

NICARAGUA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 19th session, 2014

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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 Nicaragua, corporal punishment of children is lawful, despite the repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Human Rights Committee and during the first cycle UPR in 2010 (which the Government accepted).

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

1 The initial review of Nicaragua by the Human Rights Council (2010)

1.1 Nicaragua was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was included in the compilation of UN information¹ and in the summary of stakeholders' information.² The following recommendation was made and was accepted by the Government:³

“Prohibit explicitly corporal punishment of girls and boys in all circumstances, as recommended by the Committee on the Rights of the Child (Chile).”

1.2 In 2012, the “right to disciplinary punishment” of children – which constituted a legal defence for the use of corporal punishment in childrearing – was removed from the Penal Code. But the law only punishes violence which causes injury: it does not explicitly prohibit all forms of corporal punishment, however light. A draft new Family Code was expected to include explicit prohibition but appears not to have been enacted yet.

¹ 30 November 2009, A/HRC/WG.6/7/NIC/2, Compilation of UN information, para. 25

² 26 November 2009, A/HRC/WG.6/7/NIC/3, Summary of stakeholders' information, para. 14

³ 17 March 2010, A/HRC/14/3, Report of the working group, para. 90(28)

1.3 The near universal acceptance of a degree of violent punishment in childrearing 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 that Nicaragua complete law reform on the issue by explicitly prohibiting corporal punishment of children.**

2 Legality of corporal punishment in Nicaragua

2.1 **Home (lawful):** In 2012, the “right to disciplinary punishment” of children was removed from the Penal Code 2008 by Law No. 779 Comprehensive Law against Violence against Women and Reforming Law No. 641 Penal Code 2012. Article 155 of the Penal Code as amended prohibits domestic violence and states (unofficial translation): “For children and adolescents, the right to disciplinary correction may not be claimed.” However, the article goes on to punish only violence which causes injury and is considered therefore to show a lack of clarity as to the illegality of all forms of corporal punishment, however light. Provisions against violence and abuse in the Code on Children and Adolescents 1998, the Mother, Father and Child Relations Act, the Constitution 1986, Law No. 230 Reforms and additions to the Criminal Code to prevent and sanction domestic violence 1996, and the Policy on Special Protection of Children and Adolescents 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Explicit prohibition of all corporal punishment was included in the Family Code Bill under discussion in 2012: this appears not to have been enacted.

2.2 **Schools (unlawful):** Corporal punishment is prohibited in schools under article 100 of the General Education Law: “Students have the following rights: ... c) to be treated with justice and respect, not be subject to corporal punishment, humiliation and discrimination....”

2.3 **Penal system – sentence for crime (unlawful):** There is no provision for judicial corporal punishment in the Penal Code or the Code on Children and Adolescents.

2.4 **Penal system – disciplinary measure in penal institutions (unlawful):** Article 101 of the Code on Children and Adolescents 1998 states that adolescents subject to criminal justice have the right to be treated with respect for their dignity and personal integrity. Article 213 establishes the right of adolescents “not to be held incommunicado or placed in solitary confinement, or not to be imposed corporal punishment”. Corporal punishment is also prohibited by article 7 of the Prison and Execution of Sentences Act 2003.

2.5 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** The Committee on the Rights of the Child has twice recommended prohibition of corporal punishment in the home and other settings in Nicaragua – following examination of the third state party report in 2005 and the fourth report in 2010.⁴

3.2 **HRC:** In 2008, the Human Rights Committee recommended law reform to prohibit corporal punishment in Nicaragua in schools and other institutions.⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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.

⁴ 21 September 2005, CRC/C/15/Add.265, Concluding observations on third report, paras. 43 and 44; 1 October 2010, CRC/C/NIC/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 6, 7, 48, 49 and 50

⁵ 12 December 2008, CCPR/C/NIC/CO/3, Concluding observations on third report, para. 15