of children must never involve physical punishment.

The deeply held view that some degree of violent punishment is necessary or even a duty in childrearing means it is not perceived as an abusive or violent act unless it reaches some level of severity. This is reflected in laws that authorise parents and others to impose “moderate” correction or “reasonable” punishment on children – provisions that typically constitute a legal defence against charges of assault. These defences must be explicitly repealed or are amended so as to unequivocally rule out the use of corporal punishment as a “disciplinary” method.

The table below identifies the 11 Latin American states where children are not fully protected in law from all forms of corporal punishment. In nine of these, Governments have expressed a commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so made during the Universal Periodic Review of their overall human rights record and/or by expressing their commitment in other contexts. The table summarises the progress made towards prohibition in each state and what remains to be done. Crucially, it identifies immediate opportunities for drafting and introducing prohibiting legislation. We welcome information on opportunities for action, as well as comments and updates: email sharon@endcorporalpunishment.org.

<i>State</i>	<i>Corporal punishment not fully prohibited</i>	<i>Opportunities for law reform and progress towards prohibition</i>	<i>Immediate action required to achieve full prohibition</i>
States committed to prohibition of all corporal punishment			
Chile 	home, alternative care, day care	Government clearly accepted 2014 UPR recommendations to prohibit; 2008 law reform excluded “abuse” but not all corporal punishment from “right to correct”; Bill Protecting Rights of Children and Adolescents under discussion.	Ensure Bill Protecting Rights of Children and Adolescents prohibits all corporal punishment without exception.
Cuba 	home, alternative care, day care	2011 Government report to UN Committee on the Rights of the Child stated draft new Family Code would repeal provision for “adequate and moderate” correction.	Ensure new Family Code includes clear prohibition of all corporal punishment and repeals provision for “adequate and moderate correction” in current Family Code.
Dominican Republic 	home, alternative care, day care	Government accepted 2009 UPR recommendations to prohibit and reported to 2014 UPR that corporal punishment was being addressed; Civil and Penal Codes being revised.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home; this could be achieved in the context of revising Penal and Civil Codes.
Ecuador 	home, alternative care, day care, penal system	Government clearly accepted 2012 UPR recommendations to prohibit in all settings, but 2014 reforms on domestic violence did not prohibit corporal punishment.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home and within indigenous communities.
El Salvador 	home, alternative care, day care	Case law apparently rules that “right of correction” excludes corporal punishment but this not confirmed through law reform; Government clearly accepted 2010 and 2014 UPR recommendations to prohibit.	Drafting and introduction of legislation repealing “right of correction” and prohibiting all corporal punishment, including in the home.

State	Corporal punishment not fully prohibited	Opportunities for law reform and progress towards prohibition	Immediate action required to achieve full prohibition
States committed to prohibition of all corporal punishment			
Mexico 	home, alternative care, day care	Government adopted Regional Roadmap on Violence Against Children; General Law on Rights of Children and Adolescents 2014 includes prohibition but does not explicitly repeal “right of correction”.	Enact legislation explicitly repealing “right to correct” in Civil Code.
Panama 	home, alternative care, day care, schools	Government clearly accepted 2010 UPR recommendations to prohibit; drafting of family protection law under discussion.	Ensure new family protection law includes comprehensive prohibition of corporal punishment and repeals “right of correction” in Family and Civil Codes.
Paraguay 	home, alternative care, day care, schools	Bill which would prohibit corporal punishment under discussion.	Ensure Bill prohibits all corporal punishment without exception and is tabled and enacted at earliest opportunity.
Peru 	home, alternative care, day care, penal institutions	Government clearly accepted 2012 UPR recommendations to prohibit in all settings; legislation to achieve prohibition under discussion, through revision of Code on Children and Adolescents or in separate legislation.	Ensure legislation to prohibit all corporal punishment without exception and to repeal “right of correction” is tabled and enacted at the earliest opportunity.

