

Criminal prosecution of child abuse in the Pacific coast of Colombia - a case study on public health alternatives to criminal prosecution of “normal” criminal behavior¹

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The Pacific coast of Colombia is an extraordinary place. A tropical jungle enclosed between the Pacific Ocean and the Andean ridge; clouds traveling freely across the Ocean collide against the mountains and pour abundant rain on the coast, making it one of the most exuberant and bio-diverse regions in the world.

This is the home of most Afro-Colombians, who share the land with several Indigenous groups and a few “whites”. People from this region are strong and athletic; famous boxers and soccer players who have made Colombians proud around the world.

It is also the region with the highest prevalence of child abuse in the country—perhaps among the highest in the world.

¹ An earlier version of this paper was prepared for the seminar Good and Evil at Georgetown Law Center. I am grateful to Rosa Brooks and Angela Pinzon for extremely helpful comments and advice.

This paper examines the policy of criminal prosecution of child abuse in the Pacific coastal region of Colombia from the point of view of the “situationist” literature². The paper is organized in five sections. The first one summarizes the existing evidence on the problem of child abuse in the Pacific coast. The second part presents the legal framework of the criminal prosecution of child abuse before and after the adoption of the new Colombian *Code of the Infant and Adolescent* in 2006. The next section provides a broader context to the problem of child abuse in the Pacific coast, including the personal narratives of ordinary mothers, teachers and children from the region. The fourth part briefly introduces some of the “situationist” literature. The final section revisits the policy of criminal prosecution of child abuse in the Pacific coast through the “situationist” perspective, and provides some policy recommendations.

The scientific evidence on the negative consequences of child abuse is overwhelming; the prevalence of abuse in the Colombian Pacific coasts is abnormally high, and the lack of success of the campaigns in place is patent. These three facts demand a new approach to the problem of child abuse in the Pacific coast.

The problem: Child abuse in the Pacific coast of Colombia

Child abuse seriously affects children³. It causes physical and emotional harm which in many cases leads to permanent brain damage⁴, disability or death⁵. It is also a contributing factor

² See, e.g., Hanson & Yosifon.

³ Ministerio de Protección Social, 2007; Pinzon, & Botero. There are many types of child abuse. This paper focuses on severe physical and psychological abuse and neglect perpetrated by the parents or other family members and caregivers. Sexual abuse by family members is only marginally considered.

⁴ Teicher; Lewis.

⁵ Pinzon & Botero.

to other serious problems: Developmental delays⁶, post traumatic stress disorder⁷, behavioral problems⁸, chronic diseases⁹, mental diseases¹⁰, child homelessness¹¹, teen pregnancy and child recruitment to illegal armed forces¹².

Child abuse is a very serious problem in the region¹³. Prevalence of child abuse in the Pacific coast is significantly higher than in the rest of Colombia. Prevalence of abuse has been reported to range between 2% and 36%¹⁴ for the entire country, while ranging between 68%¹⁵ and 97%¹⁶ in the Pacific coast. Even though these figures are not strictly comparable—because the studies did not use the same methodology and definition of abuse—they provide some indication of the magnitude of the problem of child abuse in the Pacific coast.

The vast majority of this abuse is perpetrated by the children's parents or primary care givers¹⁷. This situation forces many abused children to flee their homes and migrate to the cities, where they may become victims of street child labor¹⁸ and sexual exploitation¹⁹.

The problem of child abuse in the Pacific coast remains very serious despite various intervention efforts carried out by national and local authorities over the past decade²⁰.

⁶ Kolko et al. 1999.

⁷ DeBellis.

⁸ Kolko 2002; Righthand et al.

⁹ Felitti et al.; Batten et al.

¹⁰ Duran et al.; Hillis et al.

¹¹ Rosenthal et al.

¹² Jeffery.

¹³ Ramirez-Herrera & Pinzon-Rondon; Ramirez; Pinzon-Rondon & Ramirez-Herrera.

¹⁴ Ramirez.

¹⁵ Pinzon-Rondon & Ramirez-Herrera.

¹⁶ Ramirez.

¹⁷ Instituto Colombiano de Medicina Legal y Ciencias Forenses. 2008.; Ministerio de la Proteccion Social. 2006.

¹⁸ Pinzón-Rondón et al 2006.

¹⁹ Pinzón-Rondón, et al, forthcoming.

²⁰ Ministerio de la Proteccion Social. 2006. Instituto Colombiano de Medicina Legal y Ciencias Forenses. *Forensis*. 2004. *See also* Pinzon, & Botero.

The legal framework of the policy of criminal prosecution of child abuse in Colombia

The child protection system addresses the problem of child abuse through a variety of mechanisms, including the criminal prosecution of abusers.

According to Colombian law child abusers are criminals who must be prosecuted and separated from society regardless of the motives of the abuse and the situation in which the abuse is manifested. The *Criminal Code*, the *Code of the Infant and Adolescent*, and several special statutes have developed a panoply of crimes to protect children from all forms of abuse.



