

Corporal punishment of children in Guatemala

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Child population 7,085,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

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

Article 13 of the Law on Integral Protection of Children and Adolescents 2003 and article 253 of the Civil Code 1963 confirm the right and duty of parents to guide, educate and correct their children. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment is acceptable. These provisions should be repealed and the law should prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have parental authority. A Bill which would prohibit is currently under discussion in the Congress.

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, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment in all education settings (public and private) is necessary.

Current legality of corporal punishment

Home

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 Criminal Code condemning assault and abuse of children are not interpreted as prohibiting corporal punishment. The Law on Integral Protection of Children and Adolescents 2003 is being amended.¹

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.² 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. Reporting to the Committee on the Rights of the Child in 2016, the Government suggested that corporal punishment was prohibited under article 150 bis of the Criminal Code.³ This is inaccurate – article 150 bis prohibits causing children harm but does not explicitly refer to corporal punishment. The Government supported a recommendation to prohibit in all settings during the Universal Periodic Review in 2017⁴ – we are seeking confirmation that it is committed to enacting an explicit prohibition of all corporal punishment.

In October 2016, the Bill “Against Corporal Punishment or Other Forms of Cruel Punishment, as a Method of Correction or Discipline Towards Children and Teenagers” was introduced in the Congress. The draft text aims to prohibit all forms of physical and humiliating punishment of children in all settings. As at October 2017, the Bill is still being examined by the Committee on Human Rights which after studying the Bill will issue an opinion on its merits.⁵

Alternative care settings

There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents under the right to “correct” in article 13 of the Law on Integral Protection of Children and Adolescents 2003 and article 253 of the Civil Code 1963 (see under “Home”).

¹ 2 November 2017, CRC/C/GTM/Q/5-6/Add.1, Reply to list of issues, para. 79

² 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)

³ 28 February 2017, CRC/C/GTM/5-6, Fifth/sixth report, para. 186

⁴ 2 January 2018, A/HRC/37/9, Report of the working group, para. 111(139)

⁵ 2 November 2017, CRC /C/GTM/Q/5-6/Add.1, Reply to list of issues, para. 6

Day care

There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. Corporal punishment is lawful under the right to “correct” in article 13 of the Law on Integral Protection of Children and Adolescents 2003 and article 253 of the Civil Code 1963 (see under “Home”).

Schools

Corporal punishment is lawful in schools, including military schools. Article 1 of the National Education Law 1991, Legislative Decree No. 12-91, recognises the child’s right to dignity in the educational system, but there is no explicit prohibition of corporal punishment.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 260 of the Law on Integral Protection of Children and Adolescents 2003: “During the implementation of sanctions, the adolescent will, at least, have the following rights: ... (e) (8) Right not to be incommunicado in any case, nor to be subjected to solitary confinement or the imposition of corporal punishment....”

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Law on Integral Protection of Children and Adolescents 2003. Article 255 of the Law states that the purpose of sanctions is to “set and promote social actions that allow adolescents, subject to some kind of sanction, their continued personal development and reintegration into family and society, as well as the development of their abilities and sense of responsibility” (unofficial translation). Article 260 of the Law explicitly prohibits corporal punishment (see under “Penal institutions”).

Corporal punishment is imposed as a sentence in Mayan justice but this appears to be unlawful. The use of the whip (*Xik’ay’*) as well as the shaving of heads and other humiliating punishments is, according to Mayan legal opinion, intended “not to inflict pain or scars, but to arouse public shame”.⁶ Under the Accord on the Identity and Rights of Indigenous Peoples, signed in 1995 as part of the Comprehensive Peace Accords, the Government must incorporate the customary law of the Maya population into the state through law reform. Article 10 of the Law on Integral Protection of Children and Adolescents 2003 confirms that children and adolescents belonging to ethnic and/or indigenous communities “have the right to live and develop forms of social organisation that correspond to their historical and cultural traditions” but it also states that these must “not be contrary to public order and respect for human dignity”; the prohibition of corporal punishment in article 260 (see under “Penal institutions”) presumably applies also in the context of Mayan justice.

