

Ending family violence in Mexico – challenging physical punishment of girls and boys



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

Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 70th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), September 2017

Introduction: family violence in Mexico and CEDAW's examination of the ninth state party report

The General Act on Women's Access to a Life Free of Violence 2007 provides some protection from family violence to women and girls and the Federal Criminal Code criminalises family violence but the existence of a "right to correct" in the Federal Civil Code undermines those provisions by allowing the use of violent punishment in the home. Two Bills are currently in discussion which provide opportunities to ensure that no form of violence is tolerated within the home.

We hope the Committee on the Elimination of Discrimination Against Women will raise the issue of violent punishment of girls and boys in its examination of Mexico. In particular, we hope the Committee will:

- **in its list of issues for Mexico, ask what steps are being taken to ensure that the Bills to prohibit all corporal punishment of children which were recently introduced to Congress are enacted as a matter of priority, and**
- **in its concluding observations on the ninth state party report, recommend that Mexico ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation is enacted to prohibit domestic violence against all family members, including the violent punishment of girls and boys, and to repeal the "right to correct".**

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in Mexico and immediate opportunities for law reform
 2. Treaty body and UPR recommendations on the issue made to Mexico to date.
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1 Laws on domestic violence and corporal punishment of children in Mexico

Summary

1.1 Article 323ter of the federal Civil Code protects individuals, including girls and boys, from family violence but only “repeated” acts of violence are prohibited. Provisions in the Federal Criminal Code and the General Act on Women’s Access to a Life Free of Violence 2007 prohibiting and criminalising violence and abuse in the family are not interpreted as prohibiting all corporal punishment of girls and boys. Two Bills have been introduced to amend the federal Civil Code and the General Law on the Rights of Children and Adolescents 2014, which would provide an opportunity to fulfil Mexico’s commitment to prohibition.

Detail

1.2 Law reform to date has not yet achieved full prohibition. The new General Law on the Rights of Children and Adolescents 2014 was published in the Official Gazette on 4 December 2014. It states in article 105: “The federal and state laws shall under the provisions of this Act and within the scope of their powers undertake the necessary measures that effect is given to the following obligations: (1) That those exercising parental authority, guardianship or custody of children and adolescents, care and look after them and protect them against all forms of abuse; respect their dignity and provide guidance to them, so that they know their rights and learn to defend and respect those of others; ... (4) That those dealing with children and adolescents refrain from any violence against them, including corporal punishment.” Article 103 of sets out the duties of those exercising parental authority, including to create “an emotional, caring and non-violent environment”, to “protect against all forms of violence” and to “refrain from any attack on [children’s] physical and mental integrity”, adding that “the exercise of parental authority, guardianship or custody of children and adolescents cannot be justification for breaching the obligation under [the latter]”. However, the Law does not explicitly repeal the “right of correction”.

1.3 The “right to correct” of persons with parental authority is confirmed in the Civil Code. In 1997, the Federal Civil Code 1928 was amended so that the exercise of the right to correct should not involve the use of force which endangers the physical or mental integrity of children, and new provisions against family violence were added. A new Federal Civil Code was adopted in 2012 that reiterated these provisions without further amendment. Article 422 of the Code states (unofficial translation): “Persons with parental power or custody of a child are required to educate them suitably.” Article 423 states: “For the purpose of the preceding article, those who exercise parental authority or have children in their custody have the power to correct [‘la facultad de corregirlos’] them and the obligation to observe behaviour which sets a good example. The power to correct does not imply the infliction on children of force which violates their physical or psychological integrity in accordance with the provisions of article 323ter of this Code.” Article 323ter states that family members should avoid behaviours that lead to domestic violence. Domestic violence is defined in the article as “the use of physical or moral force, or serious omissions, repeatedly by one family member on another, which violates their physical and/or psychological integrity, regardless of whether or not it results in injury, provided that the attacker and the attacked family members live at the same address and there is a relationship of kinship, marriage or cohabitation.” These provisions appear to protect children from physical punishment inflicted “repeatedly”, but it is not clear that isolated punitive assault on a child would not be tolerated. The federal Law for the Protection of the Rights of Children and Adolescents 2000 confirms the right of children and adolescents to “have a violence-free life” (art. 3) and the obligation of parents to protect children from all forms of abuse, stating that this means parental authority should not be exercised in a way which violates the child’s physical or mental integrity (art. 11), but it does not explicitly prohibit all corporal punishment in childrearing.

