

# Ending family violence in Chile – challenging physical punishment of girls and boys



Global Initiative to  
End All Corporal Punishment  
of Children

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 69<sup>th</sup> session, from the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), June 2017

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## Introduction: family violence in Chile and CEDAW's examination of the seventh state party report

Legal protection from domestic violence is provided for in the Domestic Violence Act 2005. However, there is no clear prohibition of all violent punishment and parents' "right of correction" is recognised in the Civil Code. Until this "right" – which underpins widespread social and legal acceptance of violent punishment of girls and boys and undermines efforts to promote zero-tolerance of domestic violence – is explicitly repealed, some level of violence will always be lawful in the home and elimination of domestic violence will remain an impossibility.

**We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Chile. In particular, we hope the Committee will:**

- in its list of issues for Chile, ask what progress is being made towards ensuring the Bill on the rights of children and adolescents explicitly repeals the "right of correction" so that children as well as adults have legal protection from violent assault, and
- in its concluding observations on the seventh state party report, recommend that Chile ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members and repeal the "right of correction".

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Chile
  2. Treaty body and UPR recommendations on the issue made to Chile to date.
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## 1 Laws on domestic violence and corporal punishment of children in Chile

### Summary

1.1 Protection from family violence in Chile is provided for in the Domestic Violence Act 2005 and the Criminal Code (amended 2017). However, there are still references in legislation of a “right to correct” children and no clear prohibition of all corporal punishment. A Bill on the rights of children and adolescents which would prohibit is currently being discussed by the Senate.

### Detail

1.2 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.

1.3 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); the Criminal Code 1874 (amended 2017) protects children from some forms of violence, including in the home, but neither prohibit all corporal punishment in childrearing. A Law against the abuse of children, adolescents, adults and disabled persons was voted by the Congress in March 2017 which amended 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.

1.4 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).

1.5 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. The current draft text prohibits “any form of corporal punishment” (art. 28), but does not explicitly repeal the “right of correction”. In May 2017, the Bill was approved by the Chamber of Deputies and transmitted to the Senate.<sup>3</sup>

**1.6 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Chile to enact the Bill on the rights of children and adolescents as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal the “right of correction”.**

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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> 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

## **2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review**

- 2.1 Recommendations to prohibit and eliminate all corporal punishment of children have on three occasions been made to Chile by the Committee on the Rights of the Child – in 2002, in 2007 and again in 2015.<sup>4</sup>
- 3.2 During the Universal Periodic Review of Chile in 2014, a number of recommendations were made to explicitly prohibit corporal punishment of children, with specific reference to the home/family and to alternative care settings.<sup>5</sup> The Government accepted all of these recommendations.<sup>6</sup>

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<sup>4</sup> 1 February 2002, CRC/C/15/Add.173, Concluding observations on second report, paras. 31 and 32; 23 April 2007, CRC/C/CHL/CO/3, Concluding observations on third report, paras. 40 and 41; 2 October 2015, CRC/C/CHL/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 44 and 45

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

<sup>6</sup> 5 March 2014, A/HRC/26/5/Add.1, Report of the working group: Addendum, para. 4