



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

**BRIEFING ON CUBA FOR THE COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
PRESESSIONAL WORKING GROUP – October 2012**

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

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),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 Cuba. 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, Cuba’s acceptance of the recommendations made during the UPR in 2008 to harmonise legislation with human rights standards, and the current opportunities for achieving law reform as described in this briefing, 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 Cuba, asking what progress has been made towards prohibiting and eliminating all corporal punishment in all settings, including the home, and**
- **recommend to Cuba, in the concluding observations on the seventh/eighth state party report, that all corporal punishment be explicitly prohibited in the home and all forms of care as a matter of priority.**

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.

1 Cuba's seventh/eighth report to CEDAW

1.1 The seventh/eighth report of Cuba to CEDAW (14 April 2012, CEDAW/C/CUB/7-8) describes legal and other measures aimed at combating violence against women and girls. It refers to the drafting of a new Family Code which is intended to harmonise the Code with the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child and includes an "expansion" of the "duties and rights inherent in parental authority, custody and care of minors" (para. 313). The report makes no reference to corporal punishment of children – violence which may lawfully be inflicted on girls and boys in the home and other settings under the guise of "discipline".

2 The legality of corporal punishment of children in Cuba

2.1 In Cuba, corporal punishment of children is unlawful in the penal system, schools and possibly care institutions but it is lawful in the home and some forms of care.

2.2 In the **home**, the Family Code (1975) permits "adequate and moderate correction" of children by parents (article 86) and guardians (article 152).

2.3 With regard to **schools**, the Government has stated that corporal punishment is prohibited in schools, but we have yet to verify that prohibition is explicit. In commenting on recommendations issued in 2011 by the Committee on the Rights of the Child, the Government stated that Resolution 165/2006 of the Ministry of Education approving the Regulations on the discipline of work in educational activities (Resolución 165 de 2006 del Ministerio de Educación que aprueba el Reglamento Ramal de la disciplina del trabajo en la actividad educacional) prohibits corporal punishment in schools.²

2.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. Article 30(11) of the Criminal Code states that "those sanctioned may not be subjected to corporal punishment, nor is it admissible to employ against them any measure entailing humiliation or a loss of dignity".³

2.5 Corporal punishment is lawful in **alternative care settings** under the right of correction of guardians in the Family Code (see above). In 2011 the Government stated to the Committee on the Rights of the Child that corporal punishment is prohibited in institutions but cited only the above mentioned Resolution relating to education.⁴

3 Immediate opportunities for achieving law reform to prohibit corporal punishment

3.1 As noted above, a draft new Family Code is under consideration and proposed amendments are in part focused on the concept of parenthood. This provides an immediate opportunity for the Government to fulfil its obligation under human rights law to give girls and boys the same legal protection from assault that adults already enjoy.

3.2 Indications are that the Government intends to ensure that the law no longer condones corporal punishment of children by parents and guardians. In its written replies to the

² Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contentivo de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8

³ Report to CRC 2009, para. 233; also report to CAT 2011

⁴ Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contentivo de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8

Committee on the Rights of the Child in 2011, the Government stated that the draft Family Code removes the provision for “adequate and moderate correction” of children.⁵

3.3 Given the near universal longstanding and widespread acceptance of corporal punishment in childrearing, and as the Committee on the Rights of the Child confirms in its General Comment on the issue, it is vital that the repeal of the legal defence for the use of corporal punishment in childrearing is not a “silent” reform but is accompanied by explicit prohibition of all corporal punishment by parents and others with parental authority.⁶ This ensures that the law sends a clear message that no form of corporal punishment is acceptable or lawful, by any person in any place.

We hope the Committee on the Elimination of Discrimination Against Women will encourage the Government of Cuba in its efforts to reform the law and emphasise the importance of explicitly prohibiting all corporal punishment as well as repealing the provision for “adequate and moderate correction” in the draft new Family Code.

4 Recommendations by human right treaty monitoring bodies

4.1 Following examination of Cuba’s initial report in 1997, the **Committee on the Rights of the Child** expressed concern at violence against children and recommended that the state party take measures to protect children including through a public information campaign to prevent corporal punishment.⁷ In its concluding observations on the second report in 2011, the Committee expressed concern at the use of corporal punishment in schools and social institutions and at the legality of corporal punishment in the home, and recommended that all forms of corporal punishment be explicitly banned.⁸ In a written response, the Government of Cuba strongly objected to the statement that corporal punishment is used in schools and social institutions, stating that no law permits corporal punishment and that it is prohibited in these settings. The Government cited a 2006 ministerial resolution relating to schools but gave no legal details concerning prohibition in social institutions (see section 2 above).⁹

4.3 Cuba was examined in the first cycle of the **Universal Periodic Review** in 2009 (session 4). The Government accepted recommendations to “continue its action to align, to strengthen and to make compatible national legislation with its international obligations in accordance with the treaties to which it is a party”, to “conduct a study on the need for legislative and administrative adjustments for the domestic implementation of human rights” and to “continue its implementation of measures designed to further promote and protect the rights of children”.¹⁰

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www.endcorporalpunishment.org; info@endcorporalpunishment.org
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⁵ 27 April 2011, CRC/C/CUB/Q/2/Add.1, Written replies to the Committee on the Rights of the Child, para. 36

⁶ 21 August 2006, CRC/C/GC/8, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), paras. 34 and 35

⁷ 18 June 1997, CRC/C/15/Add.72, Concluding observations on initial report, paras. 19 and 35

⁸ 20 June 2011, CRC/C/CUB/CO/2 Advance Unedited Version, Concluding observations on second report, paras. 36 and 37

⁹ Opiniones del Gobierno de la República de Cuba sobre el documento CRC/C/CUB/CO/2 contentivo de las Observaciones finales del Comité de los Derechos del Niño sobre el segundo Informe periódico de Cuba (?2011), pp. 7-8

¹⁰ 3 March 2009, A/HRC/11/22, Report of the Working Group, para. 130(2), 130(3), 130(4) and 130(6)