⁶ Reported in “Mayan Justice in Guatemala: Shame, Property and Human Rights”, *NACLA Report*, 28 August 2007; see also Hessbruegge & Garcia, “Mayan Law in Post-Conflict Guatemala”, in Isser, D. (ed) (2011), *Customary Justice and the Rule of Law in War-Torn Societies*, Washington: US Institute of Peace, 77-112

Universal Periodic Review of Guatemala’s human rights record

Guatemala was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). The following recommendation was made:⁷

“Prohibit explicitly corporal punishment in the home and family (Austria)”

The Government accepted the recommendation but also stated that corporal punishment is already prohibited: “On the protection of children and corporal punishment, Guatemala noted that the national law for the integral protection of children and youth, which prohibits all mistreatment, is in accordance with the Convention on the Rights of the Child which Guatemala ratified in 2002.... Corporal punishment in all areas is denounced, sanctioned and punished.”⁸

Examination in the second cycle took place in 2012 (session 14). In its national report, the Government draws attention to programmes aimed at preventing and eradicating corporal punishment in the home and community and relevant measures in alternative care settings and for children in conflict with the law,⁹ but there is no reference to law reform to achieve explicit prohibition. During the review the following recommendations were made and were accepted by the Government:¹⁰

“Enact legislation to explicitly prohibit corporal punishment of children in all settings, including the home and in schools (Liechtenstein);

“Introduce legislative reforms to expressly prohibit corporal punishment against children in all settings (Republic of Moldova).”

Third cycle examination took place in 2017 (session 28). The following recommendation was made and supported by the Government:¹¹

“Guarantee the life, integrity and physical safety of children and adolescents placed in State shelters; provide adequate reparation for the damages caused; prohibit corporal punishment of children in all settings; and repeal the legal exemptions endorsed in the Civil Code and Law (Bolivarian Republic of Venezuela)”

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 February 2018, CRC/C/GTM/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, paras. 20 and 23)

“The Committee is seriously concerned about:

(a) The deplorable living conditions, maltreatment, and reports of disappearances, trafficking, violence and abuse against children in public care centres, mainly affecting girls and children with disabilities;

⁷ 29 May 2008, A/HRC/8/38, Report of the working group, para. 89(17)

⁸ 29 May 2008, A/HRC/8/38, Report of the working group, para. 52

⁹ 7 August 2012, A/HRC/WG.6/14/GTM/1, National report to the UPR, paras. 38, 39 and 88

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

¹¹ 2 January 2018, A/HRC/37/9, Report of the working group, para. 111(139)

- (b) The death of 41 girls and serious injuries caused on 21 girls as a consequence of a fire in the State care centre “Hogar Seguro Virgen de la Asuncion” (HSVA), the absence of remedies and psychosocial redress for victims and the transfer of survivors to other care institutions, where they continue to be exposed to risks of violence, including corporal punishment, abuse, and overcrowding conditions;
- (c) The overcrowding and deficient living conditions in juvenile detention facilities and prisons, which can amount to torture or cruel, inhuman or degrading treatment of children, as well as the incidents of violence and riots;
- (d) The high levels of impunity and low level of prosecutions and convictions of perpetrators of violence against children in public care institutions and detention centres; and
- (e) The lack of information on remedies and redress for child victims of violence, abuse and neglect in State care.”

“With reference to its 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 urges the State party to expedite the adoption of the draft law No. 5184 on the Use of Corporal Punishment and Other Cruel Forms of Punishment as a Correctional or Disciplinary measure for Children and Adolescents, which criminalizes corporal punishment in all settings, including the home. The State party should promote positive, non-violent and participatory forms of child-rearing and discipline.”

Committee on the Rights of the Child

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

“While noting that Article 53 of the PINA Law prohibits corporal punishment, the Committee remains concerned that corporal punishment continues to be practiced in the home and in alternative care settings, and that there is no explicit prohibition of corporal punishment in schools. It is also concerned at the social acceptance of corporal punishment as a normal form of discipline.

“The Committee recommends that the State party amend Article 13 of the PINA Law as well as Article 253 of the Civil Code, and specifically prohibit corporal punishment and other forms of cruel punishment of children in all settings. It further recommends that the State party develop and implement information and awareness-raising campaigns among the population, in order to change the notion of disciplining through violence and the practice of violence present in many families. It further recommends the creation of an effective abuse detection system in the educational, health and alternative care systems, with appropriate instruments and means in order to provide assistance to children and training for the staff of the relevant institutions. The Committee brings to the State party’s attention its General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of 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 Buenos Aires between 30 May and 1 June 2005. In particular, the Committee recommends that the State Party pay particular attention to the following recommendations:
 - i. Prohibit by law all forms of violence against children in all settings, including all corporal punishment....”