The competing legal doctrines and the 2006 reform

The legal framework of child protection in Colombia experienced major changes in 2006²¹. After several unsuccessful attempts, the Colombian Congress passed a new *Code of the Infant and Adolescent* (henceforth “the Code”).

The new code was not only a major legal reform of the child protection system but it also implied a radical doctrinal shift, from the *Irregular Situation Doctrine* to the *Integral Protection Doctrine*.

During the last two decades these two child protection doctrines have been competing for supremacy in Latin America²². The enactment of the new code in 2006 was heralded as the

²¹ For a comprehensive description of the legal framework of the Colombian child protection system before the 2006 reform, see, Ibáñez, 1997, 1998; Tejeiro; Instituto Colombiano de Bienestar Familiar, 1998; Jiménez & Ochoa; Fundación Restrepo Barco, 1999; García et al; Gómez. For a comprehensive analysis of the 2006 reform, see Monroy Cabra,

²² Some Latin American countries—starting with Brazil in 1990—abandoned the *Doctrine of Irregular Situation* by enacting new codes inspired on the *Doctrine of Integral Protection*. For a detailed discussion on the evolution and

conceptual triumph of the second doctrine in Colombia. The following pages provide a brief explanation of the two discourses and their significance in the Colombian context²³.

The Doctrine of the Irregular Situation and the Code of 1989

The “*Doctrine of the Irregular Situation*” (*Doctrina de la Situación Irregular*) favours case-by-case judicial intervention and institutionalization of children. It was the dominant doctrine among Latin American countries for decades²⁴. The main features of this doctrine are: (i) The protection system focuses on children in especial situations defined by law. (ii) The system favours case-by-case judicial intervention and institutionalization of abused children, rather than supporting comprehensive measures to address the structural causes of the abuse²⁵.

The Colombian child protection laws in force until 2006 followed the *Doctrine of the Irregular Situation*²⁶. The protection system²⁷ was built around the distinction between children in regular and irregular situation (Articles 1 and 30 of the Code). As a general rule, parents had both the right and the duty to take care of all children and adolescents (Article 6 of the Code), while minors in irregular situation were subject to the special protection of the State.

Children in irregular situation were further subcatalogued in various groups²⁸. The first of these groups encompassed most cases of child abuse; it was called “*abandoned and endangered*

impact of the two doctrines in Latin America, see García-Méndez. Various attempts to amend the Colombian code were made in Congress over the years, and all failed.

²³ This section draws in part from an unpublished manuscript entitled *Child Abuse and Neglect in Colombia: Legal Framework and Protection Institutions*, by Angela Pinzon and Juan Carlos Botero (2002, revised in 2007).

²⁴ See García-Méndez.

²⁵ Tejeiro; García-Méndez; Fundación Restrepo Barco; Sajón.

²⁶ The 1989 Code of the Minor provided the general framework for the protection of children and adolescents in Colombia.

²⁷ The protection system encompassed the Colombian Institute for Family Welfare (ICBF), the family judges, regional and local authorities, and a series of private and semi-private institutions, individuals and families. See, Ibáñez, 1997, 1998; Tejeiro; Instituto Colombiano de Bienestar Familiar, 1998; Jiménez & Ochoa; Fundación Restrepo Barco; García et al, 1995; Gómez.

²⁸ Article 30 defined children in irregular situation as those that (i) have been abandoned or are in [physical or psychological] risk; (ii) lack the required attention for the satisfaction of their basic needs; (iii) are at risk of losing

children”, which included abandonment; physical, sexual or psychological abuse; child exploitation; and children in grave risk to their physical or psychological health, including most cases of “neglect” (Article 31).

These children were entitled to the protective measures defined in the Code (Article 29). When abandoned and endangered children could not be kept under the care of their parents, they were moved to live with suitable relatives (Article 70), foster families (Article 73) or public or private social-assistance institutions (Article 82). The code also provided permanent solutions, such as the child’s safe return to her own family (Article 6) or legal adoption (Article 88).

Families were relatively marginal in the child protection system under the 1989 Code²⁹.

This regulatory framework focused on *abnormal* children (“abused and at risk children”); it was considered discriminatory and stigmatic because the “special situations” regulated in the code were often created by structural conditions of inequality and poverty³⁰. Thus, a comprehensive reform was enacted in 2006.

The Doctrine of Integral Protection and the Code of 2006

The competing doctrine is the “*Doctrine of Integral Protection*” (*Doctrina de la Protección Integral*), which follows the U.N. Convention on the Rights of the Children of 1989 and favours comprehensive solutions. Its most salient features are: (i) Children are not objects of compassion and protection, but rather people entitled to enforceable rights. (ii) The protection system aims at the entire population of children, not only at those who are in a special situation.

their patrimony; (iv) have taken part in a criminal act; (v) lack legal representation; (vi) have a physical or psychological disability; (vii) are drug addicts or are exposed to addictive substances; (viii) are subject to unauthorized child work; and (ix) are in a special situation that threatens their rights or integrity.

²⁹ The institution of the family was barely mentioned in the 1989 Code. The only significant references were found in Articles 6 and 131, which state the right of all children to have a family and not to be separated from the family.

