

**BRIEFING FROM THE GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING ON BRAZIL FOR THE COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – February/March 2012**

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

The human rights obligation to prohibit corporal punishment of girls and boys

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),¹ addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”. This briefing describes the legality of corporal punishment of children in Brazil and urges the Committee on the Elimination of Discrimination Against Women to include the issue in its examination of the state party’s implementation of the Convention.

Corporal punishment of children in Brazil

In Brazil, corporal punishment of children is unlawful as a sentence for crime, but it is not prohibited in the home, schools, penal institutions or alternative care settings. The seventh state party report to the Committee on the Elimination of Discrimination Against Women (CEDAW/C/BRA/7) describes efforts to address the problem of violence against women and children, but makes no reference to the violence that may lawfully be inflicted on girls in the name of discipline.

With regard to corporal punishment in the home, article 1.638 of the Civil Code (2002) states that “immoderate” punishment of children can result in a loss of parental authority, thereby allowing “moderate” punishment of children. Provisions against violence and abuse in the Criminal Code (1940), the Code on Children and Adolescents (1990), the Law on Domestic and Family Violence against Women (2006, The Maria da Penha Law) and the Constitution (1988) are not interpreted as prohibiting all corporal punishment in childrearing.

In schools, the Code on Children and Adolescents protects children from inhuman, violent, terrifying and humiliating treatment (article 18) and states that children have a right to be respected by educators (article 53), but it does not explicitly prohibit corporal punishment.

In the penal system, corporal punishment is unlawful as a sentence for crime but it is not explicitly prohibited as a disciplinary measure in penal institutions. The Code on Children and Adolescents recognises the right of adolescents deprived of their liberty to be treated with respect and dignity (article 124) and charges the state with responsibility for ensuring their physical and mental integrity (article 125), but there is no explicit prohibition of physical punishment in detention centres. Research has found that children in conflict with the law are frequently beaten during and after arrest and when detained in juvenile detention centres.²

¹ General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” is available at www2.ohchr.org/english/bodies/crc/comments.htm.

² Human Rights Watch (2003), *Cruel Confinement: Abuses against detained children in Northern Brazil*; Human Rights Watch (2004), “*Real dungeons*”: *Juvenile Detention in the State of Rio de Janeiro*, vol. 16, no. 7

There is no explicit prohibition of corporal punishment in alternative care settings. Article 1.638 of the Civil Code (see above) presumably applies to persons with parental authority in alternative care settings.

A 2003 bill which would have achieved prohibition in all settings, including the home, failed to proceed to the Senate in 2006. In July 2010, President Luiz Inacio Lula da Silva, before leaving office, submitted a bill to Congress which would prohibit in all settings but as at May 2011 law reform has not been achieved.

Recommendations by human rights treaty monitoring bodies

In its concluding observations on the state party's initial report in 2004, the Committee on the Rights of the Child expressed concern at the practice and legality of corporal punishment and recommended explicit prohibition in all settings, including the family (CRC/C/15/Add.241, paras. 42 and 43).

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 Brazil, in particular asking what legislative and other measures have been taken by the state party to prohibit and eliminate corporal punishment, to ensure girls enjoy their rights as human beings to respect for their human dignity and physical integrity and to equal protection under the law.

In light of General Recommendation No. 19 on Violence against women adopted by the Committee on the Elimination of Discrimination Against Women in 1992, of the links between corporal punishment of children and all other forms of violence including gender-based violence, and of the Committee on the Rights of the Child's General Comment No. 8 (2006), we hope the Committee will subsequently recommend to the state party that explicit prohibition of all corporal punishment of children be enacted in relation to all settings, including the home and all alternative care settings, as a matter of urgency.

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