1 The human rights obligation to prohibit corporal punishment

1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in Chile. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the repeated recommendations to Chile by the Committee on the Rights of the Child, and the Government’s acceptance of relevant recommendations made during its Universal Periodic Review in 2009, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for Chile, in particular asking what measures are being taken to ensure that the law explicitly prohibits all corporal punishment without exception, and
- recommend to Chile, following its examination of the state party’s sixth report, that legislation is enacted and enforced which explicitly prohibits all corporal punishment, however light, in the home and alternative care settings, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.
2 Legality of corporal punishment of children in Chile

2.1 Corporal punishment of children in Chile is unlawful in schools and in the penal system but it is not fully prohibited in the home and alternative care settings.

2.2 Home (lawful). Article 234 of the Civil Code provides for parents’ “right to correct” their children. In 2008, this was amended to state that this 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. However, there is no clear prohibition of corporal punishment which does not reach the threshold of “abuse”. The Domestic Violence Act 2005 (Law No. 20066) confirms the duty of the state “to guarantee the life, personal integrity and security of the members of the family”, including children (articles 2 and 3), but there is no indication that the Act is intended to prohibit all corporal punishment in childrearing.

2.3 Schools (unlawful). Article 10 of the General Education Law 2010 (Law No. 20370) 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).

2.4 Penal system – sentence for crime (unlawful). Corporal punishment is unlawful under the Juvenile Justice Act 2005 (Law No. 20084).

2.5 Penal system – disciplinary measure in penal institutions (unlawful). Article 45 of the Juvenile Justice Act 2005 prohibits corporal punishment (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 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.”

2.6 Alternative care settings (lawful). Corporal punishment is lawful as for parents. Article 57 of the Child Law 1897 (Law No. 16618) confirms that the “right to correct” applies in care institutions and foster homes.

3 Recommendations by human rights treaty monitoring bodies and during the Universal Periodic Review

3.1 The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Chile and recommended it be explicitly prohibited in all settings including the home – following examination of the state party’s second report in 2002 and the third report in 2007.  

3.2 Chile was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made specifically concerning corporal punishment but the

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1 February 2002, CRC/C/15/Add.173, Concluding observations on second report, paras. 31 and 32
2 23 April 2007, CRC/C/CHL/CO/3, Concluding observations on third report, paras. 40 and 41
Government accepted the recommendations to harmonise domestic legislation with international human rights standards.\(^3\)

\(^3\) 4 June 2009, A/HRC/12/10, Report of the working group, paras. 96(6) and 96(8)