

# Corporal punishment of children in Chile

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Child population 4,398,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Chile's commitment to prohibiting corporal punishment

Chile expressed its commitment to prohibiting all corporal punishment of children in 2014 by accepting clearly the recommendations to do so made during the Universal Periodic Review. This was repeated during the third cycle Review in 2019. A Bill aiming to prohibit (Bulletin No. 10315-18) is under discussion in the Congress.

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care.

Article 234 of the Civil Code and article 57 of the Child Law 1967 confirm the “right to correct” of parents and others with parental responsibility. Amendments in 2008 failed to explicitly prohibit corporal punishment. This provision should be repealed or further amended – the near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable – and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

*Alternative care settings* – Article 57 of the Child Law 1967 confirms that the “right to correct” applies in care institutions and foster homes. Legislation should be enacted which clearly prohibits corporal punishment in all alternative care settings (foster care, institutions, places of safety, emergency care, etc), including through explicit repeal of the “right to correct”.

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. The Civil Code originally authorised parent to “correct and moderately punish” children. In 1999, this was amended to repeal the right to “moderately punish” but the “right of correction” remained in article 234. In 2008, this was further amended to state that correction excludes all forms of physical and psychological abuse (“maltrato físico y psicológico”) and shall be exercised in accordance with the Convention on the Rights of the Child. The Government has stated that this prohibits physical punishment of children.<sup>1</sup> However, there is no clear statement in law that all forms of corporal punishment, however “light”, amount to “abuse” in Chilean law: the amendment therefore protects children only from physical punishment which reaches some level of severity.

The Domestic Violence Act 2005<sup>2</sup> confirms the duty of the state “to guarantee the life, personal integrity and security of the members of the family”, including children (arts. 2 and 3), but there is no indication that the Act is intended to prohibit all corporal punishment in childrearing. The Criminal Code 1874 (amended 2017) protects children from some forms of violence, including in the home, but does not prohibit all corporal punishment in childrearing.

In 2014, the Government indicated its commitment to enacting prohibiting legislation by clearly accepting recommendations to prohibit corporal punishment in all settings made during the Universal Periodic Review of Chile.<sup>3</sup> In the same year a Civil Code Amendment Bill (Bulletin No. 9488-07) was under discussion that would amend article 234 of the Code to explicitly prohibit corporal punishment, but it defined corporal punishment in relation to the causing of injury to the child. The Bill was dropped before the end of the year. However, the National Council on Childhood has formally requested that this Bill be reactivated and improved, proposing an alternative text which does not limit the prohibition only to corporal punishment causing injury: “Parents will have the power to correct the children, taking care that it does not impair their health or personal development. This power excludes all forms of physical and psychological abuse. All forms of corporal punishment and cruel, humiliating or degrading treatment is prohibited...”. We do not have further information.

A Law against the abuse of children, adolescents, adults and disabled persons was voted by the Congress in March 2017. The Law amends the Criminal Code to strengthen the protection against assault, removing the criteria of injury and defining assault solely as “physical maltreatment” (unofficial translation). However the Law does not explicitly prohibit all corporal punishment of children.

The National Policy for Childhood 2015-2025 identifies moving “towards the eradication of all forms of violence and exploitation towards children and adolescents, including the eradication of corporal punishment” (unofficial translation) as a priority objective within the general aim “Protection, Reparation and Restitution of Rights” (unofficial translation). The National Plan of Action for Children and Adolescents (2018–2025) also identifies the prevention of violence and the promotion of good treatment as a priority but does not mention law reform. The National Plan on Human Rights 2018-

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<sup>1</sup> 10 November 2014, CRC/C/CHL/4-5, Fourth/fifth state party report, paras. 5, 21 and 101

<sup>2</sup> Law No. 20066

<sup>3</sup> 2 April 2014, A/HRC/26/5, Report of the working group, paras. 121(106), 121(107) and 121(108); 5 March 2014, A/HRC/26/5/Add.1, Report of the working group: Addendum, para. 4

2021 does not address corporal punishment. In 2019, Chile again supported recommendations to prohibit all corporal punishment made during the Universal Periodic Review.<sup>4</sup>

A draft law protecting the rights of children and adolescents (Bulletin No. 10315-18) was introduced to the Chamber of Deputies in September 2015 and is currently under discussion. In December 2016 the Family Committee of the Chamber of Deputies voted amendments to the Bill which now states: “Article 28 - Protection against violence. Every child has the right to be treated with respect. No child shall be subjected to violence, physical or mental ill-treatment, neglect or negligent treatment, abuse, sexual or otherwise, sale, trafficking, farms, corporal punishment, torture or any other offensive or degrading treatment, treatment especially in the family, school, healthcare, institutional and social areas. All forms of maltreatment to a child, including prenatal abuse, are prohibited and cannot be justified by any circumstances... The State shall take measures conducive to prevent, prohibit and punish civil, criminal or administrative, as appropriate, any form of corporal punishment or maltreatment.” In May 2017, the Bill was approved by the Chamber of Deputies and transmitted to the Senate.<sup>5</sup> As of October 2019, it was still under discussions in the Senate.<sup>6</sup>

A draft law creating a comprehensive statute against violence against children and adolescents (Bulletin No. 12416-31) was introduced in the Chamber of Deputies in January 2019 – as of October 2019, it is still under discussion there.<sup>7</sup> The Bill focuses on strengthening the existing child protection system. The definition of violence in article 1.2 of the Bill includes “physical, humiliating or denigrating punishment” (unofficial translation) and one of its key principles is the prohibition of all forms of violence (art. 4.1).