³⁰ Fundación Restrepo Barco; García-Méndez.

As a consequence, the State shall develop comprehensive public policies to address the causes of abuse³¹.

The new Code of 2006 was meant to produce a complete overhaul of the Colombian child protection system. The broader policy change is clear from the plain text of the laws³². According to Article 1 of the 1989 Code:

Article 1. *“The purpose of this Code is to: 1) Define the fundamental rights of the minor. 2) Determine the guiding principles of the norms for the protection of minors, both to prevent irregular situations and to correct them. 3) Define the irregular situations that minors may face and the origin, characteristics and consequences of each one of them. 4) Establish the measures that must be adopted to protect the minor in irregular situation.” (...)* (Emphasis added).

In contrast, article 2 of the 2006 Code expressly recognizes that the purpose of the system is the integral protection of children, in accordance with international conventions.

Article 2. *“Purpose. The purpose of this Code is to establish substantive and procedural norms for the integral protection of children and adolescents, to guarantee their rights and freedoms set forth in international instruments of Human Rights, the Colombian Constitution and the laws, as well as its redress. Such guaranty and protection shall be the obligation of the family, the society and the State.”* (Emphasis added)

³¹ Tejeiro; García Méndez; Fundación Restrepo Barco.

³² The Colombian Constitution had expressly adopted the Integral Protection Doctrine since 1991—Article 42 of the Constitution states that the State shall guarantee “the integral protection of the family”. However, the legal framework of child protection in force in Colombia until 2006 did not follow this doctrine—despite the clear text of the Constitution—because the distinction between children in regular and irregular situation remained the cornerstone of the child protection system pursuant to the 1989 Code.

The policy change is also expressly mentioned in the Presentation of Motives of the Bill³³, and laid out in more detail in the Motion for first debate in the Senate:

*“The current Code of the Minor is based on the **Irregular Situation Doctrine**, which inspired the early legislations on children of the 20th century, and which focuses on answering, in an exclusive manner, to the problems of minors in situations of risk or effective violation of their rights. Under this conception, the laws to protect children and adolescent only operate when they are victims of violence, exploitation, alimentary neglect or abandonment, among others. It is a perspective that even though it recognizes social realities affecting some children that must be resolved, it does not see the protection of children’s rights as a systematic and permanent action, in which responsibilities are shared by families, society and the State, and public policies of prevention and redress of such rights, besides the measures to attend children in irregular situations.*

*In contrast, the **integral protection theory** that was adopted by the International Convention on Children’s Rights of 1989, recognize children and adolescents in an ample manner, as autonomous people, subject of rights and duties, that must be protected in an integral and persistent manner, not only when such rights are violated or ignored. In this context a joint responsibility must be established in the family, the society and the State, to comply with basic obligations and generate social policies to guarantee the rights of children and adolescent and to prevent the threat or violation of such rights.”*

³³ “Besides the political change that the new legal structure demands, it is imperative to comply with international commitments that the Colombian State has acquired with the adhesion to the treaties, conventions and pacts, international documents of policy and doctrine on human rights of children, that constitutes a body of law of mandatory compliance, which integrates **the paradigm of the integral protection** and that must be incorporated into Colombian law.” (Emphasis added). (Colombian Congress Press, *Gaceta del Congreso* No. 551, 2005, at page 25).

(Colombian Congress Press, *Gaceta del Congreso* No. 128, 2006, at page 2. Bill No. 215 of 2005)

Under the 2006 Code the system is based on the principle of co-responsibility of the family, the society (private institutions and individuals), and the State (at all levels) for the integral protection of the children's rights (Article 10).

According to article 1 of the Code, its aim is to guarantee full and harmonic development of children and adolescent in the family and the community. Article 7 defines integral protection of children and adolescents as the recognition and effective enforcement of the children's rights. The protection materializes through a comprehensive set of policies, plans, programs and actions at the local, regional and national levels.

The child protection system is built around the family's obligations. The family shall provide the conditions for the children's integral development in an environment of respect and solidarity; guarantee their individual and social rights (as defined in international conventions), and provide education and material nurturing, among others. It also has the obligation to refrain from abusing children in all manners, including economic exploitation (Article 39)³⁴.

Other provisions list the obligations of other actors (private institutions and individuals and various government agencies), as well as the mechanisms in place to support the family's compliance with its obligations, and the procedures to protect children when the family is unable to comply³⁵.

³⁴ The right of all children to have a family and not be separated from the family, which was present in the old Code, is also included in the new one (Art. 22). Children may still be removed from families as a measure of last resort, although there are a number of mechanisms in place to prevent the separation (Articles 53 to 60).

³⁵ For instance, pursuant to the principle of co-responsibility of the family, the society and the State (Art. 10), the family's duty to protect the children's health includes the obligation to register them to the health and social security systems from the moment of birth, and the duty to bring them to timely health, vaccination and medical controls

In sum, children have rights, families and other entities have obligations, and the system ensures that children’s rights are enforced.

