

Legal reform strategy to prohibit corporal punishment against children in Venezuela and Costa Rica

Venezuela, 2007

1. Legal framework context

The Organic Law for the Protection of Children and Adolescents (LOPNA) adopted in 1998 banned corporal punishment in schools (article 57). Nevertheless, Article 358 of LOPNA, provided that the rearing of children included the “ability to apply appropriate corrective measures”. Article 265 of the Civil Code enshrined that parents had the “ability to impose (on the child) appropriate corrections”. In addition, Article 349 stated that caretakers could “moderately” correct a minor. The terms “adequate” and “moderate” were not clearly defined so corporal punishment was legalized under this terminology. And it was legitimized by a culture that accepted the use of violence such a method of child rearing.

In 2004, the organization Community Centers of Learning (CECODAP) carried out a study of perceptions of physical and humiliating punishment, which considered 694 children and 205 adults from all the country. It revealed that both adults and children considered corporal punishment to be “common sense”, natural, normal and necessary for a good upbringing of children.

The same study revealed that children perceived corporal punishment as an expression of love (Carlos Trapani, 2007). For parents, corporal punishment was grounded on an idea of respect and considered an effective tool to prevent children’s negative behaviors.

2. Key strategic components

Venezuela was the second Latin-American country to ban all corporal punishment against children and adolescents in all settings on December 10, 2007. There was a combination of factors that influenced successfully this process. Specifically, awareness raising and public education, an appropriate legislative technique and a holistic approach to legal reform, , an active participation of a wide range of actors within the parliament, civil society representatives and most importantly a leading involvement of children and adolescents in Venezuela.

a. Awareness raising and public education

In Venezuela, the process of legal reform was initiated by civil society organizations, with the support of the Regional Office of Save the Children Sweden for Latin America and the Caribbean. CECODAP, a local NGO which has worked since 1994 to promote and defend the

rights of the child, and the Movement of National Action of the Child and Adolescent (MANIA), which is a network, composed of adolescents from 12 different states in Venezuela joined efforts for the promotion of the prohibition of all forms of violence against children in Venezuela.

MANIA's work seeks at empowering children and young people to influence decision making institutions to protect their rights. CECODAP works also on child participation through its Project of Citizenship Participation of Adolescents for Public Advocacy. All participants in this program received training on violence prevention, participated in national and international forums on corporal punishment and advocated for change with national authorities.

The involvement of Save the Children Sweden ensured a coordinated regional work and fluent communication between local NGOs in Venezuela and organizations from other countries working to promote nonviolence. Save the Children Regional Office for Latin America and the Caribbean brought the issue of corporal punishment against children into the agenda of child rights defenders and governments in the region.

In 2004, when the process started the concept of corporal punishment in Latin America was not clear and even unknown. Legislations in the region prohibited mistreatment but not corporal punishment.

For this reason, the strategy identified as the first task the development of a clear definition of corporal punishment and the analysis of legal frameworks in the region as regards to protection of the right of the child to personal integrity.

In Venezuela, reflection and discussions took place to achieve consensus on a definition. Youth were engaged and led workshops that led to a consensual definition of punishment framed by the right to good treatment. Discussion and reflections targeted educators, parents, human rights defenders, protection counselors, police officials and other members of the System of Protection of the Child and Adolescents.

The World Social Forum organized in Caracas on January 2006, recognized for the first time in Venezuela, the right of children to be raised without violence. During the Forum CECODAP organized two workshops to present the juridical framework to ban corporal punishment in Latin America. A regional analysis of legal frameworks in the region was carried out by Save the Children Sweden with the support of the Andean Commission of Jurists and was presented in that event. The Forum was followed by a workshop that brought together a group of young people from different regions and Ms. Gabriela Ramirez the President of the Permanent Commission on the Family, Women and Youth. In that event, children asked for support to achieve legal ban of all forms of violence. The President

of the Permanent Commission expressed her commitment to work together with young people to ensure a legal ban of all forms of violence against children. At that moment, the aim was to pass a specific law to prohibit corporal punishment. However, the National Assembly decided to postpone the adoption of that law and instead prioritized the reform of procedural aspects of LOPNA.

