

ARGENTINA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

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

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.

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 as a matter of priority.

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. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Argentina, despite repeated recommendations made by the Committee on the Rights of the Child and during the initial UPR in 2008.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations. We hope states will raise the issue during the review in 2012 and recommend to Argentina that legislation be enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Argentina by the Human Rights Council (2008)

1.1 Argentina was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). The issue of corporal punishment of children was included in the compilation of UN information¹ and the summary of stakeholders' information.² Austria raised the issue during the review and recommended that corporal punishment in the family and schools be explicitly prohibited by law.³ In response, the Government stated that the comprehensive law on the protection of children (the Law for the Integral Protection of Children and Adolescents (2005)) prohibits physical punishment.⁴ The recommendation to prohibit corporal punishment was clearly documented in the body of the Working Group report⁵ but unfortunately was not included in the summary of recommendations at the end of the report: there is no record of formal acceptance or rejection by the Government and the issue is not included in the mid-term report (September 2010). We note, however, that the Government formally accepted all other recommendations.⁶

1.2 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Specifically challenging Argentina in this respect during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

1.3 There has been some progress towards prohibiting corporal punishment of children in Argentina since the initial UPR in 2008: it is now explicitly prohibited as a disciplinary measure in penal institutions. However, it remains lawful in the home and in alternative care settings.

2 Legality of corporal punishment in Argentina

2.1 Corporal punishment is lawful in the **home**. Article 278 of the Civil Code (1998) confirms the "power" of parents "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" and children should be safeguarded from "excessive correction by their parents". The Government has stated that this article, in light of other legal provisions against physical and mental abuse of children, does not allow corporal punishment in childrearing,⁷ but in reality it prohibits only corporal punishment which reaches a certain threshold of severity. As noted above, the Government has also stated that corporal punishment is prohibited in the Law for the Integral Protection of Children and Adolescents (2005). While article 9 of this law protects children's personal integrity and human dignity and states that they should not be subjected to violence and degrading, humiliating or cruel treatment, it does not explicitly prohibit all corporal punishment in childrearing and the

¹ 26 March 2008, A/HRC/WG.6/1/ARG/2, Compilation of UN information, paras. 29 and 32

² 6 March 2008, A/HRC/WG.6/1/ARG/3, Summary of stakeholders' information, paras. 16 and 18

³ 13 May 2008, A/HRC/8/34, Report of the Working Group on the Universal Periodic Review: Argentina, para. 22

⁴ 13 May 2008, A/HRC/8/34, Report of the Working Group on the Universal Periodic Review: Argentina, para. 38

⁵ "22. ... Austria mentioned the reference made in the national report to the 'Ley de Protección Integral de las niñas, niños y adolescentes' adopted in 2005 and the firm commitment of national courts to providing special protection for the child's best interest in accordance with the CRC. In this regard, Austria asked for further information on the measures taken for the protection of children from all forms of physical or mental violence as provided for in the CRC and recommended that corporal punishment in the family and schools be explicitly prohibited by law."

⁶ See http://www.upr-info.org/IMG/pdf/Recommendations_Argentina_2008.pdf, accessed 23 February 2012

⁷ 2010, CRC/C/ARG/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, p. 46

protection is undermined by the “power of correction” in article 278 of the Civil Code. Successive bills which would have repealed or amended article 278 to prohibit corporal punishment have failed to progress through parliament.

2.2 Corporal punishment is unlawful in **schools** under the Federal Education Law (2000) and the Law on the School Coexistence System (1999).

2.3 In the **penal system**, corporal punishment is prohibited as a sentence for crime in article 18 of the Constitution (1994). According to the Government’s written replies to the Committee on the Rights of the Child in 2010, it is explicitly prohibited as a disciplinary measure in penal institutions in article 32 of Annex I Resolution No. 991/09 (2009), which approved the General Rules for Centres of Closed Regime, the Procedural Protocol for allegations of mistreatment and the Procedural Protocol for Incidents between Young People in Centres of Closed Regime.⁸

2.4 There is no explicit prohibition of corporal punishment in **alternative care settings**. The parental “power of correction” in the Civil Code (see above) presumably applies to other adults with parental authority over children.

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** has twice recommended that corporal punishment of children be explicitly prohibited in all settings Argentina, including in the home – in 2002 and again in 2010.⁹

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⁸ 2010, CRC/C/ARG/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, p. 71

⁹ 9 October 2002, CRC/C/15/Add.187, Concluding observations on second report, paras. 38, 39, 62 and 63; 11 June 2010, CRC/C/ARG/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 45, 46 and 47