BRIEFING ON GUATEMALA FOR THE HUMAN RIGHTS COMMITTEE
104TH SESSION – March 2012
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Note: This briefing updates the briefing submitted to the Country Report Task Force in July 2010 in light of the availability of the state party’s report to the Human Rights Committee, new recommendations from the Committee on the Rights of the Child and the Government’s response to UPR recommendations.

This briefing describes the legality of corporal punishment of children in Guatemala. In light of article 7 of the International Covenant on Civil and Political Rights and the jurisprudence of the Committee on the Rights of the Child on the issue, we hope the Human Rights Committee will:

- raise the issue of corporal punishment of children during its examination of the state party, asking what measures have been taken to prohibit and eliminate it, and
- recommend that explicit prohibition of all corporal punishment of children be enacted in relation to all settings, including the home and all alternative care settings, as a matter of urgency.

Guatemala’s report to the Human Rights Committee

The state party’s third report to the Human Rights Committee outlines the disciplinary measures that may be taken in relation to juvenile prisoners: these do not include corporal punishment (though they do include solitary confinement) (CCPR/C/GTM/3, para. 381). The report also describes extensively the measures taken to address violence against women, including a number of bills before Congress (e.g. paras. 70, 168, etc). Information is given regarding child and adolescent victims of domestic violence (paras. 238-240ff) but this makes no reference to violence lawfully inflicted on children by their parents in the name of discipline.

We note that the issue of corporal punishment of children is not raised in the List of Issues adopted by the Committee (CCPR/C/GTM/Q/3) and there is no reference to it in the state party’s written replies (CCPR/C/GTM/Q/3/Add.1).

Corporal punishment of children in Guatemala

In Guatemala, corporal punishment of children is unlawful in the penal system under state law but may be imposed under traditional law. It is not prohibited in the home, schools and alternative care settings.
With regard to the home, article 13 of the Integral Protection of Children and Adolescents Act (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) similarly states that parents must “educate and correct” their children “using prudent means of discipline”. These provisions are not interpreted as prohibiting all corporal punishment, however light, in childrearing. Article 53 of the Integral Protection of Children and Adolescents Act 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.

In 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. Similarly, there is no prohibition of corporal punishment in alternative care settings.

In the penal system, corporal punishment is unlawful as a sentence for crime under the Integral Protection of Children and Adolescents Act and the Constitution (1985), but local tribes may enforce traditional punishments, including whipping. Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 260(e)(8) of the Integral Protection of Children and Adolescents Act which states explicitly that during the enforcement of sanctions adolescents have the right not to be subjected to solitary confinement or the imposition of corporal punishment.

**Recommendations by human rights treaty bodies and during the UPR**

The Committee on the Rights of the Child first expressed concern about corporal punishment of children in Guatemala in 1997, in its concluding observations on the state party’s initial report (CRC/C/15/Add.58, paras. 8 and 33). In 2007, in examining implementation of the Optional Protocol on the involvement of children in armed conflict, the Committee expressed concern at the legality and use of corporal punishment in military schools and recommended explicit prohibition (CRC/C/OPAC/GTM/CO/1, paras. 16 and 17). In 2010, the Committee on the Rights of the Child again recommended law reform, to explicitly prohibit all corporal punishment and other cruel punishment of children in all settings (CRC/C/GTM/CO/3-4, Concluding observations on third/fourth report, paras. 53, 54 and 55).

Guatemala was examined in the first cycle of the Universal Periodic Review in 2008. In response to recommendations to prohibit all corporal punishment of children, the Government stated that corporal punishment is already prohibited and that the Integral Protection of Children and Adolescents Act complies with the Convention on the Rights of the Child (29 May 2008, A/HRC/8/38, Report of the Working Group, paras. 52 and 89(17)). As noted above, however, existing law does not prohibit all corporal punishment. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that all corporal punishment is unlawful, however light: there is no such clarity in Guatemalan law.

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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