The new code is generally regarded by experts and practitioners in the field as a major improvement and, in my view, this perception is fully deserved. While many of its provisions were included in previous laws, they are now organized in a coherent system aimed at guaranteeing the effective enforcement of the children’s rights. It also made progress in acknowledging the context and structural (situational) causes of abuse in Colombia

Finally, the Code provides significant leeway to indigenous groups and other ethnical minorities in the implementation and interpretation of these obligations, within the limits of the Constitution and the law (Article 39, par.)

The policy of criminal prosecution of abusive parents under the 2006 regime

In spite of all the changes introduced by the new Doctrine and the new Code, the policy of criminal prosecution of abusive parents remains essentially unchanged. Moreover, criminal prosecution of all crimes against minors has been emphasized and strengthened³⁶. According to the Colombian Constitutional Court Justice Marco Gerardo Monroy-Cabra, “criminal penalties

(article 39). The State has the responsibility to organize the health and social security systems, and the specific obligation to assume the cost of these services when children are not covered. Various agencies have specific obligations regarding preventive health campaigns, nutrition programs, primary care, among others (articles 27, 29, 41, 46). Private health institutions also have specific obligations; the most important is the prohibition to deny health services to children in need (regardless of economic means). New enforcement tools, applicable to both private and public agencies and people, include very strong fines in case of neglect to provide health services (article 27). Some of these obligations are staggered over a few years, to allow the allocation of financial resources needed to comply with them. If the child patient is not covered by health insurance (private or public), the cost of the services must be covered by the state.

Similar co-responsibility schemes are defined to enforce the right to education and other fundamental rights. The basic duty of the family is paired with specific obligations of education institutions, mass-media organizations, other private institutions, and various State agencies and judges, and strong fines and penalties are provided in case of neglect of service (articles 28, 41, 42, 43, 44, 45, 49).

³⁶ The Colombian Government strongly promotes criminal prosecution of child abuse. *See, e.g.*, ICBF press releases of Jan 13, 2006 and June 13, 2008. Available online at: <http://www.minproteccionsocial.gov.co> and <http://icbf.gov.co>

have been increased as a mechanism to protect minors, which is explained by the proliferation and frequency of crimes against minors”³⁷

The Criminal Code, (Law 599 of 2000, as amended), defines a number of crimes that directly or indirectly aim at preventing and punishing child abuse³⁸. A few special laws regulate other aspects of the criminal prosecution of abuse, including the Code of Criminal Procedures and Law 294 of 1996 on intra-family violence.

Let us consider the case of excessively harsh parental disciplining of children, which is the most common form of child abuse in the Pacific coast. According to Article 229 of the Criminal Code³⁹, the crime of “intra-family violence”, which includes both physical and psychological child abuse (“maltrato físico o psicológico”) carries a penalty of 4 to 8 years in prison. The penalty increases from half to two thirds if the victim is a minor. This penalty applies to all cases of child abuse by a family member or caregiver, unless the conduct is punishable by a more severe crime (in which case the more severe penalty applies).

In contrast, the basic modality of the crime of “physical harm to a person”⁴⁰ carries a penalty of 16 to 36 months. Penalties for more severe forms of harm go up to 180 months, and they are increased by half when the victim is a minor (Criminal Code, articles 111 to 124). As stated above, if the harm results from parental abuse the most severe penalty shall apply.

Very harsh parental discipline (which is a culturally accepted practice in the Colombian Pacific coast) carries a more severe criminal penalty than that applicable to physical harm of

³⁷ Monroy-Cabra, page 769.

³⁸ Including the following: Articles 111 – 116: Physical harm to a person. Article 127: Abandonment of a minor. Article 125: Physical harm to a fetus. Articles 205 – 212: Sexual abuse. Articles 213 – 219: Induction to prostitution, trade of people, sexual tourism, prostitution of minors and child pornography. Articles 229 – 230: Intrafamily violence. Article 231: Mendicancy and traffic of minors. Article 233: Lack of alimentary assistance to minors. Article 237: Incest.

³⁹ Amended by article 33 of Law 1142 of 2007.

⁴⁰ When the harm incapacitates the victim to work for 30 days or less (Criminal Code, art. 112).

identical intensity caused by an unrelated party. If a complete stranger walking down the street finds a child and beats him or her for no reason at all⁴¹, the applicable penalty is less than half of that applicable to a mother that beats her son or daughter as a form of parental discipline, for instance, when desperately trying to prevent him or her from becoming a member of a criminal gang⁴².

Evidently both situations of abuse are extremely harmful to children (as described in the first chapter of this document) and all forms of abuse must be eradicated. The question is whether the legal and social mechanisms to prevent and address these two cases should be the same.

Under the 2006 Code children are entitled to enforceable rights and it is the legal duty of the family, the government and the society as a whole, to see that these rights are effectively enforced. Child abusers, including family members, are considered *deviant individuals* who must be prosecuted regardless of the motives of the abuse and the situation within which the abuse takes place. Of course, the Code also speaks about the highest interest of the child, which shall be taken into consideration in all circumstances, including criminal prosecution of child abuse. But this declaration does not change the text of the Criminal Code—criminal law in Colombia is to be interpreted to the letter.

