



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

ARGENTINA – COUNTRY REPORT

Child population: 12,181,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Article 278 of the Civil Code (1998) confirms the power of parents to correct their children, and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. This article should be repealed, as well as any similar defences in provincial laws. The near universal acceptance of corporal punishment in “disciplining” or “correcting” children necessitates a clear statement in law that all corporal punishment, however light, is prohibited.

Other legislative measures necessary

Schools – Explicit prohibition should be enacted in relation to all education settings, public and private, including religious institutions.

Alternative care – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, including repeal of article 278 of the federal Civil Code and any similar defences at provincial level.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 278 of the Civil Code (1998) 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.” 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 (2010, CRC/C/ARG/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, p. 46). However, this protects children only from corporal punishment which reaches a certain threshold of severity and there is no explicit prohibition of all corporal punishment. The Government has also stated that corporal punishment is prohibited in the Law for the Integral Protection of Children and Adolescents (2005) (A/HRC/8/34, Report of the Working Group, para. 38). While article 9 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 protection is undermined by the “power of correction” already noted.

Successive bills which would have repealed or amended article 278 to prohibit corporal punishment have failed to progress through parliament.

Schools

Corporal punishment is considered unlawful in schools under laws which protect the dignity of students. 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; article 9 of the Law for the Integral Protection of Children and Adolescents also applies (see above). However, there is no explicit prohibition of corporal punishment.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. Article 18 of the Constitution (1994) abolishes whipping and any kind of torture. There is no provision for corporal punishment as a sentence for crime under Act 22,803 on young offenders or in the Code of Criminal Procedure.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. According to the Government’s written replies to the Committee on the Rights of the Child in 2010, 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 – explicitly prohibits corporal punishment for teenagers deprived of their liberty in the criminal justice system (CRC/C/ARG/Q/3-4/Add.1, p. 71). Article 9 of the Law for the Integral Protection of Children and Adolescents also applies (see above).

Alternative care

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.

Prevalence research

A report on the human rights violations perpetrated against approximately 25,000 people – children and adults – detained in Argentina’s psychiatric institutions documented many beatings and prolonged use of isolation in cells. (Mental Disability Rights International & Center for Legal and Social Studies (2007), *Ruined Lives: Segregation from Society in Argentina’s Psychiatric Asylums*)

Surveys carried out in 2002-2004 examined the attitudes of children and adults in Argentina, Brazil, Costa Rica, Nicaragua, Peru and Venezuela towards physical punishment. In Argentina, 293 people were surveyed (201 adults and 89 children). Nearly a third (32.6%) of the children and over half of the adults (52.1%) agreed that children should not be physically punished or that “punishment does not solve anything”, and 27% of children and 15.6% of adults agreed that physical punishment is “very bad” or “makes children violent”. Over half (53.9%) of children and 79.6% of adults thought that physical punishment is never necessary. (Save the Children Sweden & Instituto de Encuestas y Sondeos de Opinión (2005), *Sistematización de las Encuestas Sobre la Percepción del Castigo Físico en Seis Países de America Latina*, presentation: Managua, 16 May 2005)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(11 June 2010, CRC/C/ARG/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 45, 46 and 47)

“While noting the general principle in Law No. 26.061 for children not to be subjected to violent, discriminatory, humiliating or intimidating treatment, the Committee expresses concern at the inclusion in article 278 of the Civil Code of a right of parents to proper correction, which may lead to abuse and corporal punishment. It is further concerned that corporal punishment is not explicitly prohibited outside the home, including schools, centres of detention and alternative care settings.

“The Committee recommends that the State party explicitly prohibit by law in all provinces corporal punishment and all forms of violence against children in all settings, including in the family, schools, alternative childcare and places of detention for juvenile offenders, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns with a view to changing perceptions regarding eradicating corporal punishment and in order to promote the use of alternative and non-violent forms of discipline in a manner consistent with the child’s human dignity and in accordance with the Convention, especially article 28, paragraph 2. In this regard, the Committee encourages the State party to take into account the Committee’s General comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8, 2006).

“With reference to the United Nations study on violence against children (A/61/299), the Committee recommends that the State party:

a) take all necessary measures for the implementation of the recommendations contained in the report of the independent expert for the United Nations study on violence against children while taking into account the outcome and recommendations of the regional consultation for Latin America held in Buenos Aires between 30 May and 1 June 2005. In particular, the Committee recommends that the State party pay particular attention to the following recommendations:

- Prohibit by law all violence against children, including corporal punishment in all settings; ...”

Committee on the Rights of the Child

(9 October 2002, CRC/C/15/Add.187, Concluding observations on second report, paras. 38, 39, 62 and 63)

“The Committee notes with concern that there is no explicit prohibition of corporal punishment under law and that it is still widely practised in the home and in some institutions.

“The Committee recommends 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.

“The Committee ... notes with concern the poor conditions of children in detention, including the lack of adequate basic services such as education and health, the absence of adequately trained staff, and the use of corporal punishment and isolation.

“The Committee recommends that the State party:

g) take the necessary measures to improve detention conditions....”

Universal Periodic Review

Argentina was examined in the first cycle of the Universal Periodic Review process in 2008. In response to recommendations to prohibit corporal punishment of children, the Government stated that it is prohibited in the Law for the Integral Protection of Children and Adolescents (2005) (A/HRC/8/34, Report of the Working Group, para. 38). Examination in the second cycle is scheduled for 2012.

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

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