

Corporal punishment of children in Bolivia: Briefing for the Universal Periodic Review, 20th 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 Bolivia, corporal punishment of children is currently lawful, despite 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). Draft legislation which would achieve prohibition is under discussion.

We hope the Working Group will note with concern the legality of corporal punishment in Bolivia. We hope states will raise the issue during the review in 2014 and make a specific recommendation that the draft Children and Adolescent Code, which includes prohibition of all corporal punishment of children including in the home, is adopted into law as a matter of priority.

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

1.1 Bolivia was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). In its national report, the Government of Bolivia drew attention to the recommendations made by the Committee on the Rights of the Child on a number of issues and stated that the Government was currently taking action to address these concerns.¹ The compilation of UN information referred specifically to the Committee's recommendations on prohibition of corporal punishment.² The issue was also included in the summary of stakeholders' information.³ The following recommendation was made and was accepted by the Government:⁴

“To adopt specific measures to protect boys, girls and adolescents from all violence against them, to eradicate child labour, to combat the exploitation of boys, girls and adolescents and to prohibit all forms of corporal punishment (Costa Rica)”

¹ 16 November 2009, A/HRC/WG.6/7/BOL/1, National report to the UPR, para. 124

² 30 November 2009, A/HRC/WG.6/7/BOL/2, Compilation of UN information, paras. 5 and 27

³ 6 November 2009, A/HRC/WG.6/7/BOL/3, Summary of stakeholder's views, para. 21

⁴ 15 March 2010, A/HRC/14/7, Report of the working group, para. 98(36)

1.2 A draft Children and Adolescents Code is currently under discussion which includes explicit prohibition of all corporal punishment, including in the home. **We hope the members of the Working Group will welcome this development and encourage Bolivia to enact the Code at the earliest opportunity.**

2 Legality of corporal punishment in Bolivia

2.1 **Summary:** In Bolivia, corporal punishment of children is unlawful in schools and as a sentence for crime under state law, but it is not fully prohibited in the home, alternative care settings, day care and penal institutions, and its legality as a sentence in indigenous justice systems is unclear.

2.2 **Home (lawful):** Corporal punishment is lawful in the home. Article 276 of the Criminal Code states: “No aggression will be punished if the victim of the aggression is not seriously hurt and the aggressor is husband or wife, parent or grandparent, child or grandchild, sibling, close relative, political sibling, and if they are living together.” Article 106 of the Children and Adolescents Code 1999 puts a duty on the state to protect the child from “all forms of violence, inhuman and degrading treatment”. Article 108 defines maltreatment as “any act of violence exercised by parents, guardians, third parties and/or institutions, through abuse, action, omission or suppression, regularly or occasionally, that violates the rights granted to children and adolescents in this Code and other laws; violence that causes damage or injury to their physical, mental or emotional health”. Article 109 states that a child is considered to have been abused when he has been harmed “physically, psychologically, mentally or morally, whether for discipline or education”. However, these provisions protect children only from corporal punishment which is considered to cause harm; less severe corporal punishment is legally justifiable under the above quoted article 276 of the Criminal Code.

2.3 The Constitution 2009 states that no person shall suffer cruel, inhuman, degrading or humiliating treatment (art. 15) and “prohibits all forms of violence against children and adolescents in the family and in society” (art. 61). Under examination by the Committee on the Rights of the Child in 2009, the Government suggested that this prohibits corporal punishment of children but also confirmed that other legislation should be reformed to achieve full prohibition in law.⁵ As noted above (para. 1.2), prohibiting legislation has been drafted and is currently under discussion.

2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in all alternative care settings. Article 109 of the Children and Adolescents Code 1999 prohibits only corporal punishment which is considered harmful.

2.5 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. Article 109 of the Children and Adolescents Code 1999 prohibits only corporal punishment which is considered harmful.

2.6 **Schools (unlawful):** Corporal punishment is unlawful under Supreme Decree No. 212414 of 21 April 1993 on teacher misconduct and punishments, which categorises its use as “serious misconduct”. Article 109 of the Children and Adolescents Code 1999 states that “a child or adolescent is the victim of abuse when ... school discipline fails to respect his or her dignity and integrity”.

⁵ UN press release, 17 September 2009

2.7 **Penal institutions (lawful):** There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Article 109 of the Children and Adolescents Code 1999 prohibits only corporal punishment which is considered harmful. The Code of Criminal Procedure states that police officers must use force “only when strictly necessary” should not “inflict, instigate or tolerate any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, either at the time of arrest or during detention” (art. 296). Supreme Decree No. 26715 2002 regulates the treatment of prisoners in the corrections system; subsequent regulations, together with Circular No. 10/2009, reportedly tighten the restrictions on the punishment of persons deprived of their liberty⁶ but we have yet to establish whether or not they explicitly prohibit corporal punishment.

2.8 **Sentence for crime (partial prohibition):** There is no provision for judicial corporal punishment in the Criminal Code, the Juvenile Code 1992, the Children and Adolescents Code 1999 and the Law on the Public Ministry 2001. However, sentences of corporal punishment are traditionally ordered by community elders in indigenous justice systems. The Constitution 2009 establishes Bolivia as a “plurinational republic” and recognises the right of indigenous peoples to self-determination; article 214 of the Children and Adolescents Code 1999 states with regard to juvenile justice that in the case of children and adolescents from ethnic groups or indigenous or native communities, their traditions and customs shall be taken into account “provided they do not conflict with the state Constitution, this Code and applicable laws”. We do not know whether corporal punishment under traditional justice systems would be lawful under the Constitutional right of indigenous persons to self-determination or unlawful under the Constitutional prohibition of cruel, inhuman, degrading or humiliating treatment and the prohibition of violence and abuse in the Children and Adolescents Code 1999 (see para. 2.2).

2.9 In its report to the Committee Against Torture in 2011, the Government stated its intention to implement a system of administration of justice “in which the justice systems of native indigenous and campesino people and nations are respected and recognized on an equal footing”, as part of which “it will be established in no uncertain terms that respect for rights is the foundation for the administration of justice”.⁷ No definitive statement was made regarding the imposition of corporal punishment.

3 Recommendations by human rights treaty monitoring bodies

3.1 **CRC:** The Committee on the Rights of the Child first raised concerns about corporal punishment of children in Bolivia in the family and other settings in its concluding observations on the state party’s initial report in 1998.⁸ The Committee reiterated its concerns in 2005.⁹ Most recently, in 2009 the Committee elaborated on its concerns and recommended that corporal punishment be prohibited in all settings.¹⁰

⁶ 5 March 2012, CAT/C/BOL/2, Second state party report to the Committee Against Torture, para. 147

⁷ 5 March 2012, CAT/C/BOL/2, Second state party report, para. 69

⁸ 26 October 1998, CRC/C/15/Add.95, Concluding observations on initial report, para. 21

⁹ 11 February 2005, CRC/C/15/Add.256, Concluding observations on second report, paras. 35 and 36

¹⁰ 16 October 2009, CRC/C/BOL/CO/4, Concluding observations on fourth report, paras. 6, 7, 8, 40, 41 and 42

3.2 **HRC:** In 2013, the Human Rights Committee expressed concern at the legality of corporal punishment of children in the home and in institutional care settings in Bolivia and recommended its abolition.¹¹

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.

¹¹ 6 December 2013, CCPR/C/BOL/CO/3, Concluding observations on third report, para. 16