

Corporal punishment of children in Mexico: Briefing for the Universal Periodic Review, 31st session, November 2018

From the Global Initiative to End All Corporal Punishment of Children, March 2018



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Mexico, corporal punishment of children is still lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment of children in Mexico. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Mexico fulfil its commitment and enact legislation, as a matter of priority and throughout the territory, to clearly prohibit all corporal punishment of children in all settings, including in the home, and to repeal the “right of correction” from the Federal Civil Code.

1 Review of Mexico in the 2nd cycle UPR (2013) and progress since

- 1.1 Mexico was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 17). The issue of corporal punishment of children was raised in the summary of stakeholders’ information.¹ No recommendations were issued specifically on corporal punishment but the Government accepted general recommendations on protecting children’s rights.²
- 1.2 Since the review, there has been no change in the legality of corporal punishment of children. The General Law on the Rights of Children and Adolescents was enacted in 2014 and mentions corporal punishment, but it does not explicitly repeal the “right of correction”. However, the Government has strengthened its 2009 UPR commitment to prohibit all corporal punishment by becoming a Pathfinder country with the Global Partnership to End Violence Against Children; and in August 2017 launched its End Violence National Action Plan 2017-2018 which identifies explicit prohibition of corporal punishment in all settings as a priority. Bills aiming to prohibit corporal punishment and all other humiliating and degrading treatment of children are under discussion in the Congress – these Bills should be strengthened through the explicit repeal of the “right of correction” and enacted as a matter of urgency.

¹ 31 July 2013, A/HRC/WG.6/17/MEX/3, Summary of stakeholders' views, para. 48

² 11 December 2013, A/HRC/25/7, Report of the working group, paras. 148(37), 148(41), 148(81) and 148(110); 14 March 2014, A/HRC/25/7/Add.1, Report of the working group: Addendum, paras. 16, 20, 33 and 42

- 1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Mexico. We hope states will raise the issue during the review in 2018 and make a specific recommendation that Mexico fulfil its commitment and enact legislation, as a matter of priority and throughout the territory, to clearly prohibit all corporal punishment of children in all settings, including in the home and repeal the “right of correction” from the Federal Civil Code.

2 Legality of corporal punishment in Mexico

Summary of current law and reforms needed to achieve prohibition

Corporal punishment of children in Mexico is lawful in the home, and in some alternative care and day care settings. Legislation should be enacted to explicitly prohibit all corporal punishment, however light, in all settings including in the home and to repeal the “right to correct”.

- 2.1 **Home (lawful):** Law reform to date has not yet achieved full prohibition. The new General Law on the Rights of Children and Adolescents 2014 was published in the Official Gazette on 4 December 2014. It states in article 105: “The federal and state laws shall under the provisions of this Act and within the scope of their powers undertake the necessary measures that effect is given to the following obligations: (1) That those exercising parental authority, guardianship or custody of children and adolescents, care and look after them and protect them against all forms of abuse; respect their dignity and provide guidance to them, so that they know their rights and learn to defend and respect those of others; ... (4) That those dealing with children and adolescents refrain from any violence against them, including corporal punishment.” Article 103 of sets out the duties of those exercising parental authority, including to create “an emotional, caring and non-violent environment”, to “protect against all forms of violence” and to “refrain from any attack on [children’s] physical and mental integrity”, adding that “the exercise of parental authority, guardianship or custody of children and adolescents cannot be justification for breaching the obligation under [the latter]”. However, the Law does not explicitly repeal the “right of correction”.
- 2.2 The “right to correct” of persons with parental authority is confirmed in the Civil Code. In 1997, the Federal Civil Code 1928 was amended so that the exercise of the right to correct should not involve the use of force which endangers the physical or mental integrity of children, and new provisions against family violence were added. A new Federal Civil Code was adopted in 2012 that reiterated these provisions without further amendment. Article 422 of the Code states (unofficial translation): “Persons with parental power or custody of a child are required to educate them suitably.” Article 423 states: “For the purpose of the preceding article, those who exercise parental authority or have children in their custody have the power to correct [‘la facultad de corregirlos’] them and the obligation to observe behaviour which sets a good example. The power to correct does not imply the infliction on children of force which violates their physical or psychological integrity in accordance with the provisions of article 323ter of this Code.” Article 323ter states that family members should avoid behaviours that lead to domestic violence. Domestic violence is defined in the article as “the use of physical or moral force, or serious omissions, repeatedly by one family member on another, which violates their physical and/or psychological integrity, regardless of whether or not it results in injury, provided that the

attacker and the attacked family members live at the same address and there is a relationship of kinship, marriage or cohabitation.” These provisions appear to protect children from physical punishment inflicted “repeatedly”, but it is not clear that isolated punitive assault on a child would not be tolerated. The federal Law for the Protection of the Rights of Children and Adolescents 2000 confirms the right of children and adolescents to “have a violence-free life” (art. 3) and the obligation of parents to protect children from all forms of abuse, stating that this means parental authority should not be exercised in a way which violates the child’s physical or mental integrity (art. 11), but it does not explicitly prohibit all corporal punishment in childrearing.