### **Alternative care settings**

Corporal punishment is lawful in alternative care settings. Article 57 of the Child Law 1967<sup>8</sup> confirms that the “right to correct” applies in care institutions and foster homes. Article 234 of the Civil Code as amended in 2008 protects children from some but not all corporal punishment (see under “Home”).

### **Day care**

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. The “right to correct” in article 234 of the Civil Code (see under “Home”) presumably applies to persons with parental authority in day care settings.

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<sup>4</sup> 2 April 2019, A/HRC/41/6, Report of the Working Group, paras. 125(199), 125(202), 125(203), 125(207) and 125(211); 25 June 2019, A/HRC/41/6/Add.1, Report of the Working Group: Addendum

<sup>5</sup> See the Chamber of Deputies’ website,

[https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10729&prmBoletin=10315-18](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10729&prmBoletin=10315-18), accessed 3 May 2017

<sup>6</sup> See the Senate’s website, [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10729](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10729), accessed 25 October 2019; see also 7 November 2018, A/HRC/WG.6/32/CHL/1, National report to the UPR, para. 73

<sup>7</sup> See [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=12949&prmBoletin=12416-31](https://www.camara.cl/pley/pley_detalle.aspx?prmID=12949&prmBoletin=12416-31), last accessed 25 October 2019

<sup>8</sup> Law No. 16618

## **Schools**

Corporal punishment is considered unlawful in schools, though it is not explicitly prohibited. Article 10(a) of the General Education Law 2010<sup>9</sup> states that students have the right “to respect for their physical and moral integrity, and may not be subject to humiliating or degrading treatment or punishment and psychological mistreatment” (unofficial translation). In 2011, the Law on School Violence<sup>10</sup> amended article 16 of the General Education Law to strengthen protection for children in school from violence, bullying and harassment, including by stating that any kind of physical or psychological violence against a student by a person in the educational community who holds a position of authority is particularly serious.

## **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 45 of the Juvenile Justice Act 2005 (unofficial translation): “Rules of internal order and security in detention centres. Adolescents will be subject to disciplinary rules issued by the authority to maintain security and order. These standards must be consistent with the rights recognised in the Constitution, the Convention on the Rights of the Child and other international treaties ratified by Chile. These rules govern the use of force on adolescents and must contain as a minimum: ... the prohibition of disciplinary measures constituting corporal punishment, placing in a dark cell, isolation or solitary confinement and any other punishment that may compromise the physical or mental health of the adolescents or is degrading, cruel or humiliating.”

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime under the Juvenile Justice Act 2005.<sup>11</sup>

## **Universal Periodic Review of Chile’s human rights record**

Chile was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>12</sup>

“Continue and strengthen efforts to bring the national legislation, in particular the Criminal Code, into line with ratified instruments (Ukraine);

“Ensure full compliance with all obligations assumed under the International Covenant on Civil and Political Rights as well as under all other international human rights treaties to which it is a Party and revise domestic legislation that may still be incompatible with these obligations (Germany)”

The second cycle review of Chile took place in 2014 (session 18). The following recommendations were made:<sup>13</sup>

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<sup>9</sup> Law No. 20370

<sup>10</sup> Law No. 20536

<sup>11</sup> Law No. 20084

<sup>12</sup> 4 June 2009, A/HRC/12/10, Report of the working group, paras. 96(6) and 96(8)

<sup>13</sup> 2 April 2014, A/HRC/26/5, Report of the working group, paras. 121(106), 121(107) and 121(108)

“Explicitly prohibit corporal punishment of children in all settings (Hungary);

“Explicitly prohibit corporal punishment of children in the home and in all alternative care settings (Liechtenstein);

“Adopt legislation prohibiting corporal punishment of children within the family (Madagascar)”

The Government accepted the recommendations.<sup>14</sup>

Third cycle examination took place in 2019 (session 32). The following recommendations were extended:<sup>15</sup>

“Prohibit corporal punishment of children in the home and in all alternative care settings, as previously recommended (Liechtenstein);

“Adopt measures to prohibit corporal punishment in all aspects of society, including in the home, and promote alternative non-violent disciplinary measures (Uruguay);

“Explicitly prohibit corporal punishment against children in all settings (Montenegro);

“Adopt a comprehensive law that explicitly prohibits corporal punishment against children (Republic of Moldova);

“Adopt a comprehensive law that prohibits corporal punishment against children in all settings (Slovenia)”

The Government supported the recommendations.<sup>16</sup>

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(2 October 2015, CRC/C/CHL/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 44 and 45)

“The Committee notes the proposed law to modify article 234 of the civil code intended to prohibit corporal punishment against children. However, it is concerned that the proposed amendment appears to prohibit only corporal punishment which is perceived to cause injury and that article 234, by recognizing parents’ right to correct children may allow parents to take certain corrective measures that can affect the physical and mental integrity of children.

