

**BRIEFING ON EL SALVADOR FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 114th session (Jun/Jul 2015)**

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**This briefing describes the legality of corporal punishment of children in El Salvador. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, and the recommendations to El Salvador by the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities and during the UPR (accepted by the Government), we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for El Salvador, asking what progress is being made towards fulfilling the obligation to prohibit corporal punishment in all settings including the home, and**
* **in the concluding observations on the state party report, recommend to El Salvador that legislation be drafted and enacted as a matter of priority to clearly prohibit all corporal punishment of children in all settings, including the home, and to explicitly repeal the “right of correction”.**

**1 The legality of corporal punishment of children in El Salvador**

1.1 ***Summary:*** Corporal punishment of children in El Salvador is unlawful in the penal system, schools and some day care but it is not prohibited in the home, alternative care settings and all forms of day care. The Government has indicated its commitment to prohibition by accepting recommendations to prohibit in all settings made during the Universal Periodic Reviews of El Salvador in 2009 and 2014 (see below, para. 2.3).

1.2 ***Home (lawful):*** 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. Article 38 of the Law for the Integral Protection of Children and Adolescents 2009 appears to protect children from some corporal punishment but confirms that the “right of correction” remains in force: “Children and adolescents should be treated with respect for their person and individuality and may not be subjected to corporal punishment, psychological or any other form of offensive which infringes their dignity, without prejudice to the right of the mother and father to direct, guide moderate and correct accordingly” (unofficial translation).

1.3 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.[[1]](#footnote-1)

1.4 ***Alternative care settings (lawful):*** There is no explicit prohibition of all corporal punishment in alternative care settings. Article 38 of the Law for the Integral Protection of Children 2009 protects children from some but not all corporal punishment and article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 similarly confirm a “right of correction” (see above). These defences are potentially available to guardians and others with parental responsibility.

1.5 ***Day care (partially prohibited):*** 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 below, para. 1.6). In other day care, article 38 of the Law for the Integral Protection of Children 2009 protects children from some but not all corporal punishment and article 215 of the Family Code 1994 and article 204 of the Criminal Code 1997 similarly confirm a “right of correction” (see above). These defences are potentially available to guardians and others with parental responsibility.

1.6 ***Schools (unlawful):*** Corporal punishment is explicitly prohibited in schools in article 90 of the General Law on Education 1996 (amended 2000). The prohibition is confirmed in article 89 of the Law for the Integral Protection of Children 2009 (unofficial translation): “Public and private schools must teach the value of discipline and respect for teachers, students and all people. In the imposition of disciplinary measures, schools are obliged to respect the dignity, rights and guarantees of every girl, child and adolescent. As a result, the abuse, physical and psychological maltreatment and any form of cruel, inhuman or degrading punishment is prohibited….”

1.7 ***Penal institutions (unlawful):*** Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions article 128(2) of the Prisons Act, article 26 of the General Regulations for Detention Centers for Juvenile Offenders 1995, and article 118 of the Juvenile Offenders Act 1995.

1.8 ***Sentence for crime (unlawful):*** There is no provision for judicial corporal punishment in criminal law.

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

2.1 ***CRC:*** In 2004, the Committee on the Rights of the Child, having been led to believe that the Domestic Violence Act in El Salvador prohibited corporal punishment, recommended that the Act be effectively implemented.[[2]](#footnote-2) Following examination of the third/fourth state party report in 2010, the Committee expressed concern that corporal punishment is still lawful in the home and recommended it be prohibited in all settings.[[3]](#footnote-3)

2.2 ***CRPD:*** In 2013, the Committee on the Rights of Persons with Disabilities recommended to El Salvador that it follow up the recommendations of the Committee on the Rights of the Child concerning prohibition of corporal punishment and ensure that the prohibition included practices in institutions for children with disabilities.[[4]](#footnote-4)

2.3 ***UPR:*** El Salvador was reviewed in the Universal Periodic Review process in 2010 and 2014. On both occasions the Government accepted recommendations to prohibit corporal punishment of children in all settings.[[5]](#footnote-5)

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

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*April 2015*

1. 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 [↑](#footnote-ref-1)
2. 30 June 2004, CRC/C/15/Add.232, Concluding observations on second report, paras. 35, 36, 43 and 44 [↑](#footnote-ref-2)
3. 17 February 2010, CRC/C/SLV/CO/3-4, Concluding observations on third/fourth report, paras. 9, 29, 45, 54 and 55 [↑](#footnote-ref-3)
4. 8 October 2013, CRPD/C/SLV/CO/1, Concluding observations on initial report, paras. 35 and 36 [↑](#footnote-ref-4)
5. 18 March 2010, A/HRC/14/5, Report of the working group, para. 81(38) ; 17 December 2014, A/HRC/28/5, Report of the working group, para. 103(23) [↑](#footnote-ref-5)