



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

EL SALVADOR – COUNTRY REPORT

Child population: 2,415,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Article 215 of the Family Code confirm the duty of parents “to correct their children appropriately and moderately”, article 204 of the Penal Code recognises a “right of correction”, and article 38 of the Law for the Integral Protection of Children confirms the right of parents to “adequately and moderately correct” their children. These defences should be repealed. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. Explicit prohibition should be enacted of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority.

Other legislative measures necessary

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to the repeal of all legal defences for the use of corporal punishment by those with parental authority.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

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 Penal Code recognises a “right of correction” and punishes its abuse. Article 38 of the Law for the Integral Protection of Children (2009) prohibits corporal punishment of children but states that this is without prejudice to the right of parents to “adequately and moderately correct” their children. Provisions against violence and abuse in the Family Code, the Criminal Code (1997, amended 2005), the Law Against Domestic Violence (1996, in force from 1997) and the Constitution (1983) are not interpreted as prohibiting all corporal punishment in childrearing.

The Government stated 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 there is no explicit prohibition in law and the Government has acknowledged the need for law reform (21 December 2009, CRC/C/SLV/Q/3-4/Add.1, Written replies to the Committee on the Rights of the Child, paras. 67 and 68).

Schools

Corporal punishment is prohibited in schools in article 90 of the General Law on Education and article 89 of the Law for the Integral Protection of Children.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. The Juvenile Offenders Act (1995) does not include corporal punishment among permitted sanctions, recognises the right of young offenders to respect for dignity and protection of personal integrity, and establishes that under the law, the minor enjoys the rights and safeguards recognised in the Constitution, treaties, conventions, covenants and other international instruments signed and ratified by the country (article 5). Article 37 of the Law for the Integral Protection of Children prohibits inhuman, cruel and degrading treatment.

Corporal punishment is explicitly prohibited as a **disciplinary measure** in penal institutions in the Juvenile Offenders Act (article 118), the General Regulations for Detention Centres for Juvenile Offenders (1995) (article 32) and the Prisons Act (article 128).

Alternative care

There is no explicit prohibition of corporal punishment in alternative care settings. As noted above, article 38 of the Law for the Integral Protection of Children prohibits corporal punishment but confirms a parental right of correction, and there are similar defences for the use of corporal punishment in the Family Code and the Penal Code. These defences are potentially available to guardians and others with parental responsibility.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee notes with appreciation that the Convention has been invoked in national courts on many occasions and has been used by judges in the judicial reasoning, particularly by the Constitutional Chamber of the Supreme Court. The Committee also notes the State party’s numerous efforts to bring its legislation in line with the Convention, including the recent adoption of the Law for the Integral Protection of Children (LEPINA). However, the Committee regrets that national legislation is not yet in conformity with the Convention in some areas, for instance, with respect to corporal punishment....

“The Committee notes with appreciation that the principle of the best interests of the child is already included in the Family Code (art. 305) and is also enshrined in the LEPINA, notably in its article 12. However, the Committee is concerned that the principle is not sufficiently implemented in practice, especially in the areas of prevention, corporal punishment....

“With reference to the United Nations Study on Violence against Children (A/61/299), the Committee recommends that the State party:

a) take all necessary measures for the implementation of the recommendations contained in the report of the Independent Expert for the United Nations Study on Violence against Children while taking into account the outcome and recommendations of the regional consultation for Latin America held in Argentina (30 May and 1 June 2005). In particular, the Committee recommends that the State party pay particular attention to the following recommendations:

– Prohibit all violence against children, including corporal punishment in all places....

“The Committee is concerned that corporal punishment is still lawful in the home, according to article 215 of the Family Code. The Committee regrets in particular that the newly adopted LEPINA has not expressly prohibited corporal punishment within the home, as in its article 38 it provides that parents can ‘adequately and moderately correct’ their children. The Committee notes the delegation’s remark that the State party is aware that the LEPINA is not in conformity with the Convention on this particular aspect, and that this is one of the issues that will be discussed in the context of possible future adjustments to the LEPINA.

“The Committee recommends that the State party expressly prohibit corporal punishment by law in all settings, taking into account the Committee’s general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. The Committee further recommends that the State party carry out public education campaigns about the negative consequences of corporal punishment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.”

Committee on the Rights of the Child

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

“The Committee is deeply concerned about the incidence of torture and ill-treatment and the generalized disrespect for fundamental human rights in centres for juvenile offenders in the State party....

“The Committee urges the State party to take immediate and effective measures to bring an end to the occurrence of torture and other cruel, inhuman and degrading treatment, in particular of juvenile offenders. The State party must ensure that:

a) the fundamental rights and guarantees of juveniles who have committed a criminal offence set out in the Juvenile Offenders Act are respected, in particular, the prohibition, under all circumstances, of inhuman or degrading disciplinary measures, including: corporal punishment, detention in dark cells or solitary confinement, reduction of food rations, denial of contact with relatives, collective punishment and punishment more than once for the same disciplinary offence....

“While welcoming the measures taken by the State party to combat domestic violence, the Committee remains concerned at persistent large-scale abuse and violence within the family as well as the prevalence of corporal punishment.

“The Committee recommends that the State party strengthen current efforts to address the problem of domestic violence and child abuse, including through:

a) ensuring the effective implementation of the Domestic Violence Act, including the elimination of corporal punishment;

b) public education campaigns about the negative consequences of ill-treatment and preventive programmes, including family development programmes, promoting positive, non-violent forms of discipline....”

Universal Periodic Review

El Salvador was examined in the first cycle of the Universal Periodic Review in 2010. The Government accepted the recommendation to prohibit corporal punishment of children in all settings (18 March 2010, A/HRC/14/5, Report of the Working Group, para. 81(38)). Examination in the second cycle is scheduled for 2014.

Report prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
February 2012