

CHILE

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 18th session, 2014

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

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 Chile, corporal punishment of children is lawful, despite the Government's acceptance of recommendations to harmonise national legislation with international human rights obligations made during the UPR in 2009, and the repeated recommendations to prohibit corporal punishment by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Chile. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Chile to explicitly prohibit corporal punishment of children in the home and all alternative care settings as a matter of priority.

1 The initial review of Chile by the Human Rights Council (2009)

- 1.1 Chile was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made concerning corporal punishment of children, though the issue was included in the summary of stakeholders' information.¹ General recommendations were made concerning harmonisation of domestic legislation with international human rights instruments that Chile has ratified:² the Government accepted these recommendations.
- 1.2 Prohibiting and eliminating corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. The Committee on the Rights of the Child has twice recommended that corporal punishment of children in Chile be explicitly prohibited in the home and other settings –

¹ 19 February 2009, A/HRC/WG.6/5/CHL/3, Summary of stakeholders' information, para. 23

² 4 June 2009, A/HRC/12/10, Report of the working group, paras. 96(6) and 96(8)

in the concluding observations on the second report in 2002 and on the third report in 2007.³

- 1.3 But despite the Government's acceptance of the relevant recommendations in the first cycle UPR, Chilean law reform to date has fallen short of explicitly prohibiting all corporal punishment, however light, in childrearing.
- 1.4 The obligation to reform the law to prohibit corporal punishment, including in the home, is one frequently ignored or evaded by governments. The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a "right" to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. **It is for these reasons that we respectfully urge members of the Working Group to specifically recommend prohibition of corporal punishment in the review of Chile.**

2 Legality of corporal punishment in Chile

- 2.1 **Home (lawful):** Article 234 of the Civil Code provides for parents' "right to correct" their children. In 2008, this was amended to state that this excludes all forms of physical and psychological abuse ("maltrato físico y psicológico") and shall be exercised in accordance with the Convention on the Rights of the Child. However, there is no clear prohibition of all corporal punishment, however light; the law as it stands implies that it remains lawful to impose corporal punishment which does not reach the threshold of violence that would legally be regarded as "abuse".
- 2.2 **Schools (unlawful):** Corporal punishment is unlawful in schools under article 10 of the General Education Law 2010 (Law No. 20370).
- 2.3 **Penal system – sentence for crime (unlawful):** Corporal punishment is unlawful under the Juvenile Justice Act 2005 (Law No. 20084).
- 2.4 **Penal system – disciplinary measure in penal institutions (unlawful):** Corporal punishment is unlawful under article 45 of the Juvenile Justice Act 2005 (Law No. 20084).
- 2.5 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in all alternative care settings. Article 57 of the Child Law 1967 (Law No. 16618) confirms that the "right to correct" applies in care institutions and foster homes.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

³ 1 February 2002, CRC/C/15/Add.173, Concluding observations on second report, paras. 31 and 32; 23 April 2007, CRC/C/CHL/CO/3, Concluding observations on third report, paras. 40 and 41