- 1.4 In 2000 and 2011, the Constitution 1917 was amended with regard to children’s rights. As amended, article 1 states: “In the United Mexican States, all human rights recognised in the Constitution and international treaties to which the Mexican State is a party shall be enjoyed.... The rules on human rights shall be interpreted in accordance with the Constitution and the international treaties of the field at all times encouraging people the broadest protection....” Article 4 states: “All decisions and actions of the State and shall comply with the principle of the best interests of children, so ensuring their full rights. Boys and girls have the right to satisfy their needs for food, health, education and recreation for their development. This principle should guide the design, implementation, monitoring and evaluation of public policies aimed at children. The parents, guardians and custodians have an obligation to preserve and enforce these rights and principles. The State shall grant facilities for individuals to contribute to the fulfillment of child rights.”
- 1.5 In August 2017, two Bills were introduced in Parliament to prohibit corporal punishment of children. The Bill amending article 423 of the Federal Civil Code aims to remove the reference to the “right to correct”, amending the article to state (unofficial translation): “For the purposes of the preceding article, those who exercise parental authority or have children in their custody have an obligation to respect their physical and psychological integrity as well as observe behaviour which sets a good example. It is prohibited to inflict on children force that threatens their physical or psychological integrity in accordance with the provisions of article 323ter of this Code.” This would be a silent repeal as the removal of the “right to correct” is not accompanied by an explicit prohibition of corporal punishment. The Bill amending article 323ter of the Federal Civil Code and article 105 of the General Law on the Rights of Children and Adolescents 2014 includes an explicit prohibition of corporal and humiliating punishment in those laws, but it does not repeal the mention of the “right to correct”.
- 1.6 The Government has signalled its commitment to prohibiting all corporal punishment of children. In 2009, the Government accepted recommendations to ensure that children are fully protected from corporal punishment made during the Universal Periodic Review (UPR).¹ At the second cycle UPR of Mexico in 2013, the Government noted its use of the Peaceful Resolution of Family Conflict Model as part of its System for the Comprehensive Development of the Family (SNDF)² but made no reference to law reform to prohibit all corporal punishment. In 2011, the Regional Roadmap on Violence against Children was adopted by the Central American Governments of Cuba, Mexico and the Dominican Republic: it includes a recommendation to adopt national legislation to explicitly prohibit all corporal punishment and to repeal provisions allowing for “moderate” punishment/correction.³ Mexico is also a Pathfinder country with the Global Partnership to End Violence Against Children: in August 2017 it launched its End Violence National Action Plan 2017-2018 which identifies explicit prohibition of corporal punishment in all settings as a priority.
- 1.7 The majority of states have enacted provisions similar to the federal law in their Civil Codes and other legislation – i.e. confirming a “right of correction” within limits which in many cases are linked to legal definitions of domestic violence. Children are variously protected from the use of force which causes harm (e.g. Baja California Family Violence Prevention and Care Act 2003, Chihuahua Civil Code 2004, Hidalgo Law on Domestic Violence 2010, Nayarit Civil Code 1981), from the repeated use of force (Morelos Family Code 2006), from violations of their integrity (e.g. Chihuahua Law on the Rights of Adolescents 2013, Hidalgo Family Law 2007, Michoacan de

¹ 29 May 2009, A/HRC/11/27, Report of the working group, paras. 93(30)

