

GUATEMALA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14th session, 2012

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Global Initiative to
**End All Corporal Punishment
of Children**

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in Guatemala, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and the Government’s apparent acceptance of the recommendation to prohibit it made during Guatemala’s initial UPR in 2008.

We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations. We hope states will raise the issue during the review in 2012 and recommend to Guatemala that legislation be enacted to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.

1 The initial review of Guatemala by the Human Rights Council (2008)

1.1 Guatemala was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). The issue of corporal punishment of children was included in the summary of stakeholders' information¹ and the following recommendation was made:

“Prohibit explicitly corporal punishment in the home and family (Austria).”²

1.2 There is no official record of the Government's acceptance/rejection of this recommendation but we note from another source (www.upr-info.org) that the Government orally accepted all recommendations at the adoption of the report of the Working Group during the Working Group session on 9 May 2008.³ We also note that the Government's immediate response to the recommendation during the review was to state 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” and “corporal punishment in all areas is denounced, sanctioned and punished”.⁴ This statement conflicts with the findings of our research, which indicate that current legislation does not, in fact, prohibit all corporal punishment of children in all settings (see further detail below).

1.3 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. Specifically challenging Guatemala on this issue during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

1.4 In summary, corporal punishment of children in Guatemala is lawful in the home, schools and alternative care settings. It is unlawful in the penal system with the exception of justice administered by local tribes, who may lawfully inflict traditional punishments including whipping.

2 Legality of corporal punishment in Guatemala

2.1 Corporal punishment is lawful in 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 53 of the Code confirms children's right not to be subject to any form of violence, but it does not explicitly prohibit all corporal punishment in childrearing. Article 253 of the Civil Code (1963) states that parents must “educate and correct” their children “using prudent means of discipline”. These provisions are not interpreted as prohibiting all corporal punishment 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 similarly it does not explicitly prohibit all corporal punishment in childrearing.

¹ 2 April 2008, A/HRC/WG.6/2/GTM/3, Summary of stakeholders' information, para. 17

² 29 May 2008, A/HRC/8/38, Report of the Working Group on the Universal Periodic Review: Guatemala, para. 89(17)

³ See http://www.upr-info.org/IMG/pdf/Recommendations_Guatemala_2008.pdf, accessed 20 February 2012

⁴ 29 May 2008, A/HRC/8/38, Report of the Working Group on the Universal Periodic Review: Guatemala, para. 52

2.2 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.

2.3 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). However, 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.

2.4 Corporal punishment is lawful in **alternative care settings**.

3 Recommendations by human rights treaty monitoring bodies

3.1 The **Committee on the Rights of the Child** first made recommendations concerning corporal punishment of children in Guatemala in 1996.⁵ In 2007, following examination of the state party's 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 of children in military schools and recommended prohibition.⁶ In 2010, the Committee recommended prohibition of corporal punishment in all settings.⁷

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⁵ 7 June 1996, CRC/C/15/Add.58, Concluding observations on initial report, para. 33

⁶ 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

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