

Corporal punishment of children in El Salvador: Briefing for the Universal Periodic Review, 20th session, 2014

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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In El Salvador, law reform to date has failed to achieve clarity that all corporal punishment of children is prohibited, despite recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities and during the Universal Periodic Review of El Salvador in 2010 (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in El Salvador. We hope states will raise the issue during the review in 2014 and make a specific recommendation that the “right of correction” be explicitly repealed from the Family Code, the Criminal Code and the Law for the Protection of Children and Adolescents.

1 The initial review of El Salvador by the Human Rights Council (2010)

- 1.1 El Salvador was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the summary of stakeholders information.¹ The Government accepted the recommendation “to take specific measures to prohibit corporal punishment of children in all settings, including at home”.²
- 1.2 Law reform to prohibit corporal punishment in all settings, as the Committee on the Rights of the Child confirms in its General Comment No. 8 (2006),³ must involve not only clear prohibition of corporal punishment but also the explicit repeal of all legal provisions which provide a defence for its use in childrearing, such as a “right to administer punishment” or impose “reasonable chastisement”, etc. However, law reform in El Salvador has failed to achieve this, sending a confusing message: the right of children not to be subjected to corporal punishment is confirmed, but so too is the parental “right of correction”. **We respectfully urge members of the Working Group to make specific**

¹ 25 November 2009, A/HRC/WG.6/7/SLV/3, Summary of stakeholders' information, paras. 5 and 21

² 18 March 2010, A/HRC/14/5, Report of the working group, para. 81(38)

³ Committee on the Rights of the Child (2006), General Comment No. 8 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)”

recommendations to El Salvador that the “right of correction” is explicitly repealed from all relevant legislation.

2 Legality and practice of corporal punishment in El Salvador

- 2.1 **Summary:** In El Salvador, corporal punishment of children is unlawful in schools, some day care and the penal system, but it is not clearly prohibited in the home, alternative care settings and some forms of day care, where the law provides for a “right of correction”.
- 2.2 **Home (lawful):** Article 215 of the Family Code 1994 states that “it is the parents’ duty to correct their children appropriately and moderately”. Article 204 of the Criminal Code 1997 recognises a “right of correction” and punishes its abuse. The Law for the Integral Protection of Children 2009 explicitly prohibits corporal punishment but confirms that this does not affect the “right of correction”, stating in article 38 that children and adolescents “should be treated with respect for their person and individuality and may not be subjected to corporal punishment, psychological or any other form of offence which infringes their dignity, *without prejudice to the right of the mother and father to direct, guide moderate and correct accordingly*” (unofficial translation, emphasis added).
- 2.3 In 2009, the Government reported that various courts have ruled that corporal punishment goes beyond adequate and moderate correction and therefore that article 215 of the Family Code excludes corporal punishment in childrearing, but the Government also acknowledged the need for law reform.⁴ As noted above, the Government subsequently accepted the recommendation to prohibit corporal punishment in all settings including the home made during the UPR in 2010.⁵
- 2.4 **Alternative care settings (lawful):** There is no explicit prohibition of all corporal punishment. Article 38 of the Law for the Integral Protection of Children 2009 protects children from some but not all corporal punishment; article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 similarly confirm a “right of correction” (see para. 2.2). These defences are potentially available to guardians and others with parental responsibility.
- 2.5 **Day care (partial prohibition):** There is no explicit prohibition of all corporal punishment in early childhood care and in day care for older children, with the exception of preschool provision where the prohibition of corporal punishment in the General Law on Education 1996 is applicable (see para. 2.6). In other day care, article 38 of the Law for the Integral Protection of Children 2009 protects children from some but not all corporal punishment and article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 similarly confirm a “right of correction” (see para. 2.2). These defences are potentially available to guardians and others with parental responsibility.
- 2.6 **Schools (prohibited):** Corporal punishment is prohibited in article 90 of the General Law on Education 1996 (amended 2000), according to which learners have the right to “be treated with fairness and respect and not to be subjected to corporal punishment, humiliation, physical or mental abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse” (unofficial translation). The prohibition is confirmed in article 89 of the Law for the Integral Protection of Children 2009.

⁴ 21 December 2009, CRC/C/SLV/Q/3-4/Add.1, Reply to list of issues, paras. 67 and 68

⁵ 18 March 2010, A/HRC/14/5, Report of the working group, para. 81(38)

2.7 **Penal institutions (prohibited)**: Article 128(2) of the Prisons Act states: “Disciplinary measures shall be imposed in such a way that they do not affect prisoners’ health or dignity. Corporal punishment, such as confinement in a dark cell, or any other cruel, inhuman or degrading treatment or punishment, is prohibited....” According to article 26 of the General Regulations for Detention Centers for Juvenile Offenders 1995, “the staff of the centers, in carrying out their duties, must respect and protect the dignity and basic human rights of all the children” and authorities must not “instigate or tolerate any act of physical, sexual or emotional abuse, punishment or cruel, inhuman or degrading corrective measure or discipline.” Article 118 of the Juvenile Offenders Act 1995 also prohibits corporal punishment.

2.8 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child first expressed concern about corporal punishment of children in El Salvador and made recommendations for its prohibition and elimination in 2004.⁶ The Committee raised the issue again in 2010 and recommended that corporal punishment be prohibited in all places.⁷

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

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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁶ 30 June 2004, CRC/C/15/Add.232, Concluding observations on second report, paras. 35, 36, 43 and 44

⁷ 17 February 2010, CRC/C/SLV/CO/3-4, Concluding observations on third/fourth report, paras. 9, 29, 45, 54 and 55