b. Participation

Article 211 of the Constitution provides that citizens must be consulted during discussion and approval of proposed legislation. In this light, the National Assembly organized one day of social parliamentarianism on the street on April 28, 2007. On that day, a group of adolescents addressed the negative impact of violence on child rearing and on the development of children. The parliamentarians were receptive to the needs of the most segregated groups of the population and the event conveyed the rationale for a legal prohibition.

On July 10, 2007, the National Assembly passed the law without amendment and it was signed and stamped on August 14. There were some criticism against parliamentarians because such a law would leave parents without tools for teaching discipline to children. CECODAP and its partners provided information to Members of the Parliament about the negative impact of violence on children and the preventive rather than punitive aim of the reform. Due to the strong commitment made by the Parliament to protect children from violence, it was not necessary to involve the media in the advocacy process.

The President promulgated the law on December 7, 2007. The Official Gazette published the law on December 10, 2007.

a. An appropriate legislative technique

At this moment, the strategy changed CECODAP and its partners decided to drop the idea of a specific law and instead they propose the inclusion of the prohibition of corporal punishment within the reform of the LOPNA. It is very important to highlight that the political context was favorable at that time. One of the emphases of the government was to respond properly to the needs of the most vulnerable groups in Venezuela, children among them.

The drafting of the text of the law was prepared with the support of a number of Parliamentarians, CECODAP and Save the Children Sweden who worked with an advisor of the Permanent Commission on the text of the law which aimed at recognizing the right to a good treatment with a clear prohibition of corporal punishment.

The reform comprehended amendments of Article 358 of LOPNA (responsibility of child rearing), to prohibit “appropriate corrective measures” and Article 56 of LOPNA to include the prohibition of any form of physical and humiliating punishment against children. In this way, it was ensured a consistent prohibition of violence throughout the text of LOPNA.

The proposal was grounded on the ***Right to Good Treatment***. The proposal had a clear message on preventing violence and was written in a very simple language understandable by all actors of the society and also included the term love.

The law states:

All children and young people have a right to be treated well. This right included a non-violent education and upbringing based on love, affection, mutual understanding and respect and solidarity. All forms of physical and humiliating punishment are prohibited (Law for the Protection of Children and Adolescents, Article 32 A).

This law does not only set a prohibition, instead it is based on simple concepts to guide change on behaviors of all actors. It emphasizes that the aim of the prohibition is not to penalize parents and caregivers behaviors.

Unfortunately, there are not public policies on prevention of corporal punishment in Venezuela. In most parts of the country when corporal punishment occurs, child victims do not have a mechanism or authority to report this incident.

Costa Rica: a strong and sustainable alliance with the State

The campaign to prohibit corporal punishment in Costa Rica began in 2003. And as happened in Venezuela, the legal reform process involved multiple stakeholders. Among them were politicians representing all parties at the National Legislative Assembly; UNICEF Costa Rica, the National Children’s hospital; National Institute for Women; National Commission on Values; Ministry of Public Health; and the Central American Council of Ombudspersons for Children. This group had the capacity to enlist allies thorough the country and to prepare disseminate information to respond to opponents of the prohibition of corporal punishment.

In the case of Costa Rica, special attention was given to the role of the media to advocate for the prohibition of corporal punishment against children. Advocacy was grounded on two important concepts: 1) an issue of equal protection under the law for children; 2) the first step in preventing children from identifying violence as a means to achieve personal goals.

The law reform process started as an initiative of the Children and Adolescents' Section of the Ombudsperson's Office which in 2003, was headed by Professor Mario Viquez. Professor Viquez who took leadership on this process first working with the Ombudsman and later on his position of Executive Director at the National Children's Patronage (PANI). The Ombudsperson and PANI took the leadership to facilitate law reform.

