



End Corporal
Punishment

Corporal punishment of children in El Salvador

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Child population 2,072,000 (UNICEF, 2020)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care.

Article 215 of the Family Code 1994 confirm the duty of parents “to correct their children appropriately and moderately”, article 204 of the Criminal Code 1997 recognises a “right of correction”. These defences should be repealed.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. 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.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Current 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 Criminal Code 1997 recognises a “right of correction” and punishes its abuse. In 2022, a new Child Protection Law was enacted to replace the Law for the Integral Protection of Children and Adolescents 2009 (“LEPINA”), which previously confirmed the right of parents to “adequately and moderately correct” their children, in its article 38. Article 62 of the Child Protection Law 2022 relating to children’s right to personal integrity states (unofficial translation): “Girls, boys and adolescents have the right to have their personal integrity respected, which includes physical, psychological, cultural, moral, emotional and sexual integrity. People who have a girl, a boy or adolescent under their responsibility, whether temporarily or permanently, must use non-violent methods and guidelines for establishing boundaries and rules in a manner consistent with their best interest, evolutionary, cognitive development and maturity. The family, society and the State must protect girls, boys and adolescents in any situation that threatens their personal integrity. For this purpose, the State shall implement programmes that promote the implementation of positive, participatory and non-violent parenting guidelines.”

Regarding children’s right to protection against abuse, article 64 states (unofficial translation): “The State has the obligation to establish public management tools for the prevention, care and eradication of abuse of girls, boys and adolescents in all its forms. Abuse is understood as any action or omission that causes or may cause pain, suffering or damage to the physical, psychological, moral or sexual integrity or health of a girl, boy or adolescent, by any person, including their mothers, fathers or other relatives, educators and caregivers, by whatever means...”.

However, the Child Protection Law 2022 is not interpreted as explicitly prohibiting all forms of corporal punishment, however light.

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. 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.¹

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.² The Government had initially 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 2010.³ 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”.⁴ The Government reaffirmed its commitment at a meeting of the Directing Council of the Inter-American Children’s Institute in 2014. El Salvador became a Pathfinder country with the Global Partnership to End Violence Against Children in February 2016, committing to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

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

² 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

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

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

Bills on the removal of the “right of correction” which were under discussion in 2017 were all archived. In 2018, in the context of the state’s examinations by the Human Rights Committee and by the Committee on the Rights of the Child, El Salvador’s Office of the Human Rights Advocate highlighted that article 38 of the Law for the Integral Protection of Children and Adolescents 2009 confirmed the right to “moderate correction”, and called for reform to prohibit all forms of corporal punishment, however light.⁵ When asked about prohibition of corporal punishment in the home by the Committee Against Torture, the Government responded by highlighting various awareness-raising and training programmes implemented but did not mention law reform.⁶ End Corporal Punishment no longer considers El Salvador committed to prohibiting all corporal punishment of children without delay, as the “right of correction” remains in force with article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997, despite the repeal of the Law for the Integral Protection of Children and Adolescents 2009.

Alternative care settings

There is no explicit prohibition of all corporal punishment in alternative care settings. Article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 confirm a “right of correction” (see under “Home”). These defences are potentially available to guardians and others with parental responsibility.

Day care

There is no explicit prohibition of all corporal punishment in early childhood care and in day care for older children, with the exception of preschool provision where the prohibition of corporal punishment in the General Law on Education 1996 is applicable (see under “Schools”). In other day care, article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 confirm a “right of correction” (see under “Home”). These defences are potentially available to guardians and others with parental responsibility.

Schools

Corporal punishment is prohibited in schools in article 90 of the General Law on Education 1996 (amended 2000), according to which learners have the right to “(c) be treated with fairness and respect and not to be subjected to corporal punishment, humiliation, physical or mental abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse” (unofficial translation).

Penal institutions

Corporal punishment is prohibited as a disciplinary measure in penal institutions. Article 128(2) of the Prisons Act states: “Disciplinary measures shall be imposed in such a way that they do not affect prisoners’ health or dignity. Corporal punishment, such as confinement in a dark cell, or any other cruel, inhuman or degrading treatment or punishment, is prohibited....” According to article 26 of the General Regulations for Detention Centers for Juvenile Offenders 1995, “the staff of the centers, in carrying out their duties, must respect and protect the dignity and basic human rights of all the children” and authorities must not “instigate or tolerate any act of physical, sexual or emotional abuse, punishment or cruel, inhuman or degrading corrective measure or discipline.” Article 118 of the Juvenile Offenders Act 1995 also prohibits corporal punishment.

⁵ February 2018, Alternative report of the Human Rights Advocate to the Human Rights Committee, paras. 134 and 135; see also September 2018, Alternative report of the Human Rights Advocate to the Committee on the Rights of the Child, paras. 40, 41 and 42

⁶ May 2019, CAT/C/SLV/3, Third report, para. 103

Sentence for crime

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 (art. 5). Article 65 of the Child Protection Law 2022 prohibits torture, cruel, inhuman and degrading treatment.