States without a clear commitment to law reform			
Colombia 	home, alternative care, day care, penal system	1994 Constitutional Court judgment ruled against violence in childrearing and Code on Children and Adolescents includes “punishment” in definition of “abuse”, but Civil Code confirms right to “correct” children and “sanction them moderately”.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home and within indigenous communities, and repealing Civil Code right to “correct” children and “sanction them moderately”.
Guatemala 	home, alternative care, day care, schools	Government accepted 2008 and 2012 UPR recommendations to prohibit in all settings but also said corporal punishment already prohibited.	Drafting and introduction of legislation prohibiting all corporal punishment, including in the home, and repealing “right of correction”.



“Our societies and legal systems do not tolerate violence as a way of personal interaction or conflict resolution among adults. Children are not second-class citizens; on the contrary, they deserve special protection from their family, society and the state. States must send a clear message by urgently prohibiting all forms of violence against children, including violence disguised as discipline.”

Rosa Maria Ortiz, Rapporteur on the Rights of the Child, Inter-American Commission on Human Rights

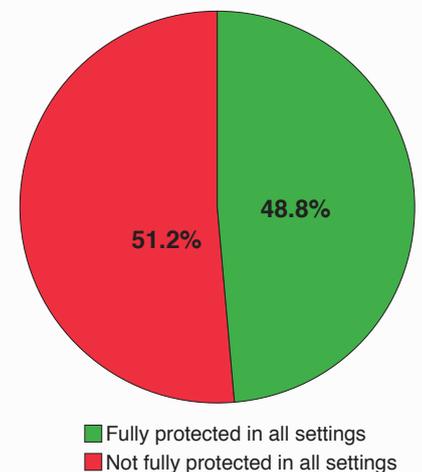
The reality of corporal punishment of children ...

Across Latin America, violent punishment is a near-universal childhood experience. The message from research in the region is clear and consistent: nearly all studies on the topic in the past ten years have found large numbers of children experiencing corporal punishment in the family home and other settings of their lives. For example, analyses by UNICEF have found high rates of “violent discipline” (psychological aggression and/or physical punishment) of 2-14 year olds in Argentina (72%), Costa Rica (46%), Dominican Republic (67%) and Paraguay (61%). Other studies have documented corporal punishment of children in Bolivia, Brazil, Chile, Ecuador, Guatemala and Peru.

Corporal punishment includes children being hit with hands and objects, kicked, shaken and forced to maintain uncomfortable positions as well as a wide range of other humiliating and degrading and degrading treatment. It is physically and emotionally painful and often leads to injury. Research has consistently found that the majority of incidents substantiated by authorities as physical “abuse” are cases of physical punishment.

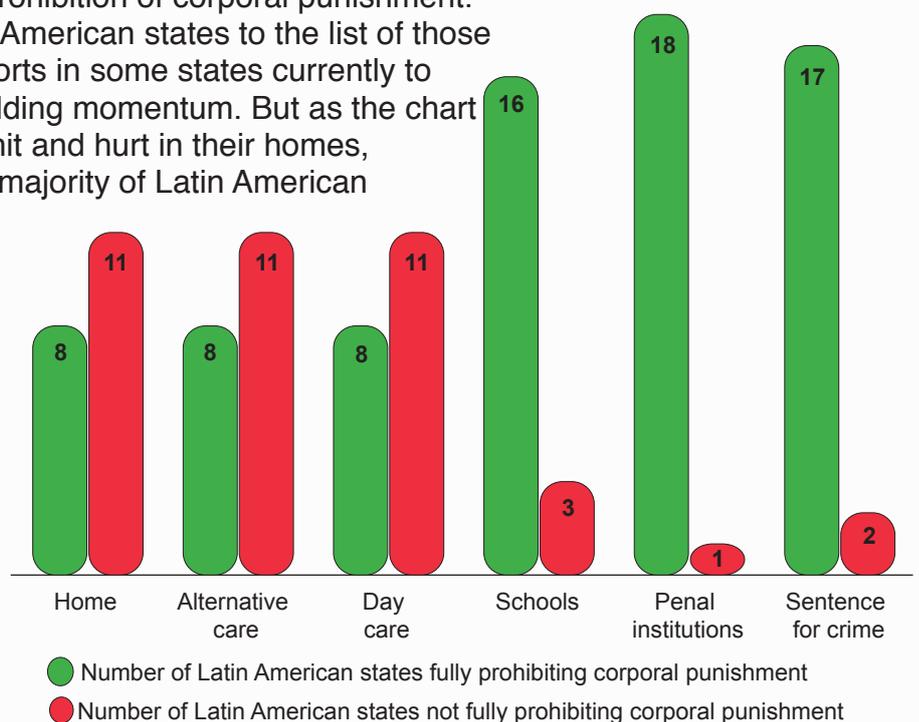
... and growing support for its prohibition

