

CUBA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16th session, 2013

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



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 Cuba, despite the Government’s acceptance of the recommendation made during the UPR in 2009 to harmonise legislation with human rights standards and the repeated recommendations to prohibit corporal punishment made by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Canada. We hope states will raise the issue during the review in 2013 and recommend to Canada that legislation is enacted to explicitly prohibit corporal punishment of children in the home and all forms of care as a matter of priority.

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

1.1 Cuba was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment of children was raised in an advance question by Liechtenstein. No recommendation was made specifically concerning corporal punishment but the following recommendations were made and were accepted by the Government:¹

“Continue its action to align, to strengthen and to make compatible national legislation with its international obligations in accordance with the treaties to which it is a party (United Arab Emirates; Trinidad and Tobago; Ghana; Uzbekistan)

“Conduct a study on the need for legislative and administrative adjustments for the domestic implementation of human rights (Mexico)

“Continue to take measures to honour its human rights obligations and to advance the promotion and protection of human rights and freedoms (Jamaica)

“Continue its implementation of measures designed to further promote and protect the rights of children and to intensify its efforts aimed at providing greater opportunity for higher education (Malaysia)”

1.2 Prohibiting corporal punishment of children in all settings, including the home, is an obligation on states under the Convention on the Rights of the Child and other human rights treaties, though it is one frequently ignored or evaded by governments. The Committee on the Rights of the Child first raised the issue of corporal punishment of children in Cuba after examining the state party’s initial report in 1997: the Committee expressed concern at violence against children and recommended that the state party take measures to protect children including through a public information campaign to prevent corporal punishment.² In its concluding observations on the second report in 2011, the Committee expressed concern at the use of corporal punishment in schools and social institutions and at the legality of corporal punishment in the home, and recommended that all forms of corporal punishment be explicitly banned.³

1.3 There has been no change in the legality of corporal punishment of children in Cuba since the review in 2009. However, a draft new Family Code is under consideration and indications are that the Government intends to ensure that the law no longer condones corporal punishment of children by parents and guardians: in its written replies to the Committee on the Rights of the Child in 2011, the Government stated that the draft Family Code removes the provision for “adequate and moderate correction” of children.⁴

1.4 Given the near universal longstanding and widespread acceptance of corporal punishment in childrearing, and as the Committee on the Rights of the Child confirms in its General Comment on the issue, it is vital that the repeal of the legal defence for the use of corporal punishment in childrearing is not a “silent” reform but is accompanied by explicit prohibition of all corporal punishment by parents and others with parental authority.⁵ This ensures that the law sends a clear message that no form of corporal punishment is acceptable or lawful, by any

¹ 3 March 2009, A/HRC/11/22, Report of the Working Group, para. 130(2), 130(3), 130(4) and 130(6)

² 18 June 1997, CRC/C/15/Add.72, Concluding observations on initial report, paras. 19 and 35

³ 20 June 2011, CRC/C/CUB/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 36 and 37

⁴ 27 April 2011, CRC/C/CUB/Q/2/Add.1, Written replies to the Committee on the Rights of the Child, para. 36

⁵ 21 August 2006, CRC/C/GC/8, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), paras. 34 and 35

person in any place. We do not know if proposals have been made to include explicit prohibition of all corporal punishment in the new Family Code.

2 Current legality of corporal punishment in Cuba

2.1 In Cuba, corporal punishment of children is unlawful in the penal system, schools and possibly care institutions but it is lawful in the home and some forms of care.

2.2 In the **home**, the Family Code (1975) permits “adequate and moderate correction” of children by parents (article 86) and guardians (article 152).

2.3 With regard to **schools**, the Government has stated that corporal punishment is prohibited in schools, but we have yet to verify that prohibition is explicit. In commenting on recommendations issued in 2011 by the Committee on the Rights of the Child, the Government stated that Resolution 165/2006 of the Ministry of Education approving the Regulations on the discipline of work in educational activities (Resolución 165 de 2006 del Ministerio de Educación que aprueba el Reglamento Ramal de la disciplina del trabajo en la actividad educacional) prohibits corporal punishment in schools.⁶

2.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. Article 30(11) of the Criminal Code states that “those sanctioned may not be subjected to corporal punishment, nor is it admissible to employ against them any measure entailing humiliation or a loss of dignity”.⁷

2.5 Corporal punishment is lawful in **alternative care settings** under the right of correction of guardians in the Family Code (see above). In 2011 the Government stated to the Committee on the Rights of the Child that corporal punishment is prohibited in institutions but cited only the above mentioned Resolution relating to education.⁸

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
October 2012

⁶ Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contentivo de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8

⁷ Report to CRC 2009, para. 233; also report to CAT 2011

⁸ Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contentivo de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8