Committee on the Rights of the Child

(12 June 2007, CRC/C/OPAC/GTM/CO/1, Concluding observations on initial report on the Optional Protocol on the involvement of children in armed conflict, paras. 16 and 17)

“The Committee is concerned about reports of the use of corporal punishment in military schools and that such punishment is not explicitly prohibited by law. In view of this, the Committee is concerned that adequate impartial complaints mechanisms for children attending military schools appear to be lacking.

“The Committee recommends that the State party;

a) ensure that all children in military schools receive education according to articles 28, 29 and 31 of the Convention on the Rights of the Child, taking into account its general comment No. 1 (2001) on the aims of education. In particular, human rights education should be included on the provisions of the Protocol.

b) formally prohibit corporal punishment, taking into account the general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment;

c) provide children attending military schools with adequate access to independent complaints and investigation mechanisms.”

Committee on the Rights of the Child

(7 June 1996, CRC/C/15/Add.58, Concluding observations on initial report, paras. 8 and 33)

“The decades of conflict affecting society have resulted in the frequent use of violence, including within the family.

“The Committee recommends that a comprehensive public information campaign be developed and implemented urgently to combat the abuse of children in the family and within society as well as the use of corporal punishment in schools.”

Committee Against Torture

(21 June 2013, CAT/C/GTM/CO/5-6, Concluding observations on fifth/sixth report, para. 19)

“The Committee notes with concern the poor conditions, including overcrowding, in juvenile detention centres. The Committee notes with particular concern the reports about the ill-treatment of minors in detention, including corporal punishment and locking them up for long periods. It is also concerned about reports that minors are ill-treated on admission to both public and private alternative-care centres (arts. 2, 11 and 16).

The Committee recommends that the State party should: ...

b) take all necessary steps to bring juvenile detention centres into line with the relevant international standards and, in particular, to reduce overcrowding and avoid locking up inmates for long periods; ...

d) adopt without delay appropriate measures to prevent and punish any type of ill-treatment of minors deprived of their liberty or those in alternative-care centres....”

Committee on the Rights of Persons with Disabilities

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

“The Committee is concerned at the high rate of maltreatment, abuse, corporal punishment, abandonment and institutionalization of children with disabilities; at the prevalence of the welfare and charity-based approach to their care; and at the limited scope of specific measures taken on their behalf in rural areas and indigenous communities.

“The Committee recommends that the State party:

(a) Amend article 13 of the Act on the comprehensive protection of children and adolescents and article 253 of the Civil Code, as recommended by the Committee on the Rights of the Child (see CRC/C/GTM/CO/3-4, para. 54);

(b) Take all necessary measures to implement an effective system for detecting the maltreatment of children with disabilities in family, educational, health-care and institutional settings, and entrust the Office of the Advocate for Children and Adolescents with addressing the issue of children with disabilities who are subjected to abuse and maltreatment; ...

(f) Prohibit and eliminate corporal punishment of children.”

Prevalence/attitudinal research in the last ten years

According to the results of the 2014 AmericasBarometer questionnaire, less than 5% of Guatemalans believe that physical punishment should always or very frequently be used against children who disobey their parents; 27.3% believe that it is almost never necessary; but 40.5% believe it is sometimes necessary. Approximately 15% of Guatemalans report that their parents physically punished them frequently; 41.7% sometimes. The survey found a significant correlation between experience of physical punishment in childhood and approval of physical punishment of children: those whose parents always or very frequently used physical punishment are much more likely to accept physical punishment of their own children. In addition, those living in cities are less likely to accept physical punishment and those who have children are more likely to condone its use.

(Azpuru, D. (2015), *Approval of Violence towards Women and Children in Guatemala*, AmericasBarometer Insights: 2015, Number 123, Latin American Public Opinion Project Insights series)

In a 2008-2009 study involving 12,446 women aged 15-49 with children, 56.5% reported that children in their home were physically punished (43.1% by being hit, beaten, spanked or slapped, 13.4% by other physical punishment). Women who had experienced partner violence were more likely to report that children in their home were physically punished (56% of women who had experienced partner violence compared to 38.8% of women who had not).

(Bott, S. et al (2012), *Violence Against Women In Latin America And The Caribbean: A Comparative Analysis Of Population-based Data From 12 Countries*, Washington DC: Pan American Health Organisation & Centers for Disease Control and Prevention)