

Corporal punishment of children in Argentina

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Child population 13,006,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

On 7 October 2014, the President of Argentina promulgated the new Civil and Commercial Code. Title VII of the Code addresses parental responsibility, including Chapter 2 providing for general rules on the duties and rights of parents. In this context, article 647 states (unofficial translation): “All forms of corporal punishment, ill-treatment and any act that physically or mentally injures or impairs children and adolescents are prohibited...”

The new Code came into force in January 2016. Prior to reform, corporal punishment was lawful under the Civil Code 1869, article 278 of which stated: “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 had stated that this article, in light of other legal provisions against physical and mental abuse of children, did not allow corporal punishment in childrearing,¹ and had also stated that corporal punishment was prohibited in the Law for the Integral Protection of Children and Adolescents 2005 under the provisions against violence.² However, while these laws protected children from severe corporal punishment there was no clear prohibition of all corporal punishment. With the enactment of the new Civil and Commercial Code, legal clarity was achieved that all corporal punishment, without exception, is prohibited.

¹ 23 April 2010, CRC/C/ARG/Q/3-4/Add.1, Reply to list of issues, paras. 152, 153 and 154

² 13 May 2008, A/HRC/8/34, Report of the working group, para. 38

Alternative care settings

Corporal punishment is unlawful in alternative care settings under the prohibition in article 647 of the new Civil and Commercial Code. In addition, Act No. 26657 and Decree No. 603/2013 reportedly “prohibit the use of isolation and medication as forms of punishment”.³

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under the prohibition in article 647 of the new Civil and Commercial Code.

Schools

Corporal punishment is unlawful in schools under the Civil and Commercial Code 2014. Previously it was considered unlawful under laws that 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 (art. 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 under “Home”).

Penal institutions

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.⁴ Article 9 of the Law for the Integral Protection of Children and Adolescents also applies (see under “Home”).

Sentence for crime

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.

Universal Periodic Review of Argentina’s human rights record

Argentina was examined in the first cycle of the Universal Periodic Review process in 2008 (session 1). The following recommendation was made:⁵

“... 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

³ 31 October 2017, CRC/C/ARG/5-6, Fifth/sixth report, para. 125

⁴ 23 April 2010, CRC/C/ARG/Q/3-4/Add.1, Reply to list of issues, para. 241

⁵ 13 May 2008, A/HRC/8/34, Report of the working group, para. 22

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.”

The Government did not clearly accept or reject the recommendation but stated that corporal punishment is prohibited in the Law for the Integral Protection of Children and Adolescents 2005.⁶

Examination in the second cycle took place in 2012 (session 14). The following recommendation was made:⁷

“Prohibit by law all kinds of violence against children including corporal punishment in all settings (Bulgaria)”

The Government accepted the recommendation, though confusingly stated that the acceptance was “within the framework of its policies to prevent and combat trafficking in persons”; the Government did not comment specifically on corporal punishment.⁸ As noted above (see under “Home”), prohibiting legislation was enacted in October 2014, to come into force in January 2016.

The third cycle examination took place in 2017 (session 28). Although prohibition was enacted in 2014, Sweden mistakenly “noted the lack of a general prohibition of corporal punishment of children”.⁹ The following recommendations were made:¹⁰

“Strengthen legislation aimed at protection of children from all forms of ill-treatment and violence (Bahrain);

“Adopt legislation prohibiting all forms of corporal punishment of children in all settings (Sweden)”

The Government supported the recommendations.¹¹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 June 2018, CRC/C/ARG/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 20)

“The Committee welcomes the prohibition of corporal punishment in all settings. With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings. It further recommends that positive, non-violent and participatory forms of child rearing and discipline are promoted through awareness campaigns, and that steps be taken to ensure that offenders are brought before the competent administrative and judicial authorities.”

⁶ 13 May 2008, A/HRC/8/34, Report of the working group, para. 38

⁷ 12 December 2012, A/HRC/22/4, Report of the working group, para. 99(66)

⁸ 21 February 2013, A/HRC/22/4/Add.1, Report of the working group: Addendum, para. 22

⁹ 22 December 2017, A/HRC/37/5, Report of the working group, para. 93

¹⁰ 22 December 2017, A/HRC/37/5, Report of the working group, paras. 107(160) and 107(161)

¹¹ 1 March 2018, A/HRC/37/5/Add.1 Advance unedited version, Report of the working group: Addendum, para. 22

Committee on the Rights of the Child

(21 June 2010, CRC/C/ARG/CO/3-4, Concluding observations on third/fourth report, paras. 46, 47 and 48)

“While noting the general principle in Act No. 26061 that children are 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 in 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, in schools, in alternative childcare and in places of detention for juvenile offenders, and that it implement those laws effectively. The Committee also recommends that the State party intensify its awareness-raising campaigns with a view to changing perceptions of 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 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

“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 to implement 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 consultations for Latin America, held in Buenos Aires from 30 May to 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....”

Human Rights Committee

(10 August 2016, CCPR/C/ARG/CO/5, Concluding observations on fifth report, paras. 15 and 16)

“The Committee is concerned by the fact that corporal punishment is not explicitly prohibited as a disciplinary measure in the home, in schools, in detention centres or in childcare institutions (arts. 7 and 24).

“The State party should take steps to put an end to corporal punishment in all domains. It should also promote non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns in order to raise awareness among the general public of the prohibition and harmful effects of corporal punishment.”

Prevalence/attitudinal research in the last ten years

According to UNICEF statistics collected in 2011-2012, 72% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Nearly half (46%) experienced physical punishment and 65% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted). A much smaller percentage (4%) of mothers and caregivers thought physical punishment was necessary in childrearing.

(UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF)

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*)