There is considerable – and growing – support for prohibition and elimination of corporal punishment across the region. The Inter-American Commission on Human Rights has called on all states in the region to prohibit corporal punishment by law in all settings, including the home, and has pledged its support to states in their efforts to abolish corporal punishment. The unified resolution of the 21st Pan-American Child Congress (2014) recommends that OAS Member States adjust their internal norms to international standards and develop plans, projects and programmes to prevent, combat, and eliminate violence against children, including corporal punishments in all environments. The Central American and South American Regional Roadmaps on Violence against Children recommend prohibition of all corporal punishment and repeal of defences.



Many organisations and prominent individuals in the region have indicated their support for total prohibition of corporal punishment. The recent addition of four Latin American states to the list of those achieving law reform and the efforts in some states currently to draft prohibiting legislation is building momentum. But as the chart shows, children can lawfully be hit and hurt in their homes, schools and care settings in the majority of Latin American states.

A higher proportion of Latin American children enjoy full legal protection than in other regions – 49% are now fully protected in law from all corporal punishment, including within the family, compared with just 9% worldwide. But still the majority of children in Latin America can lawfully be hit and hurt by those closest to them.



Taking action for children

Reforming legislation to prohibit corporal punishment provides a firm foundation for eliminating its use and transforming the lives of children. Many opportunities for prohibition exist across the region. Whenever relevant laws (e.g. on children, domestic violence, juvenile justice, education) are introduced or reviewed, the opportunities afforded to prohibit corporal punishment should not be missed. When these opportunities arise, it is vital to propose that prohibition – including the repeal of all legal defences/authorisations for the use of corporal punishment – is included in the laws and retained as the legislation passes through parliament. Every opportunity to prohibit represents a chance to fulfil children’s right to legal protection, stopping children from being hit and hurt by their parents and others.

Moving swiftly from discussion to action is key. National attention to corporal punishment (e.g. through government consultations, new research, media reports, etc) can be used to promote prohibition: proposals for law reform must be made and followed through. But it is not necessary to consult on the issue, nor is it justifiable to wait for public attitudes to change, before reforming the law. Children have an immediate right to protection.

By prohibiting corporal punishment, governments and parliaments can lead the way. All over the world there is some opposition to prohibition, but the experiences of states which have achieved prohibition show that on this issue those in power must lead rather than follow public opinion. Prohibition, accompanied by appropriate measures to raise awareness of and implement the law, together with promotion of positive, non-violent forms of discipline, is the most efficient way to change attitudes and the only way to fulfil children’s right to protection in law and practice.

“The vision of a world in which violent punishment of children is universally condemned and prohibited is now within our grasp. We cannot let more generations of children suffer these obvious and deliberate violations of their rights. We must not keep children waiting.”

Paulo Sérgio Pinheiro, The Independent Expert who led the UN Study on Violence against Children



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

The Global Initiative to End All Corporal Punishment of Children promotes universal prohibition and elimination of corporal punishment.

www.endcorporalpunishment.org



UNICEF Regional Office for Latin America and the Caribbean (UNICEF LACRO) advocates and works for the prohibition of corporal punishment in all settings across Latin America and the Caribbean.

www.unicef.org/lac



Save the Children

Save the Children opposes all corporal punishment and other humiliating punishment of children and works for its universal prohibition and elimination.

resourcecentre.savethechildren.se