

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



Information for the Committee on the Elimination of Discrimination Against Women, Pre-Sessional Working Group for the 68th 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 Guatemala and CEDAW's examination of the eighth/ninth state party report

Articles in the Law on Integral Protection of Children and Adolescents 2003 and in the Civil Code 1963 confirm parents' right to "discipline" their children. This means that children are not protected from family violence. Explicit prohibition of all corporal punishment of children must be enacted in legislation – the current discussion on the draft Law Against Corporal Punishment provides an opportunity for 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 Guatemala. In particular, we hope the Committee will:

- **in its list of issues for Guatemala, ask the Government what progress is being made towards the adoption of the draft Law Against Corporal Punishment, and**
- **in its concluding observations on the eighth/ninth state party report, recommend that Guatemala 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 is enacted prohibiting all corporal punishment of children in all settings, including through the explicit repeal of all the legal defences.**

The remainder of this briefing provides the following further details:

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

- 1.1 Corporal punishment is lawful in the home. 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.
- 1.2 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.¹ 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.
- 1.3 As at October 2016, a bill aimed at prohibiting all corporal and humiliating punishment of children has been drafted by a group of parliamentarians, but has not yet been tabled.
- 1.4 **We hope the Committee will raise the issue of corporal punishment of children in its review of Guatemala, and recommend that explicit prohibition of all corporal punishment of children be immediately enacted.**

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

- 2.1 **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 1996.² 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.³
- 2.2 **CRPD:** In 2016, the Committee on the Rights of Persons with Disabilities recommend that the Government prohibit and eliminate corporal punishment of children.⁴
- 2.3 **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.⁵ At the second cycle review in 2014, the Government again accepted recommendations to explicitly prohibit corporal punishment in all settings.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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¹ 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 7 June 1996, CRC/C/15/Add.58, Concluding observations on initial report, paras. 8 and 33

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

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

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

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