



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

## **BRIEFING ON PERU FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Oct 2013**

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### **The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence**

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

**This briefing describes the legality of corporal punishment of children in Peru. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the recommendations of treaty monitoring bodies and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:**

- **raise the issue of corporal punishment of girls in its List of Issues for Peru, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Peru, in the concluding observations on the seventh/eighth state party report, that corporal punishment is explicitly prohibited in all settings, including the home, as a matter of priority.**

## 1 The state party's report to CEDAW

- 1.1 The seventh/eighth state report of Peru to CEDAW (CEDAW/C/PER/7-8) includes information concerning violence against women but makes no reference to corporal punishment – violence inflicted on girls and boys in the guise of discipline in childrearing and education.

## 2 The legality and practice of corporal punishment of children in Peru

- 2.1 *Summary*: In Peru, corporal punishment is unlawful in schools and as a sentence for crime but it is not prohibited in the home, alternative care settings, day care and penal institutions. The Government has expressed a commitment to prohibition in all settings but this has not yet been achieved.
- 2.2 *Home (lawful)*: The Code on Children and Adolescents 2000 states in article 74: “The duties and rights of parents who exercise custody include: ... (d) providing [children] with good examples and correcting them moderately. When this action is not sufficient, they can turn to the competent authority.” A similar provision in the Civil Code 1984 (as modified by the Code on Children and Adolescents) states in article 423: “Duties and rights of parents who have custody include ... (3) moderately correcting their children, and, when this is not sufficient, seeking assistance from judicial authorities, requesting that the child be placed in an establishment dedicated to the reeducation of children and adolescents.” Provisions against violence and abuse in the Criminal Code 1991, the Code on Children and Adolescents, the Constitution and the Law on Protection against Domestic Violence 2000 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.3 A large scale national study in 2011 found that physical punishment was the third most common type of punishment, inflicted by 31.7% of biological fathers and 35.6% of biological mothers; 62% of the mothers interviewed said they had been hit by their parents as children; 18% believed that physical punishment was necessary to bring up their children, compared with 33.4% in 2000.<sup>1</sup> A 2011 study carried out in Lima, Huancayo and Iquitos found that 27% of the children involved had been struck with an object at home and 6.4% of children had suffered serious injury, such as cuts or burns.<sup>2</sup> In interview research with young children (4-5 years) in 2004, 96% reported having been physically punished for “bad behaviour”.<sup>3</sup>
- 2.4 In December 2007, Congress gave all-party support to law reform to prohibit corporal punishment in all settings. The Government accepted recommendations to prohibit corporal punishment made during the Universal Periodic Review in 2012.<sup>4</sup> In the same year, draft amendments to the Code on Children and Adolescents were under consideration which would protect the child's right to integrity, the right of students to be respected by their educators and explicit prohibition of corporal punishment.
- 2.5 *Alternative care settings (lawful)*: There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents (see para. 2.2). As part of a 2012 assessment by SOS Children's Villages of the implementation of the UN Guidelines for the Alternative Care of Children, the Ombudsman reported that children in residential care experienced physical punishment including limitation of food and were also

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<sup>1</sup> Instituto Nacional de Estadística e Informática (2011), *Perú: Encuesta Demográfica y de Salud Familiar 2011*

<sup>2</sup> Reported in *Catholic Review*, 6 September 2012

<sup>3</sup> Base line project sponsored by Save the Children Canada and Save the Children UK in San Juan de Lurigancho – Lima, reported in International Save the Children Alliance (2005), *Ending Physical and Humiliating Punishment of Children – Making it Happen: Global Submission to the UN Study on Violence against Children*, Save the Children Sweden

<sup>4</sup> 27 December 2012, A/HRC/22/15, Report of the working group, paras. 116(9), 116(10), 116(11), 116(12), 116(13) and 116(50)

punished by having their free time or study time reduced, being forced to do domestic work and having family visits limited or stopped.<sup>5</sup>

- 2.6 *Day care (?partial prohibition)*: There is no explicit prohibition of corporal punishment in early childhood care or in day care for older children. It is possibly considered unlawful in preschool provision under education law (see para. 2.7).
- 2.7 *Schools (unlawful)*: Corporal punishment is considered unlawful in schools but it is not explicitly prohibited. Supreme Decree No 007-2001-ED, Approval of Norms for the Management and Development of Activities in Educational Centres and Programmes 2001 states that corporal punishment should not be used in schools, but there is no explicit prohibition in law. Under the Code on Children and Adolescents 2000 the goal of education is the person's development and his or her dignity and fundamental rights and freedoms must be respected (article 15), and children must be respected by their teachers (article 16). The child's dignity and physical well-being is also provided for in the General Education Law 2003 (article 53) and the Constitution (article 15).
- 2.8 *Penal institutions (lawful)*: There is no explicit prohibition of corporal punishment of children and young persons as a disciplinary measure in penal institutions. Article 240 of the Code on Children and Adolescents 2000 allows the adolescent to challenge disciplinary measures in detention but does not prohibit corporal punishment. There is no provision for corporal punishment in the Penal Execution Code, which allows for re-education, reincorporation and treatment of the prisoner (article 2).
- 2.9 *Sentence for crime (unlawful)*: Corporal punishment is not among permitted measures in the Code on Children and Adolescents 2000 or the Criminal Code 1991. Article 2 of the Constitution prohibits torture and inhuman or humiliating treatment.

### **3 Recommendations by human right treaty monitoring bodies and during the UPR**

- 3.1 *CRC*: The Committee on the Rights of the Child has twice recommended to Peru that all corporal punishment be prohibited in the home and other settings – in its concluding observations on the state party's second report in 2000<sup>6</sup> and the third report in 2006.<sup>7</sup>
- 3.2 *CAT*: In 2013, the Committee Against Torture recommended that corporal punishment of children in Peru be prohibited in all settings including the home.<sup>8</sup>
- 3.3 *UPR*: The Government accepted recommendations to prohibit corporal punishment made during the UPR of Peru in 2012.<sup>9</sup>

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<sup>5</sup> SOS Children's Villages International (2012), *A Snapshot of Alternative Care Arrangements in Peru*, Innsbruck: SOS Children's Villages International

<sup>6</sup> 22 February 2000, CRC/C/15/Add.120, Concluding observations on second report, para. 22

<sup>7</sup> 14 March 2006, CRC/C/PER/CO/3, Concluding observations on third report, paras. 42 and 43

<sup>8</sup> 21 January 2013, CAT/C/PER/CO/6, Concluding observations on fifth/sixth report, para. 20

<sup>9</sup> 27 December 2012, A/HRC/22/15, Report of the working group, paras. 116(9), 116(10), 116(11), 116(12), 116(13) and 116(50)