The State (at all levels: national, regional and local) “is the institutional context for the integral development of children”; in this capacity the State has the obligation to investigate and

⁴¹ Let us assume the harm caused is equivalent to an incapacity to work for 30 days.

⁴² “What ICBF [the government] wants are children without fingers or hands. Children are getting into gangs and mothers beat them to restrain them from doing so. Then ICBF comes and instead of helping the mom they punish her. The child starts to kill other people and nobody says anything. They are killing 15 year-old kids in this neighborhood. I raise my children with my own laws, nobody is going to change my mind. It doesn’t matter if this is against the law but I don’t want a dead child” (Mother from Tumaco, Colombia, 2006)

punish all crimes against children, to guarantee the reparation of any harm done to them, and to uphold their rights (Article 41)⁴³.

Moreover, under the new Code all Colombian persons and institutions have been deputized by the sovereign to the task of enforcing the children’s rights, including the positive obligation to denounce the *deviant individuals* who abuse children. The list of “deputy prosecutors” includes every person and institution in the country:

- All educational institutions (Art. 44 (9)).
- All health providers (Art 46 (10)).
- All public employees at all levels (Art 51).
- Neighbors (Law 575 of 2000, art. 5).
- The society in general (Art 40 (4)).

Now let us pause for a second to reconsider the issue: First, it is beyond dispute that children must be protected. Second, it is also clear that criminals must be prosecuted. It follows that criminal prosecution of abusive parents is an appropriate mechanism to protect children. Or is it?

What if the “*deviant individuals*” (the abusers) constitute 97% of the population?

The Context of Child Abuse in the Colombian Pacific Coast

Colombia is a country of a rich cultural and ethnic diversity, where different races, religions, languages and traditions live under the same nationality. Since 1991 the Colombian

⁴³ See also articles 53; 82; 86, and 193, 199, 200 of the Code.

Constitution recognizes ethnical, cultural, and territorial rights to ethnic minorities, and political autonomy within their territories. However, according to representatives of the same minorities, the formal recognition of rights during the last two decades has not erased five centuries of colonial exploitation and marginalization.⁴⁴

Various studies have reported a high rate of health, education and other inequalities for the Colombian Afro-descendant and indigenous population as a whole. According to a recent study:

“Colombia has a large Afro-descendant minority with lower living standards than the rest of the population. According to the 2005 Census, 4’261,996 Colombians or approximately one tenth of the population self-classify as part of the Afro minority. This minority exhibits lower socioeconomic conditions than their counterparts. Specifically, Afro - Colombians are more concentrated in the lowest income quintiles, have higher unemployment rates, lower average levels of education, and lower access to subsidized health according to Colombia’s 2003 Living Standards Survey (LSS). In addition, working age male Afro-descendants earn 6.4% less hourly wages than their non-Afro counterparts.”⁴⁵

The problem of marginalization is particularly serious in the Pacific coast. The rate of *Unattended Basic Needs* (local measurement of extreme poverty) in the central areas of the country (Bogotá, Antioquia, Valle, Atlántico) ranges from 17% to 31%. In contrast, the same rate in the Pacific region has traditionally ranged from 80% to 100%.⁴⁶ The majority of the

⁴⁴ See, Fundacion Hemera (http://www.etniasdecolombia.org/grupos_pueblos.asp)

⁴⁵ Rojas-Hayes, pág. 33.

⁴⁶ DANE. (http://www.dane.gov.co/files/investigaciones/condiciones_vida/NBI.xls)

population in this peripheral region belongs to the Afro-descendant or the indigenous minorities⁴⁷.

The Pacific coast is highly isolated from the rest of the country by two natural walls: the impenetrable tropical jungle and the high Andean ridge. It also has a number of short rivers that provide easy access from the jungle to the sea. These characteristics have made this region particularly suited for illegal drug production and trade.

Drug trafficking has had a severe impact in the region. Internal civil strife and the illicit narcotics trade have claimed dozens of thousands of lives and led to decades of massive internal migrations. Colombia's internal displacement crisis in recent years may be the world's worst after Sudan⁴⁸.

The internal conflict and the drug trade have weakened Colombian institutions, especially in peripheral areas.

In sum, the current context of minority communities in the Pacific coast of Colombia is characterized by extreme poverty, violence, isolation and marginalization.

Personal narratives

Personal narratives may be a powerful tool to understand complex violent phenomena. The distinction between perpetrators and victims is not always very clear⁴⁹. This is particularly true in the case of criminal prosecution of abusive parents.

⁴⁷ Bernal, R and Cardenas M.

⁴⁸ Refugees International. Web page visited June 26, 2009: <http://www.refintl.org/policy/field-report>. See also, Internal Displacement Monitoring Centre. FMR26 *Internal Displacement in 2005*. Available on line at: www.fmreview.org/FMRpdfs/FMR26/FMR2641.pdf (visited June 26, 2009).

⁴⁹ See, e.g., Ehrenreich.

Focus groups conducted by Dr. Clemencia Ramirez and Dr. Angela Pinzon with mothers, children and school teachers in six towns of the Colombian coasts in 2005⁵⁰, may help us to understand the *situation* behind the high prevalence of child abuse in the Pacific coast. The following quotes, extracted from several hundred pages of Dr. Pinzon’s field-notes⁵¹, summarize some ideas conveyed by mothers and fathers from the region.

There are many children and diverse family structures; mono-nuclear families are uncommon:

- *“When I was 7 [years old], we were six [children]; my dad left and my mother took a boyfriend and left. My grandmother raised us”*
- *“My mother had 13 kids and my father 21 [children]. We are 9 alive. My father has always been with my mother... I had my first pregnancy when I was 15; the father left and my mother helped me. Then he returned and made me my second son, and left again 4 days after delivery; he left for other woman and he came back one month later”*
- *“We were 5 kids. When my dad died my cousins said they would take my dad’s children. My mother did not want to leave them but family members advised to give away two or three as a token of gratitude”*

⁵⁰ Research conducted by Dr. Clemencia Ramirez and Dr. Angela Pinzon in the Atlantic and Pacific coasts of Colombia in 2006 for Plan International. This research was awarded first prize at the Colsubsidio prize for research in pediatrics in 2007 and published in Colombia in: **Pinzon-Rondon A, Ramirez-Herrera C. Prevalencia y Factores Asociados al Maltrato Infantil en la Costa Caribe y el Litoral Pacifico Colombianos. Saludarte. 2006;5(1):6-38.** I am extremely grateful to Dr. Pinzon for having granted me access to her field-notes from these focus groups, as well as for invaluable comments and insights about the problem of child abuse in Colombia.

⁵¹ Free translation by Juan Carlos Botero. Some expressions were not easy to understand in Spanish, let alone to translate into English.

- *“Siblings from marriage are 6 men and 4 women. My dad had other family and then another; 20 children total. We lived with our mother”*
- *“Most mothers are head of household. Children stay alone”*
- *“Mothers leave by 5:00 am and return by 7:00 pm. Children are alone”*
- *“Older children cannot go to school because they have to take care of their siblings”*

Parents love their children but they don't necessarily expect all of them to reach adulthood. Infant mortality rate is the highest in the country and survival is not guaranteed.

- *“One shall not love children too much because if you love them they die”*
- *“Many die of malnutrition”*
- *“The poorer you are the more children you seek”*

Many children die as a consequence of their parents' efforts to correct them. Accidents sometimes happen: *“My neighbor hit her child in the eye and he lost the eye”*.

There is a clear distinction between *beating* children and *abusing* them. Mothers don't abuse their kids; they beat them “because they love them”.

- *“I felt affection for my permissive grandmother. I said: I want this. If I was sick she would carry me and pamper me. She did not beat me. I beat my kids because I love them and now the times are different. Times cannot be compared. Love is expressed in different ways. The fact of [beating] being abuse depends on the manner”*
- *“One thing is abuse and other thing is education”*

- *“I don’t abuse them, but I am strict and concrete. I beat them because I love them”*
- *“I don’t abuse them because I don’t beat them in the face (‘doy trompadas’) or hit them with the foot. But I beat them with the whip. After three or four whippings my mom comes or my sister; they want someone to protect them”*
- *“My mother bit me until I was six months pregnant of my son”*

Every mother has a leather whip or a wooden stick to educate their children: *“I have four whips because I have four kids”*; *“I hit them with a stick”*. Beating and whipping children is *“good”*; abusing them is *“bad”*. Many parents report three strikes to be the right number; beyond that it is abuse.

All parents were victims of severe physical abuse when they were kids and all of them now beat their own children: *“Raise your hands those who have beaten your kids with some object”* [100% of participants raised their hands]. Beating is universally accepted as a necessary form of parental discipline.

Fairness does not necessarily imply individual responsibility; punishment is sometimes applied to all kids, not only to those that misbehave: *“The little one does something wrong and I beat them both”*.

Parents almost unanimously resent government efforts to combat child abuse and to promote awareness of rights among children. There seems to be considerable friction between deeply-rooted traditional upbringing and the government’s discourse and actions.

- *“The perdition of children is the government’s fault because of the talks they give. They give talks to big kids. For them a mother that cares for her children is violent”*
- *“As a mother from Choco I want to raise my children the way I was raised”*
- *“What they want are nice girls without fingers and boys without hands. This because they get into gangs. I had to live this for my neighbor. The boy started getting into gangs and the mother would tie him and finally nothing to do. She hit him and nothing. The ICBF [government] came to her house and they said it was a total crime for her to tie him. ICBF should help instead of punish her; she is a desperate mother that doesn’t know what to do and she needs help. The kid started to kill and ICBF doesn’t do anything. In my community they have killed children 15 years old. I raise my kids as it should be. My laws nobody take away from me. They are obeyed. I don’t care if I violate the law but I don’t want a dead son”*
- *“My oldest son has 14 and the next one 12. And they say ‘I will not do it’ and they don’t do it and they leave. Why? Because of the rights”*
- *“In some ways it worked better before. Now children say: if you beat me I will denounce you. ‘Children with rights’, it doesn’t work. You then need to tell them that it is fine to consume Marihuana and that is wrong”*
- *“Children don’t understand that they have duties to their parents. How can a child say such things? If one punishes them the good way they ignore you, and if one punishes them the bad way they threaten you; it does not work”*

- *“They tell me ‘why do you continue as you were raised?’ That is the way I was raised and that is the way I will raise my kids. I have 5 girls and one boy. When I say go to bed nobody stays up. I don’t let them meet girls that do what they want. I tell them: ‘this is it, and it is’ None has been a rebel yet”*

The drug trade and the guerrilla and paramilitary groups are a constant threat to these families. Severe discipline is considered essential to prevent kids from “going the wrong way”.

Violence is widespread and the community fights back. Vigilante systems are very common:

- *“My community is dangerous but it is well organized. If someone cries ‘robber’ everybody stands up and if they catch him he goes to the cemetery or to the hospital if he is lucky and the police arrives. If a man does something he dies”*
- *“Midnight and someone cries ‘criminal, criminal’ and we go out even in underwear. We hit the door; this SOB gets bullets, machete or anything. He dies”*

The situationist literature

From the classic experiments of professors Milgram and Zimbardo to more recent research on the reasons why people obey the law, social psychology offers a new perspective to reconsider the policy of criminal prosecution of child abuse in the Pacific coast of Colombia. A comprehensive summary of the situationist literature and its implications to the field of law is found in Professor Hanson’s article “The Situation”.

The following ideas seem relevant to this case:

First, “good” or “evil” behavior, such as the act of helping someone in need or the act of inflicting intentional harm on another person, seems to be more closely associated with the *situation* than with the particular characteristics (*disposition*) of the individual involved⁵². The situationist literature takes the magnifying glass away from the *disposition* of the particular individual that interacts with the law (e.g., the criminally abusive parent) and focuses on the *situation* surrounding this individual. It explores the extent to which the individual’s behavior is determined by the situation rather by his or her personal character.

Second, people’s judgment seems to be highly affected by the need to adapt to the views of those around them, even to the point of compromising the accuracy of perception of objective facts or the acceptance of these facts⁵³. The situation is so powerful.

Third, there is overwhelming evidence that many—perhaps most—perfectly normal individuals and good members of the society can do horrible things if they are placed in the wrong situation, including genocide and other abuses against defenseless individuals⁵⁴.

The findings of the Milgram experiment and other research in the field challenge the criminal law systems’ basic assumption that people are essentially free individuals who choose to commit crimes, and therefore deserve to be punished for their crimes. A more accurate description of human freedom in the face of “good” or “evil” behavior seems to be that of a normal curve. Some individuals are capable of extreme acts of altruism regardless of the situation, and some are capable of the most despicable actions irrespective of the situation. These are the extremes; most people do not behave that way. For most of us personal character only

⁵² For instance, the Good Samaritan Experiment and the case of bystanders to homicide. See, Power. See also, Seidler.

⁵³ See, e.g., the Asch Conformity Experiment. Asch.

⁵⁴ See, e.g., the classic Milgram Experiment and the Stanford Prison Experiment: Milgram; Haney, C, et.al.; Zimbardo, 2004. See also, Ehrenreich; Gourevitch.

plays a limited role in our decisions; the situation may be a better predictor of behavior than personal attributes.

Fourth, changes in the situation have been found to produce significant improvements in reducing violent behavior when dispositional approaches have failed⁵⁵.

Finally, social psychology has also shown that people obey the law if they believe it is legitimate, not because they fear punishment⁵⁶. “[R]esearch findings suggest that people’s compliance with the law is not effectively explained by the measurement of the risks associated with the law-breaking behavior... As a result, social control strategies based primarily on a deterrence model of human behavior have had at best limited success”⁵⁷

Criminal prosecution of child abuse in the Pacific coast from a situationist perspective

“Now children say: if you beat me I denounce you. ‘Children with rights’, it doesn’t work. You then need to tell them that it is ok to consume drugs and that is definitely not correct”.

(Mother from Quibdo, 2006)

The situationist literature has some provocative implications for the case of child abuse in the Colombian Pacific coast

⁵⁵ See, e.g., school bullying in the United States: Steps to Respect Program Guide; Olweus; Willson; Rigby and Johnson. *See also*, Franco & Zimbardo.

⁵⁶ Tyler.

⁵⁷ Darley, page 39.

First, an abusive parent is not necessarily an evil individual that must be separated from society. Of course, this does not mean that child abuse shall be tolerated; it only questions the criminal law's assumption that parents abuse their children as a matter of personal choice. Moreover, it questions the concept that abusing parents are *deviant individuals*.

Second, a policy focused on identifying *deviant individuals* (such as the policy of criminal prosecution of abusing parents regardless of the situation surrounding the abuse) may not be the most appropriate way of addressing a population problem.

Third, criminal prosecution may not be the most effective mechanism to protect children in an isolated community that overwhelmingly considers severe physical abuse as a necessary form of parental discipline.

In spite of all the changes introduced by the 2006 Code, the *dispositional* nature of the policy of criminal prosecution of abusive parents remains essentially unchanged.

From the point of view of the “situationist” literature⁵⁸, some of the changes had little practical implication for abused children in the Colombian coasts. The new code is in many ways as *dispositional* as the previous one. It moved from a *dispositional* focus on “abnormal children” (children in “irregular situation”) into a *dispositional* focus on “deviant parents” who failed to protect their children's rights.

This rights-based, black-and-white approximation to the problem of child abuse seems gravely inadequate⁵⁹.

⁵⁸ Hanson et al, and other papers mentioned above.

⁵⁹ According to the national agency in charge of criminal statistics, the crime of child abuse is underreported in the entire country. (Instituto Nacional de Medicina Legal y Ciencias Forenses. Forensis 2008, Datos para la Vida. Bogota, 2009. Page 111.) Underreporting is particularly serious in the Pacific coast, where reporting rates are lower

Child abuse shall not be treated as a dichotomous variable (black or white, true or false), because there is no clear cutoff when an inappropriate conduct turns into “abuse”. The moment when certain necessary parental discipline becomes abusive highly depends on the situation. Moreover, the threshold of abuse does not seem to be universal; it varies among cultures and populations⁶⁰.

The quality of child treatment is a continuum from perfect treatment (tender loving care), to very serious abuse (physical punishment leading to permanent disability or death).⁶¹ Research has shown that this continuum follows a normal distribution⁶², and each society has its own curve.

This means that child abuse is not a problem of prosecuting *deviant individuals* but a population problem that shall be addressed at the population level⁶³. As shown in the first chapter of this paper, the curve of child abuse for the Colombian Pacific coast is shifted towards the abusive end of the spectrum, i.e., it shows an abnormally high prevalence of abuse.

Based on the above, if the true goal of the Colombian child protection system is to protect children, the relevant question is not how to punish more abusers in the Pacific coast, but rather if punishing more abusers effectively contributes to shifting the curve of abuse to the other end of the spectrum.

When child abuse in the Pacific coast is considered in the situation, the “deviant individuals” begin to appear as regular people striving to survive in a particularly harsh

than in most parts of Colombia (Forensis 2008, municipal rates in pages 127 to 148.), even though prevalence of abuse in this region is several times higher than in other parts of the country (See, e.g., Pinzon-Rondon & Ramirez-Herrera)

⁶⁰ Pinzon, & Botero.

⁶¹ Newcomb & Locke.

⁶² Korfmacher.

⁶³ Rose G. *The Strategy of Preventive Medicine*. New York: Oxford Medical Publications; 1992.

environment (extreme poverty, violence, isolation and marginalization). Moreover, they constitute the overwhelming majority of the population (between 68 and 97%)—the criminal conduct is “normal”⁶⁴. In this context the selective criminal prosecution of some abusing parents seems not only arbitrary and unfair but more importantly, futile and counterproductive.

The *dispositional* case-by-case prosecution of deviant individuals (abusers) may or may not be appropriate and effective for the rest of Colombia—this is not a question that this paper intends to answer. Be that as it may, it is clear that the current *dispositional* approach to the problem of child abuse in the Colombian Pacific coast is seriously inadequate.

In the context of extreme poverty, drug-related violence, isolation and marginalization that characterizes the Pacific region, a *situationist* approach must take into account the broader context described in the third chapter of this paper. Most child abusers in the region are “normal” parents doing the best they can to educate their kids in the same way they were educated by their own parents. Insisting on the policy of criminal prosecution will have very little impact. Moreover, this policy maintains an incentive to hide abuses (which possibly explains the low reporting rates as compared to other parts of the country).

Child abuse in the region is a very old problem for which no easy fix is available. Nonetheless, there is some hope. There is evidence that even small situational changes may help to reduce violence when dispositional efforts have failed⁶⁵.

Child abuse in the Pacific coast is a population problem that cannot be solved by exclusively treating families at high risk of abuse or prosecuting confirmed cases of child abuse. Given the high prevalence of child abuse in this region and the cultural and social circumstances

⁶⁴ In the Pacific coast of Colombia this conduct lacks significant deviation from the average.

⁶⁵ Literature cited in the fourth chapter of this paper.

influencing abuse, a public health approach would be more effective. The goal must be to shift the curve of child abuse, not to punish abusers per se. In other words, child abuse in this region shall be considered first and foremost a public health problem, not a criminal problem. Criminal prosecution may help to shift the curve of abuse only if it is used as a marginal (last resort) component of a more comprehensive policy aimed at addressing the current *situation* of abuse.

A small shift of the parent-child treatment population curve towards the perfect treatment end of the spectrum will bring a considerable decrease of child abuse cases and will improve the situation of the population as a whole. A public health strategy focused on public awareness and community-based work with mothers and families—possibly including general public campaigns, partnering with local community organizations, and strong follow-up at the family level—is more likely to deliver the desired outcome of reducing child abuse in the Pacific coastal region of Colombia.

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