- 2.3 In August 2017, two Bills were introduced in Parliament to prohibit corporal punishment of children. The Bill amending article 423 of the Federal Civil Code was approved by the Chamber of Deputies in December 2017 and passed on to the Senate for examination. It has the apparent aim to prohibit corporal punishment and all other humiliating and degrading treatment of children but seems to qualify corporal punishment as “repeated” use of force. It amends article 423 as follows (unofficial translation, emphasis added): “For the effects of the previous article, those who exercise parental authority or have minors under their custody, have the power to correct them and the obligation to respect their physical and psychological integrity, as well as observe a behaviour that serves as a good example. The power to correct does not imply for any reason the use of corporal punishment or cruel, degrading or humiliating treatment *that threaten their physical or mental integrity in the terms of the provisions of article 323ter of this Code.*” The Bill amending article 323ter of the Federal Civil Code and article 105 of the General Law on the Rights of Children and Adolescents 2014 includes an explicit prohibition of corporal and humiliating punishment in those laws, but it does not repeal the mention of the “right to correct”. It is still pending in the Senate.
- 2.4 The majority of states have enacted provisions similar to the federal law in their Civil Codes and other legislation – i.e. confirming a “right of correction” within limits which in many cases are linked to legal definitions of domestic violence. Children are variously protected from the use of force which causes harm (e.g. Baja California Family Violence Prevention and Care Act 2003, Chihuahua Civil Code 2004, Hidalgo Law on Domestic Violence 2010, Nayarit Civil Code 1981), from the repeated use of force (Morelos Family Code 2006), from violations of their integrity (e.g. Chihuahua Law on the Rights of Adolescents 2013, Hidalgo Family Law 2007, Michoacan de Ocampo Family Code 2008, Nayarit Civil Code 1981, Nayarit Law on the Protection of the Rights of Children and Adolescents 2005) and/or from abuse (e.g. Chihuahua Criminal Code 2006). But the near universal acceptance of physical punishment in childhood means that it is not typically perceived as harmful or abusive or to violate integrity unless it is severe or causes obvious injury: prohibition requires clarity in law that no corporal punishment should be used.
- 2.5 Corporal punishment is prohibited in the state of Guanajuato under article 477 of the Civil Code. There are possible other exceptions where state laws may prohibit corporal punishment in the home (in Guerrero and Zacatecas for example): we are currently seeking further information. In other states, corporal punishment is clearly lawful under an unqualified “right of correction” (e.g. Jalisco Civil Code 1995, Jalisco Criminal Code 1982).
- 2.6 In 2000 and 2011, the Constitution 1917 was amended with regard to children’s rights. As amended, article 1 states: “In the United Mexican States, all human rights recognised in the Constitution and international treaties to which the Mexican State is a party shall be enjoyed.... The rules on human rights shall be interpreted in accordance with the Constitution and the international treaties of the field at all times encouraging people the broadest protection....” Article 4 states: “All decisions and actions of the State and shall comply with the principle of the best interests of children, so ensuring their full rights. Boys and girls have the right to satisfy

their needs for food, health, education and recreation for their development. This principle should guide the design, implementation, monitoring and evaluation of public policies aimed at children. The parents, guardians and custodians have an obligation to preserve and enforce these rights and principles. The State shall grant facilities for individuals to contribute to the fulfillment of child rights.”

2.7 **Alternative care settings (*partially lawful*)**: Corporal punishment is unlawful in institutional forms of care under article 105 of the General Law on the Rights of Children and Adolescents 2014, which establishes the obligations of “directors and staff of health, social assistance, academic, sports, religious or other institutions” to “refrain from any form of violence, abuse, prejudice, aggression, damage, abuse, harassment and exploitation” and of “those who have dealings with children and adolescents to refrain from any violence against them, including corporal punishment” (unofficial translation). We have yet to confirm that these obligations extend to informal alternative care settings (e.g. private foster care arrangements) and that they are not undermined by the “right of correction” of those with parental authority.

