



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

ARGENTINA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 1st session, 2007

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

This briefing describes the gaps in prohibition in Argentina, despite recommendations by the Committee on the Rights of the Child.

We hope the Review will highlight the importance of Argentina responding to treaty body recommendations and strongly recommend that Argentina introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

I: Legality of corporal punishment in Argentina

The home

Corporal punishment is lawful in the **home** under federal legislation. The Civil Code (1998) states that children are under the authority of their parents (article 265) and that children owe respect and obedience to their parents (article 266). Article 278 states: “Parents have the power to correct the behaviour of their minor children or have it corrected. This power must be exercised in moderation, without abuse, punishment or acts that injure or harm the child physically or psychologically. Judges must safeguard minors against excessive correction by their parents, ordering the cessation of such acts and relevant sanctions if appropriate.”

Under article 5 of the Law for the Integral Protection of Children and Adolescents (2005), the government is responsible for the protection and aid of children in any circumstances. Article 9 recognises the right of the child and adolescent to dignity and personal, physical and moral integrity, and to protection from torture, abuse, humiliating and intimidating treatment, and cruel or degrading treatment, but there is no prohibition of corporal punishment.

As at February 2007, a network of NGOs planned a situation analysis with a view to introducing debate on the legal status of corporal punishment in 2007/2008.

Schools and other settings

There is no explicit prohibition of corporal punishment in **schools**. Article 5 of the Federal Education Law (2000) recognises the child’s right to dignity and well-being and states that this must be respected in setting guidelines for educational policy. The Law on the School Coexistence System (1999) protects the child’s right to physical integrity (article 6) and does not list corporal punishment among permitted sanctions in schools, but according to legal opinion this does not amount to a prohibition of corporal punishment. The Law for the Integral Protection of Children and Adolescents (see above) also applies.

In the **penal system**, corporal punishment is unlawful as a sentence for crime, but there is no explicit prohibition of its use as a “disciplinary” measure in penal institutions. Under article 18 of the Constitution, prisons should be “for the security and not for the punishment of the prisoners confined therein”, and the Law for the Integral Protection of Children and Adolescents (see above) applies. The Code of Criminal Procedure and the Criminal Code provide for the establishment of specific facilities for children in pre-trial detention or sentenced to imprisonment, but in practice conditions in child detention centres do not match the legal standards and many children are detained in local police stations where they are subject to corporal punishment and other ill-treatment.¹

There is no explicit prohibition of corporal punishment in **alternative care settings**.

II: Recommendations by human rights treaty monitoring bodies

In 2002, following consideration of the state party’s second report, the **Committee on the Rights of the Child** expressed concern about the lack of explicit prohibition in legislation of corporal punishment and particularly about its continued practice in the home and institutions and against children in detention (CRC/C/15/Add.187, paras. 38 and 62). The Committee recommended “that the State party expressly prohibit corporal punishment in the home and all institutions and carry out public education campaigns to promote positive, non-violent forms of discipline as an alternative to corporal punishment” (para. 39).

¹ World Organisation Against Torture, 2002, *Rights of the Child in Argentina*, OMCT. See also SERPAJ/Argentina, Hogares Don Bosco, 1998, *Informe carcel y ninos*; and SERPAJ-Argentina, Recopilacion de denuncias efectuadas por el Defensor del Departamento Judicial de San Isidro, Provincia de Buenos Aires, Novembre 2001