

**BRIEFING ON GUATEMALA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 115th session (Oct/Nov 2015)**

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**This briefing describes the legality of corporal punishment of children in Guatemala. 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 Guatemala by the Committee on the Rights of the Child, the Committee Against Torture 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 Guatemala, in particular asking what measures are being taken to explicitly prohibit corporal punishment in the home and all other settings and to repeal the “right of correction”, and**
* **recommend to Guatemala, following examination of the state party’s report, that legislation is enacted and enforced which clearly prohibits corporal punishment in the home and all other settings and explicitly repeals the “right of correction” in the Civil Code 1963 and the Law on Integral Protection of Children and Adolescents 2003.**

**1 The legality of corporal punishment of children in Guatemala**

1.1 ***Summary:***In Guatemala, corporal punishment of children is unlawful the penal system but it is not prohibited in the home, alternative care settings, day care and schools. The Civil Code 1963 and the Law on Integral Protection of Children and Adolescents Act 2003 both confirm a “right of correction”.

1.2 ***Home (lawful******)***: 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.

1.3 The Government accepted the recommendations to prohibit corporal punishment made during the Universal Periodic Review of Guatemala in 2008 and again in 2012, though in 2008 indicated that it considers existing legislation adequate in this respect.[[1]](#footnote-1) However, while education and awareness programmes have been undertaken to address corporal punishment in the home, there appears to have been no progress towards drafting prohibiting legislation.

1.4 ***Alternative care settings (lawful):***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.

1.5 ***Day care (lawful):***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.

1.6 ***Schools (lawful):***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.

1.7 ***Penal institutions (unlawful):***Corporal punishment is unlawful 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….”

1.8 ***Sentence for crime (unlawful):***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.

1.9 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”.[[2]](#footnote-2) 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 above, para. 1.7) presumably applies also in the context of Mayan justice.

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

2.1 ***CRC:*** The Committee on the Rights of the Child raised concerns about corporal punishment of children in the family and in schools in Guatemala in its concluding observations on the state party’s initial report in 1996.[[3]](#footnote-3) In 2007, the Committee expressed concern about corporal punishment in military schools and recommended its prohibition.[[4]](#footnote-4) Following examination of the third/fourth report in 2010, the Committee recommended that corporal punishment be prohibited in all settings.[[5]](#footnote-5)

2.2 ***CAT:*** In 2013, the Committee Against Torture expressed concern at corporal punishment of children in detention, and recommended that international standards on juvenile detention be adhered to.[[6]](#footnote-6)

2.3 ***UPR:*** During the first cycle Universal Periodic Review of Guatemala in 2008 and again during the second cycle UPR in 2012, the Government accepted recommendations to prohibit corporal punishment of children in all settings, including the home.[[7]](#footnote-7)

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

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*August 2015*

1. 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) [↑](#footnote-ref-1)
2. 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 [↑](#footnote-ref-2)
3. 7 June 1996, CRC/C/15/Add.58, Concluding observations on initial report, paras. 8 and 33 [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. 1 October 2010, CRC/C/GTM/CO/3-4, Concluding observations on third/fourth report, paras. 53, 54 and 55 [↑](#footnote-ref-5)
6. 21 June 2013, CAT/C/GTM/CO/5-6, Concluding observations on fifth/sixth report, para. 19 [↑](#footnote-ref-6)
7. 29 May 2008, A/HRC/8/38, Report of the working group, para. 89(17); 31 December 2012, A/HRC/22/8, Report of the working group, paras. 99(56) and 99(57) [↑](#footnote-ref-7)