“In the light of its general comment No. 8 (2006) on corporal punishment, and reiterating its previous recommendation (CRC/C/CHL/CO/3 para. 41), the Committee recommends that the State party adopt a comprehensive law that explicitly prohibits corporal punishment against children in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing.”

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<sup>14</sup> 5 March 2014, A/HRC/26/5/Add.1, Report of the working group: Addendum, para. 4

<sup>15</sup> 2 April 2019, A/HRC/41/6, Report of the Working Group, paras. 125(199), 125(202), 125(203), 125(207) and 125(211)

<sup>16</sup> 25 June 2019, A/HRC/41/6/Add.1, Report of the Working Group: Addendum

### ***Committee on the Rights of the Child***

(23 April 2007, CRC/C/CHL/CO/3, Concluding observations on third report, paras. 40 and 41)

“The Committee reiterates its previous concern (CRC/C/15/Add.173 paras. 31-32) and regrets that article 234 of the Civil Code appears to authorise corporal punishment in the home. Furthermore the Committee notes the lack of statistical data on the number of reported cases and is concerned that corporal punishment continues to occur in the home, as well as in schools and institutions.

“The Committee recommends that the State party, while taking due account of general comment No. 8 of the Committee on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006), amend article 234 of the Civil Code and enforce legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. The State party should also conduct awareness raising and public education campaigns against corporal punishment and promote non-violent, participatory methods of childrearing and education.”

### ***Committee on the Rights of the Child***

(1 February 2002, CRC/C/15/Add.173, Concluding observations on second report, paras. 31 and 32)

“The Committee is concerned that corporal punishment of children remains socially acceptable in Chile and it is still practised in families, schools and other institutions. It further notes that Chilean legislation does not expressly prohibit corporal punishment.

“In light of articles 3, 19, and 28 (2) of the Convention, the Committee encourages the State party to:

a) develop measures to raise awareness on the harmful effects of corporal punishment and engage in the promotion of alternative forms of discipline in families to be administered in a manner consistent with the child’s dignity and in conformity with the Convention; and

b) explicitly prohibit corporal punishment in the family, in schools and in other institutions.”

## **Prevalence/attitudinal research in the last ten years**

A 2015 UNICEF report shows high prevalence of psychological, physical and severe physical violence in child-rearing, more often inflicted by the mother than father (noting that mothers generally spend more time with children and are primarily responsible for parenting). The report found 44% of children had experienced psychological violence from their mother in the last year, 32% from their father; 35% had experienced physical violence from their mother in the last year, 20% from their father; and 15% had experienced severe physical violence from their mother in the last year, 12% from their father. The report found physical punishment tends to decrease as children get older, and children’s perception of physical punishment is linked to their experience of it: its use was justified by 53% of children who said they received severe physical punishment; 42% who received other physical punishment; 34% psychological punishment; and 25% who did not suffer violence.

(UNICEF (2015), *4º Estudio de Maltrato Infantil en Chile: Análisis Comparativo 1994-2000-2006-2012*, Santiago, Chile: UNICEF)

Research conducted for the Ministry of Interior and Public Security found 75% of children had experienced violence or abuse from a parent or caregiver in their lifetime, 42% in the last year; 70% psychological violence in their life, 27% in the last year; 53% physical violence in their life, 27% in the last year; and 25% severe physical violence in their life, 22% in the last year. The report did not specify the extent to which the violence was inflicted in the guise of “discipline”.

(GfK Adimark (2013), *Principales Resultados "Encuesta Nacional de Victimización por Violencia Intrafamiliar y Delitos Sexuales" Para: Ministerio del Interior y Seguridad Pública, Santiago, Chile: GfK Adimark*)

A 2012 study of men's childhood experiences of violence in Brazil, Chile, Croatia, India, Mexico and Rwanda, which involved men aged 18-59 living in urban settings, found a high prevalence of corporal punishment in all six countries. In Chile, of the 1,151 men who participated, 48% reported having been spanked or slapped by a parent in the home during childhood, 36% threatened with physical punishment in the home and 34% humiliated by someone in their family in front of other people; 27% reported having been beaten or physically punished at school by a teacher. The study found that men who had experienced violence, including corporal punishment, during childhood, were more likely to perpetrate intimate partner violence, hold inequitable gender attitudes, be involved in fights outside the home or robberies, pay for sex and experience low self-esteem and depression, and were less likely to participate in domestic duties, communicate openly with their partners, attend pre-natal visits when their partner is pregnant and/or take paternity leave.

(Contreras, M. et al (2012), *Bridges to Adulthood: Understanding the Lifelong Influence of Men's Childhood Experiences of Violence, Analyzing Data from the International Men and Gender Equality Survey*, Washington DC: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo)