

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



Information for the Committee on the Elimination of Discrimination Against Women's 66th session, from the Global Initiative to End All Corporal Punishment of Children (www.endcorporalpunishment.org), January 2017

Introduction: violence against children in their homes in El Salvador and CEDAW's examination of the eighth/ninth state party report

Articles in the Family Code, the Criminal Code and the Law for the Integral Protection of Children and Adolescents provide for a “right of correction”. Although corporal punishment has been ruled by courts as exceeding adequate and moderate correction of children, prohibition of corporal punishment has not yet found its way to the statute books. The Government committed to law reform during the Universal Periodic Review in 2010 and the current revisions of the Law for the Integral Protection of Children and Adolescents and the Penal Code provide an opportunity for achieving the necessary law reform.

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 El Salvador. In particular, we hope the Committee will, in its concluding observations on the eighth/ninth state party report, recommend that El Salvador take immediate action to ensure that *no* form of violence within the domestic sphere is condoned, including by parents against their children, and that legislation be enacted repealing the “right to correction” and prohibiting all corporal punishment of children.

The remainder of this briefing provides the following further details:

1. The current law relating to family violence and corporal punishment of children in El Salvador and immediate opportunities for reform
 2. Treaty body and UPR recommendations on the issue made to El Salvador to date.
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1 Laws on the use of force in “correcting” children in El Salvador and immediate opportunities for prohibiting violent punishment of girls and boys

Summary

1.1 In El Salvador, while adults in the home are protected from domestic violence, children may lawfully be subjected to violence under the guise of “correction” by their parents and carers. The Government’s commitment to prohibit corporal punishment as well as the current draft amendments to the Law for the Integral Protection of Children and Adolescents 2009 provide the opportunity for law reform.

Detail

- 1.2 Corporal punishment is lawful in the home. Article 215 of the Family Code 1994 states: “It is the parents’ duty to correct their children appropriately and moderately and, if necessary, to seek assistance from professional specialists or psycho-pedagogical guidance services at schools or agencies for the protection of minors or the family. If the child’s behaviour cannot be corrected through these means, the parent can request that a judge arrange for guardianship; in making such a decision, the judge will order any studies of the family group that he or she considers appropriate.” Article 204 of the Criminal Code 1997 recognises a “right of correction” and punishes its abuse. Article 38 of the Law for the Integral Protection of Children and Adolescents 2009 appears to protect children from some corporal punishment but confirms that the “right of correction” remains in force: “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 offensive which infringes their dignity, without prejudice to the right of the mother and father to direct, guide moderate and correct accordingly” (unofficial translation).
- 1.3 Provisions against violence and abuse in the Family Code 1994, the Criminal Code 1997 (amended 2005), the Law Against Domestic Violence 1996 and the Constitution 1983 are not interpreted as prohibiting all corporal punishment in childrearing.
- 1.4 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 has also acknowledged the need for law reform.¹ The Government signalled its commitment to prohibition by accepting the recommendation to prohibit corporal punishment in all settings including the home made during the Universal Periodic Review of El Salvador in 2010.² During the second cycle UPR of El Salvador in 2014, the Government stated that corporal punishment is prohibited in articles 38 and 89 of the Law for the Integral Protection of Children and Adolescents 2009, but also went on to accept a recommendation to “expressly prohibit corporal punishment by law in all settings”.³ The Government reaffirmed its commitment at a meeting of the Directing Council of the Inter-American Children’s Institute in 2014.
- 1.5 As at October 2016, a draft bill is under discussion in Parliament which would remove parents’ right to “adequately and moderately correct” their children from the Law for the Integral Protection of Children and Adolescents 2009, but it does not repeal similar legal defences from the Family Code or Civil Code. The Government reported to the Committee on the Elimination of Discrimination Against Women in 2017 that the Penal Code was also under review, with notably the addition of article 338 which would strengthen women and children’s protection from family violence.⁴

¹ 21 December 2009, CRC/C/SLV/Q/3-4/Add.1, Reply to list of issues, paras. 67 and 68, no specific case law cited

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

³ 17 December 2014, A/HRC/28/5, Report of the working group, paras. 96 and 103(23)

⁴ 9 January 2017, CEDAW/C/SLV/Q/8-9/Add.1, Reply to the list of issues on eighth/ninth report, para. 4

1.6 We hope the Committee will urge the state party to ensure that complete prohibition of corporal punishment of children is included in the draft amendments to the Law for the Integral Protection of Children and Adolescents 2009 and that all legal defences be repealed.

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

2.1 **CRC:** In 2004, the Committee on the Rights of the Child, having been led to believe that the Domestic Violence Act in El Salvador prohibited corporal punishment, recommended that the Act be effectively implemented.⁵ Following examination of the third/fourth state party report in 2010, the Committee expressed concern that corporal punishment is still lawful in the home and recommended it be prohibited in all settings.⁶

2.2 **CRPD:** In 2013, the Committee on the Rights of Persons with Disabilities recommended to El Salvador that it follow up the recommendations of the Committee on the Rights of the Child concerning prohibition of corporal punishment and ensure that the prohibition included practices in institutions for children with disabilities.⁷

2.3 **UPR:** El Salvador was reviewed in the Universal Periodic Review process in 2010 and 2014. On both occasions the Government accepted recommendations to prohibit corporal punishment of children in all settings.⁸

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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⁵ 30 June 2004, CRC/C/15/Add.232, Concluding observations on second report, paras. 35, 36, 43 and 44

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

⁷ 8 October 2013, CRPD/C/SLV/CO/1, Concluding observations on initial report, paras. 35 and 36

⁸ 18 March 2010, A/HRC/14/5, Report of the working group, para. 81(38) ; 17 December 2014, A/HRC/28/5, Report of the working group, para. 103(23)