

# Corporal punishment of children in Guatemala: Briefing for the Universal Periodic Review, 28<sup>th</sup> session, 2017

*From the Global Initiative to End All Corporal Punishment of Children, March 2017*



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 Guatemala, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, and the recommendations made during the 2<sup>nd</sup> cycle UPR of Guatemala in 2012 (which the Government accepted).**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Guatemala. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Guatemala clearly prohibit corporal punishment of children in all settings and repeal all existing legal defences.**

## **1 Review of Guatemala in the 2<sup>nd</sup> cycle UPR (2012) and progress since**

1.1 Guatemala was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders' information.<sup>2</sup> The Government accepted two recommendations to explicitly prohibit corporal punishment of children in all settings.<sup>3</sup>

1.2 A Bill was introduced in Congress in October 2016; it aims to prohibit all forms of physical and humiliating punishment of children and to amend the Civil Code. Although we welcome these efforts at law reform, it is important that all legal defences, including the one contained in the Law on Integral Protection of Children and Adolescents, are repealed and that a clear prohibition of all corporal punishment, however light, is included in the Bill.

**1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Guatemala. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Guatemala clearly prohibit corporal punishment of children, however light, in all settings and repeal the legal defences in the Civil Code and in the Law on Integral Protection of Children and Adolescents.**

<sup>1</sup> 13 August 2012, A/HRC/WG.6/14/GTM/2, Compilation of UN information, para. 34

<sup>2</sup> 25 July 2012, A/HRC/WG.6/14/GTM/3, Summary of stakeholders' views, para. 33

<sup>3</sup> 31 December 2012, A/HRC/22/8, Report of the working group, paras. 99(56) and 99(57)

## 2 Legality of corporal punishment in Guatemala

### ***Summary of current law and opportunities for achieving prohibition***

Corporal punishment of children in Guatemala is unlawful in the penal system, but it is not yet prohibited in the home, alternative care settings, day care and schools. A draft Bill which would prohibit is currently being examined in Congress.

- 2.1 ***Home (lawful)***: Article 13 of the Law on Integral Protection of Children and Adolescents 2003 provides for the rights and duties of parents to “guide, educate and correct the child or adolescent using prudent means of discipline that do not violate their dignity and integrity”. Article 253 of the Civil Code 1963 states that parents must “educate and correct” their children “using prudent means of discipline”. These provisions provide a legal defence for the use of corporal punishment in childrearing; the provision against violating a child’s dignity does not achieve prohibition of all corporal punishment. Article 53 of the Law on Integral Protection of Children and Adolescents confirms the right of the child not to be subjected to any form of violence, cruelty or oppression and to be protected from all forms of abuse but it does not explicitly prohibit all corporal punishment in childrearing. Provisions in the Penal Code condemning assault and abuse of children are not interpreted as prohibiting corporal punishment.
- 2.2 The Government accepted a recommendation to explicitly prohibit corporal punishment in the home made during the Universal Periodic Review (UPR) of Guatemala in 2008, but also indicated that it considered existing legislation adequate in this respect.<sup>4</sup> In 2012, the Government again accepted UPR recommendations to prohibit, and education and awareness programmes have been undertaken to address corporal punishment in the home. As at February 2017, a bill aimed at prohibiting all forms of physical and humiliating punishment of children has been drafted by a group of parliamentarians and is now being examined in the Committee for Human Rights of the Congress.
- 2.3 ***Alternative care and day care settings (lawful)***: There is no explicit prohibition of corporal punishment in alternative and day care settings, where corporal punishment is lawful as for parents under the right to “correct” in article 13 of the Law on Integral Protection of Children and Adolescents 2003 and article 253 of the Civil Code 1963.
- 2.4 ***Schools (lawful)***: Corporal punishment is lawful in schools, including military schools. Article 1 of the National Education Law 1991, Legislative Decree No. 12-91, recognises the child’s right to dignity in the educational system, but there is no explicit prohibition of corporal punishment.
- 2.5 ***Penal institutions (unlawful)***: Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 260 of the Law on Integral Protection of Children and Adolescents 2003: “During the implementation of sanctions, the adolescent will, at least, have the following rights: ... (e) (8) Right not to be incommunicado in any case, nor to be subjected to solitary confinement or the imposition of corporal punishment....”

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<sup>4</sup> 29 May 2008, A/HRC/8/38, Report of the working group, paras. 52 and 17; 31 December 2012, A/HRC/22/8, Report of the working group, paras. 99(56) and 99(57)

2.6 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in the Law on Integral Protection of Children and Adolescents 2003. Corporal punishment is imposed as a sentence in Mayan justice but this appears to be unlawful. The use of the whip (*Xik'ay'*) as well as the shaving of heads and other humiliating punishments is, according to Mayan legal opinion, intended “not to inflict pain or scars, but to arouse public shame”.<sup>5</sup> Under the Accord on the Identity and Rights of Indigenous Peoples, signed in 1995 as part of the Comprehensive Peace Accords, the Government must incorporate the customary law of the Maya population into the state through law reform. Article 10 of the Law on Integral Protection of Children and Adolescents 2003 confirms that children and adolescents belonging to ethnic and/or indigenous communities “have the right to live and develop forms of social organisation that correspond to their historical and cultural traditions” but it also states that these must “not be contrary to public order and respect for human dignity”; the prohibition of corporal punishment in article 260 presumably applies also in the context of Mayan justice.

### 3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC:** The Committee on the Rights of the Child first expressed concern at corporal punishment of children in Guatemala and recommended measures to end it in 1996.<sup>6</sup> Most recently, in 2010 the Committee expressed concern at corporal punishment particularly in the home and in alternative care settings and recommended that it be specifically prohibited in all settings.<sup>7</sup>

3.2 **CRPD:** The Committee on the Rights of Persons with Disabilities recommended corporal punishment of children is prohibited in all settings and called for the repeal of the right of correction.<sup>8</sup>

3.3 **UPR:** In the Universal Periodic Review of Guatemala in 2008, the Government accepted the recommendation made to explicitly prohibit corporal punishment in the home and family, but misleadingly indicated that existing law already achieves this.<sup>9</sup> At the second cycle review in 2014, the Government again accepted recommendations to explicitly prohibit corporal punishment in all settings.<sup>10</sup>

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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 since 2011 the Committee on the Rights of Persons with Disabilities.*

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<sup>5</sup> Reported in “Mayan Justice in Guatemala: Shame, Property and Human Rights”, *NACLA Report*, 28 August 2007; see also Hessbruegge & Garcia, “Mayan Law in Post-Conflict Guatemala”, in Isser, D. (ed) (2011), *Customary Justice and the Rule of Law in War-Torn Societies*, Washington: US Institute of Peace, 77-112

<sup>6</sup> 7 June 1996, CRC/C/15/Add.58, Concluding observations on initial report, paras. 8 and 33

<sup>7</sup> 1 October 2010, CRC/C/GTM/CO/3-4, Concluding observations on third/fourth report, paras. 53, 54 and 55

<sup>8</sup> 30 September 2016, CRPD/C/GTM/CO/1, Concluding observations on initial report, paras. 23 and 24

<sup>9</sup> 29 May 2008, A/HRC/8/38, Report of the working group, paras. 52 and 89(17)

<sup>10</sup> 31 December 2012, A/HRC/22/8, Report of the working group, paras. 99(56) and 99(57)