Universal Periodic Review of El Salvador's human rights record

El Salvador was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendation was made and was accepted by the Government:⁷

“To take specific measures to prohibit corporal punishment of children in all settings, including at home (Slovenia)”

Examination in the second cycle took place in 2014 (session 20). During the review, the Government stated that corporal punishment is prohibited in articles 38 and 89 of the Law for the Integral Protection of Children and Adolescents 2009.⁸ Nevertheless, the following recommendation was made and was accepted by the Government:⁹

“Put further effort and attention into the prevention of violence against children, expressly prohibit corporal punishment by law in all settings, eliminate worst forms of child labour, and prevent children from living in the street (Estonia)”

Third cycle examination took place in 2019 (session 34). No recommendation on corporal punishment was made, but the following recommendations were extended:¹⁰

“Fully take into account the recommendations of the Committee on the Rights of the Child with a view to the effective implementation of the Convention on the Rights of the Child (Austria)”

“Continue its work to combat violence against women and children, take measures to protect victims of violence based on their sexual orientation and gender identity, and allocate adequate resources for programmes ensuring the full enjoyment of the rights of women, children and lesbian, gay, bisexual, transgender and intersex persons (Australia)”

“Continue to take legislative and administrative measures to better protect the rights of women and children (China)”

The Government later supported the recommendations.¹¹

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(11 October 2018, CRC/C/SLV/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 25)

“The Committee is deeply concerned that corporal punishment of children is still lawful and culturally justified, and that the multiple indicator cluster survey for 2014 showed that forty per cent of children suffered corporal punishment at home. With reference to its general comment No. 8 (2006) on corporal punishment and recalling its previous recommendations (CRC/C/SLV/CO/3-4, para. 55), the Committee urges the State party to:

(a) Promptly adopt a law prohibiting corporal punishment in all settings;

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

⁸ 17 December 2014, A/HRC/28/5, Report of the working group, para. 96

⁹ 17 December 2014, A/HRC/28/5, Report of the working group, para. 103(23)

¹⁰ 2 January 2020, A/HRC/43/5, Report of the Working Group, paras. 103(13), 103(145) and 103(187)

¹¹ 19 February 2020, A/HRC/43/5/Add.1, Report of the Working Group: Addendum

(b) Review article 215 of the Family Code, article 204 of the Criminal Code, and article 38 of the Law for the Integral Protection of Children and Adolescents to criminalize corporal punishment without exceptions;

(c) Take measures to promote positive, non-violent and participatory forms of child-rearing and discipline.”

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....”

Human Rights Committee

(5 April 2018, CCPR/C/SLV/CO/7 Unedited advance version, Concluding observations on seventh report, paras. 39 and 40, in Spanish only)

“El Comité toma nota de la prohibición del castigo corporal en la Ley de Protección Integral de la Niñez y Adolescencia (LEPINA), pero observa con preocupación que su artículo 38 permite la “corrección moderada”...

“El Estado parte debe adoptar medidas prácticas, incluyendo medidas legislativas, cuando proceda, para poner fin al castigo corporal en todos los contextos...”

Committee on the Rights of Persons with Disabilities

(1 October 2019, CRPD/C/SLV/CO/2-3, Concluding observations on second-third report, paras. 30 and 31)

“The Committee is deeply concerned that legislation in the State party continues to allow ill-treatment and the use of physical restraints, electric shocks and drug sedation on persons with disabilities without their free and informed consent in psychiatric and other institutions.

“Recalling its general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention and taking into account target 16.1 of the Sustainable Development Goals, the Committee recommends that the State party, in consultation with organizations of persons with disabilities:

(a) Amend the Mental Health Law and mental health policies to prohibit corporal punishment, isolation, restraint measures and anti-seizure therapies and eliminate any cruel, inhuman or degrading treatment of persons with disabilities;

(b) Establish an independent monitoring mechanism, in consultation with organizations of persons with disabilities, to investigate, monitor and receive complaints of ill-treatment, and apply sanctions for the conducting of any practice without the free and informed consent of persons with disabilities.”

Committee on the Rights of Persons with Disabilities

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

“The Committee is concerned at: ...

d) the lack of an express ban on corporal punishment of children with disabilities....

“The Committee urges the State party: ...

c) to follow up on the recommendations of the Committee on the Rights of the Child (CRC/C/SLV/CO/3-4) regarding the express prohibition of all forms of corporal punishment and ensure that the prohibition includes practices in institutions for children with disabilities....”

Prevalence/attitudinal research in the last ten years

The El Salvador Violence Against Children Survey 2017, published in 2019, found physical discipline and verbal aggression were common in El Salvador. Among 13-17 year-olds, 17% of females and 10% of males said their parents used physical discipline in the past 12 months. Close to one-fifth of females and over one-quarter of males agree that corporal punishment is an acceptable disciplinary practice. The report also found parent-youth relationships are a significant protective factor for youth in El Salvador: 52% of females and 40% of males said their parents used positive discipline strategies in the past 12 months, a difference that was statistically significant.

(Ministry of Justice and Public Security, Government of El Salvador (2019), El Salvador Violence Against Children Survey, 2017, San Salvador, El Salvador)

Research conducted in 2014 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 52% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 32% of children experienced psychological aggression, 36% physical punishment and 3% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 35% of children experienced only non-violent forms of discipline.

(Ministerio de Salud – Instituto Nacional de Salud, DIGESTYC & UNICEF (2015), Encuesta Nacional de Salud 2014 - Encuesta de Indicadores Múltiples por Conglomerados 2014, Resultados Principales, San Salvador, El Salvador: Ministerio de Salud e Instituto Nacional de Salud)

End Corporal Punishment acts as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We support and analyse national progress, monitor legality and implementation worldwide, partner with organisations at all levels, and engage with human rights treaty body systems. End Corporal Punishment is hosted by the World Health Organization and supported by a multi-partner Advisory Committee.