The Foundation PANIAMOR, a Costa Rican NGO that has been working on the rights of the child since 1987 played a central role on advocacy for the law reform. PANIAMOR with the support of Save the Children Sweden Regional Office for Latin-American and the Caribbean built a political and social network to support legal reform. It launched a national campaign named "Educate without hitting", which has been implemented in Costa Rica since 2003, in partnership with the public health and education sector.

The law reform pursued a change on public perceptions of corporal punishment being a form of violence against children and not beneficial for their growth and development. Costa Rica is a catholic country and at the time of the reform, the use of corporal punishment was perceived as a right and a duty of parents to discipline their children, based on misinterpretation of the Holy Scriptures. On the contrary to the Venezuelan, in Costa Rica the process was not grounded on the recognition of a new human right terminology – the Right to Good Treatment- but on the understanding that corporal punishment is a violation of the right to personal integrity to which all human beings, including children, are entitled; the recognition that it is a form of legalized age based discrimination.

Initially the proposal aimed at "abolishing physical punishment and degrading treatment of children". After a long debate about the best wording for the initiative, the title was modified. And it was finally approved as the Law on the Right of Children and Adolescents to Discipline Free from Corporal Punishment and Other Forms of Humiliating Treatment (Law Number 8654 of September 1, 2008) The added a new article (Article 24 bis) to the Code of Children and Adolescents (1999), under Chapter I "The Rights of Personality" "Parental Authority: Rights and Duties" (article 2 of the reform law). The final summary states:

"the right of children and adolescents to receive counseling, education, care and discipline from their parents, tutors, caretakers or personnel from educational and health institutions, shelters, youth detention and any other type of center, but this is not a legal authorization to those parties for the use of corporal or degrading punishments; and the obligation of the State, represented by PANI and acting in partnership with the National Integral Protection System and NGOs to implement awareness raising and educational campaigns and programs to empower parents and other adults to comply with the new legislation. The submission by PANI to the National Council on Children and Adolescents (NCCA) of a periodic report on the advances made in compliance of this mandate is also provided for. The National

Integral Protection System and the National Council on Children and Adolescents are structures created under the Code of Children and Adolescents to articulate children's rights to protection at the highest level"

The strong partnership initiated in Costa Rica with the campaign on "Education without hitting" launched in 2003, grounded the foundation for an effective implementation of the law. PANIAMOR has been working in partnership with the Ministry of Education and the Ministry of Health on the implementation of this campaign. This initiative pursued promoting capacity for sustained large scale parents education and national outreach to families with a focus on early childhood. It aimed at "training the trainers", which means reach and education, health professionals, educators to ensure them to assist and educate parents properly. The campaign content has become a component of the regular curricula of early childhood parent education programs.

PANIAMOR and the Ombudsperson Office continue to carry awareness raising activities, involving different actors and promoting strategic alliances. In the same line, PANIAMOR and UNICEF Costa Rica and two private sector actors, the Entrepreneurial Association for Development and Protect and Gamble Costa Rica proposed to PANI a national survey on child rearing practices within families. The survey was carried out between November 2009 and January 2010. The findings confirmed that more than half of those interviewed (57.2%) considered that in some cases corporal punishment is the only alternative to discipline children. Most people knew about the new law (86%) and 64.3% agreed with it. More than two thirds (70.4%) believe that child rearing is a private matter and the State should not intervene. Most of the people interviewed believed that as a consequence of the law children will be more undisciplined and less respectful, although with more initiative and more self-assurance.

This scenario shows a challenging enforcement of the law which should be grounded on the empowerment of families, parents, caregivers and children for the safeguard of the rights of the child.

Successful law reform processes in Venezuela and Costa Rica show an effective combination of engagement of key actors within the government – parliamentarians and ombudspersons - , wide participation of multiple stakeholders, effective public education and awareness raising initiatives, solid legal background and strong participation and empowerment of children.