2.8 **Day care (*partially lawful*)**: Corporal punishment is unlawful in institutional day care under article 105 of the General Law on the Rights of Children and Adolescents 2014, which establishes the obligations of “directors and staff of health, social assistance, academic, sports, religious or other institutions” to “refrain from any form of violence, abuse, prejudice, aggression, damage, abuse, harassment and exploitation” and of “those who have dealings with children and adolescents to refrain from any violence against them, including corporal punishment” (unofficial translation). We have yet to confirm that these obligations extend to informal day care arrangement (e.g. childminding) and that they are not undermined by the “right of correction” of those with parental authority.

2.9 The Childcare Services Law 2011 states that providers of childcare services must “ensure the recognition of the dignity of children, the creation of the necessary conditions of respect, protection and full exercise of their rights” (art. 19, unofficial translation) but it does not explicitly prohibit corporal punishment.

2.10 **Schools (*unlawful*)**: Corporal punishment is unlawful in schools. Article 57 of the General Law on the Rights of Children and Adolescents 2014 states that authorities must establish mechanisms to prevent violence against children in schools, prepare protocols on school violence for staff and those exercising parental authority, ensure that “school discipline is administered in a manner compatible with human dignity, preventing the imposition of disciplinary measures that are not previously established, contrary to human dignity or threaten the life or physical or mental integrity of children and adolescents” and “eradicate discriminatory or exclusionary pedagogical practices that violate human dignity or integrity, especially humiliating and degrading treatment” (unofficial translation). It also refers to those exercising parental authority in education in relation to article 103 of the Law, which provides for the duty to create “an emotional, caring and non-violent environment”, to “protect against all forms of violence” and to “refrain from any attack on [children’s] physical and mental integrity”.

2.11 The federal General Law on Education 1993 states that in educating children “measures will be taken that ensure the learner the protection and care necessary to preserve their physical, psychological and social integrity on the basis of respect for their dignity, and that the implementation of school discipline is compatible with their age” (art. 42). Similar provisions are found in state education laws (e.g. Hidalgo Law on Education 2011, Nayarit Law on Protection of the Rights of Children and Adolescents 2005, Michoacan de Ocampo Law on the Rights of Children and Adolescents 2011).

- 2.12 **Penal institutions (unlawful)**: Corporal punishment is unlawful as a disciplinary measure in penal institutions under the federal Law for the Treatment of Juvenile Offenders 1991, which states that children in conflict with the law “will receive fair and humane treatment” and prohibits “abuse, isolation, psychological coercion, or any other action that violates their dignity or their physical or mental integrity” (art. 3) and does not include corporal punishment among permitted disciplinary measures (art. 43). There are similar provisions in state legislation on juvenile justice; in some states prohibition of corporal punishment is explicit. For example, article 109 of the Chihuahua Juvenile Justice Act 2006 states: “The adolescent has the right ... (11) not to be subjected to isolation measures or physical punishment.” The Jalisco Juvenile Justice Act 2006 states (art. 10): “Adolescents subject to the terms of this Act are entitled to ... (14) Not receive corrective or illegal extreme disciplinary measures, such as confinement in dark cell, corporal punishment or any action that may endanger their physical or mental health, or be subjected to psychological repression....”
- 2.13 The Federal Justice for Adolescents Act was promulgated in 2012 and comes into force in December 2014: it explicitly prohibits corporal punishment of children (art. 11). A new Code of Criminal Procedure was adopted in March 2014.
- 2.14 **Sentence for crime (unlawful)**: The federal Constitution 1917 explicitly prohibits corporal punishment (art. 22): “Punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties are prohibited.” There is no provision for judicial corporal punishment in federal or state criminal laws.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC**: The Committee on the Rights of the Child has recommended to Mexico that corporal punishment of children be prohibited on four occasions – in concluding observations on the second report in 1999,³ the third report in 2006⁴, the fourth/fifth report in 2015,⁵ and in concluding observations on the initial report to OPAC in 2011.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 since 2011 the Committee on the Rights of Persons with Disabilities.

³ 10 November 1999, CRC/C/15/Add.112, Concluding observations on second report, para. 25

⁴ 8 June 2006, CRC/C/MEX/CO/3, Concluding observations on third report, paras. 35, 36, 72 and 73

⁵ 8 June 2015, CRC/C/MEX/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 31 and 32

⁶ 7 April 2011, CRC/C/OPAC/MEX/CO/1, Concluding observations on initial report (OPAC), para. 18