² 11 December 2013, A/HRC/25/7, Report of the working group, para. 142

³ Regional Road Map on Violence against Children, adopted in 2011, 1 and 2 December in Santo Domingo, as a follow-up to the recommendations of the UN Study on Violence against Children, available at http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Hoja%20de%20Ruta%20Final%20EVCN%20Centroamericano%20Dic%202012.pdf, accessed 21 February 2015

Ocampo Family Code 2008, Nayarit Civil Code 1981, Nayarit Law on the Protection of the Rights of Children and Adolescents 2005) and/or from abuse (e.g. Chihuahua Criminal Code 2006). But the near universal acceptance of physical punishment in childhood means that it is not typically perceived as harmful or abusive or to violate integrity unless it is severe or causes obvious injury: prohibition requires clarity in law that no corporal punishment should be used.

1.8 Corporal punishment is prohibited in the state of Guanajuato which in 2015 amended article 477 of its Civil Code to state (unofficial translation): “Those who exercise parental authority have an obligation of care, development and integral education of the people on which this exercise rests. Those exercising parental authority may not impose corporal punishment or any other humiliating treatment as a form of disciplinary correction. The authorities will assist those exercising parental authority, in a prudent and moderate manner, whenever they are required to do so.”

1.9 There are possible other exceptions where state laws may prohibit corporal punishment in the home: we are currently seeking further information. For example, in Guerrero, the Civil Code 1993 states that “the right to punish does not imply the right to hit or abuse the child” (art. 589); the explanatory notes on the Criminal Code 1986 state that the offence of harm is defined as “causing harm to the wellbeing” of a person, a definition which “sets itself apart from the casuistic and redundant system that characterises most of the Criminal Codes of the Republic”, and that in this connection it was decided not to provide an exemption for those with parental authority or guardianship who cause minor injuries to a child because “this right [to correction] is not to be exercised in this way”. In Zacatecas, the definition of domestic violence in the Family Violence Act 2003 appears comprehensive and applies to isolated as well as repeated acts, including when argued they are inflicted under the right of correction (art. 283bis). In other states, corporal punishment is clearly lawful under an unqualified “right of correction” (e.g. Jalisco Civil Code 1995, Jalisco Criminal Code 1982).

1.10 Prohibition of all violent punishment of children – which is critical in laying the legal foundations for efforts to reduce child abuse and domestic violence – requires an explicit ban in legislation. We hope the Committee will urge the Government of Mexico to enact legislation as a matter of priority to clearly prohibit all corporal punishment of girls and boys and repeal the “right to correct” from the federal Civil Code.

2 Recommendations by human right treaty monitoring bodies and during the Universal Periodic Review

2.1 The *Committee on the Rights of the Child* has recommended to Mexico that corporal punishment of children be prohibited on four occasions – in concluding observations on the second report in 1999,⁴ the third report in 2006⁵, the fourth/fifth report in 2015,⁶ and in concluding observations on the initial report to OPAC in 2011.⁷

2.2 In 2009 during the first cycle of the *Universal Periodic Review*, Mexico accepted a recommendation to protect children from corporal punishment in 2009.⁸ In the second cycle review in 2013, the Government accepted more general recommendations to ensure the protection of children’s rights.⁹

⁴ 10 November 1999, CRC/C/15/Add.112, Concluding observations on second report, para. 25

⁵ 8 June 2006, CRC/C/MEX/CO/3, Concluding observations on third report, paras. 35, 36, 72 and 73

⁶ 8 June 2015, CRC/C/MEX/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 31 and 32

⁷ 7 April 2011, CRC/C/OPAC/MEX/CO/1, Concluding observations on initial report (OPAC), para. 18

⁸ 29 May 2009, A/HRC/11/27, Report of the working group, para. 93(30)

⁹ 11 December 2013, A/HRC/25/7, Report of the working group, paras. 148(37), 148(41), 148(81) and 148(110); 14 March 2014, A/HRC/25/7/Add.1, Report of the working group: Addendum, paras. 16, 20, 33 and 42

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