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 Bolivia. 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 Bolivia by the Committee on the Rights of the Child, and Bolivia’s acceptance of the recommendation to prohibit made during its Universal Periodic Review in 2010, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children in its List of Issues for Bolivia, in particular asking what measures have been taken to ensure the law explicitly prohibits corporal punishment in all settings, e.g. in the context of current revisions to the Children and Adolescents Code, and

- recommend to Bolivia, following its examination of the state party’s third report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, 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 Bolivia

2.1 Corporal punishment of children in Bolivia is unlawful in schools but it is not yet fully prohibited in penal institutions, care settings and within the home. It is unlawful as a sentence for crime under state law but its legality in the traditional justice systems of indigenous communities is unclear.

2.2 With regard to the home, article 276 of the Criminal Code states: “No aggression will be punished if the victim of the aggression is not seriously hurt and the aggressor is husband or wife, parent or grandparent, child or grandchild, sibling, close relative, political sibling, and if they are living together.” Article 19 of the Children and Adolescents Code (1999) puts a duty on the state to protect the child from “all forms of physical or mental or physical abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while the child is in the custody of the parent, legal guardian or any other person” (unofficial translation), and article 109 states that a child is considered to have been abused when he has been harmed “physically, psychologically, mentally or morally, whether for discipline or education”. However, these provisions protect children only from corporal punishment which is considered to cause harm; less severe corporal punishment is legally justifiable under the above quoted article 276 of the Criminal Code.

2.3 The Constitution (2009) states that no person shall suffer cruel, inhuman, degrading or humiliating treatment (article 15) and “prohibits all forms of violence against children and adolescents in the family and in society” (article 61). Under examination by the Committee on the Rights of the Child in 2009, the Government suggested that this prohibits corporal punishment of children but also confirmed that other legislation should be reformed to achieve full prohibition in law. In 2010, the Government accepted the recommendation made during the UPR to prohibit all corporal punishment (see below).

2.4 Corporal punishment is unlawful in schools under Supreme Decree No. 212/2414 of 21 April 1993 on teacher misconduct and punishments, which categorises its use as “serious misconduct”. Article 61 of the Constitution applies (see above), and article 109 of the Children and Adolescents Code states that “a child or adolescent is the victim of abuse when … school discipline fails to respect his or her dignity and integrity”.

2.5 In the penal system, there is no provision for judicial corporal punishment in the Criminal Code, the Juvenile Code (1992), the Children and Adolescents Code or the Law on the Public Ministry (2001). However, sentences of corporal punishment are traditionally ordered by community elders in indigenous justice systems. The Constitution establishes Bolivia as a “plurinational republic” and recognises the right of indigenous peoples to self-determination; article 214 of the Children and Adolescents Code states with regard to juvenile justice that in the case of children and adolescents from ethnic groups or indigenous or native communities, their traditions and customs shall be taken into account “provided they do not conflict with the state Constitution, this Code and applicable laws”. We do not know whether corporal punishment under traditional justice systems would be lawful under the Constitutional right of indigenous persons to self-determination or unlawful under the Constitutional prohibition of cruel, inhuman, degrading or humiliating treatment and the prohibition of violence and abuse in the Children and Adolescents Code (see above).

2.6 There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. Article 109 of the Children and Adolescents Code prohibits only corporal punishment which is considered harmful. Article 296 of the Code of Criminal

1 UN press release, 17 September 2009
Procedure states that police officers must use force “only when strictly necessary” should not “inflict, instigate or tolerate any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, either at the time of arrest or during detention”. Supreme Decree No. 26715 (2002) regulates the treatment of prisoners in the corrections system; subsequent regulations, together with Circular No. 10/2009, reportedly tighten the restrictions on the punishment of persons deprived of their liberty but we have yet to establish whether or not they explicitly prohibit corporal punishment.

2.7 Corporal punishment is lawful in alternative care settings. Article 109 of the Children and Adolescents Code prohibits only corporal punishment which is considered harmful.

3 Immediate opportunities for prohibiting corporal punishment in Bolivia

3.1 The Children and Adolescents Code is being revised. We have yet to ascertain whether proposed amendments include prohibition of corporal punishment but this revision provides an immediate opportunity for achieving the necessary law reform to prohibit all corporal punishment of children, including in the home and including in indigenous communities. We hope the Committee will strongly urge the Government of Bolivia to take every effort to ensure that prohibition is included in the draft amendments to the Code and in the revised Code as enacted.

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

4.1 The Committee on the Rights of the Child has repeatedly raised the issue of corporal punishment in Bolivia and made recommendations three times – in its concluding observations on the initial report in 1998, the second report in 2005 and the third report in 2009. In 2009, the Committee urged the Bolivian Government to ensure that both positive and indigenous customary law meet the obligations under the Convention regarding corporal punishment and recommended law reform to prohibit corporal punishment in all settings, including the home.

4.2 During the Universal Periodic Review of Bolivia in 2010, the Government accepted the recommendation to “prohibit all forms of corporal punishment”. However, the Government’s review of implementation of the recommendations did not refer to corporal punishment.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org; info@endcorporalpunishment.org

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2 5 March 2012, CAT/C/BOL/2, Second state party report to the Committee Against Torture, para. 147
3 26 October 1998, CRC/C/15/Add.95, Concluding observations on initial report, para. 21
4 11 February 2005, CRC/C/15/Add.256, Concluding observations on second report, paras. 35 and 36
5 16 October 2009, CRC/C/BOL/CO/4, Concluding observations on fourth report, paras. 6, 7, 8, 40, 41 and 42
6 ibid., paras. 8, 41 and 42
7 15 March 2010, A/HRC/14/7, Report of the Working Group, para. 98(36)
8 Mid-term report on implementation of the recommendations, June 2010