



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

## **Briefing on Mexico for the Committee on the Rights of Persons with Disabilities, Pre-Sessional Working Group 1<sup>st</sup> session – April 2014**

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### **Summary**

**This briefing describes the legality of corporal punishment of children in Mexico, in violation of children’s right to protection from corporal punishment and other cruel or degrading forms of punishment. In light of the particular vulnerability of children with disabilities to corporal punishment by adults, the jurisprudence of the UN treaty bodies, and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee on the Rights of Persons with Disabilities will:**

- **include the issue of corporal punishment in its List of Issues for Mexico, in particular asking what measures are being taken to ensure that legislation explicitly prohibits all corporal punishment, without exception, in the home and all other settings throughout the state party;**
- **urge the Government of Mexico, in its concluding observations on the initial report, to ensure that legislation explicitly prohibits all corporal punishment, without exception, and states that no form of physical punishment can be justified by appealing to a “right of correction”.**

### **1 The right of children with disabilities not to be subjected to corporal punishment**

1.1 The Convention on the Rights of Persons with Disabilities confirms that children with disabilities should enjoy all human rights and fundamental freedoms on an equal basis with other children (art. 7). The Convention also states that all persons have the rights to freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15), to freedom from exploitation, violence and abuse within and outside the home (art. 16) and

to respect for their physical and mental integrity (art. 17). The jurisprudence of treaty monitoring bodies, led by the Committee on the Rights of the Child monitoring the Convention on the Rights of the Child, is clear that these rights put an obligation on states parties to prohibit and eliminate all corporal punishment of children, including within the family.

- 1.2 As confirmed in the UN Secretary General's Study on Violence against Children, children with disabilities are particularly vulnerable to violence, including corporal punishment, and corporal punishment is a significant cause of impairment among children.<sup>1</sup> Yet the obligation to prohibit corporal punishment is frequently ignored or evaded by governments. The near universal acceptance of a degree of violence in childrearing together with deeply held views that parents and other adults have a "right" to physically punish children can challenge efforts to achieve prohibition. It also means that corporal punishment – at least to some degree – is not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence.
- 1.3 **For the above reasons, we hope that in examining implementation of the Convention, the Committee on the Rights of Persons with Disabilities will specifically address the issue of corporal punishment of children with disabilities and recommend its prohibition in the home and all other settings.**

## **2 Mexico's initial report (CRPD/C/ECU/1) and the issue of corporal punishment**

- 2.1 Mexico's initial state party report to the Committee on the Rights of Persons with Disabilities provides information on measures taken to ensure persons with disabilities are free from exploitation, violence and abuse (paras. 97-104), on a number of aspects relating to protecting the integrity of the person (paras. 105-108) and on the rights of children with disabilities (paras. 42-50). However, the report makes no reference to corporal punishment – violence that may be inflicted on children with disabilities in the guise of "discipline" – nor to the fact that the law in Mexico specifically provides for a "right of correction" of children including children with disabilities). **We hope the Committee will emphasise to the state party that so long as the law confirms a "right of correction" and fails to explicitly prohibit all corporal punishment, children with disabilities, as all other children, remain vulnerable to violent assault in the guise of "discipline" or "correction".**

## **3 Legality and practice of corporal punishment of children with disabilities in Mexico**

- 3.1 **Summary:** Mexico is a federal republic consisting of 31 states and a Federal District, which is the seat of the federal Government. Each state is autonomous and has its own Constitution and other laws. Under federal law, corporal punishment of children is unlawful in schools and in the penal system; it appears that law reform has not yet fully prohibited corporal punishment in the home and in all alternative care and day care settings. For the most part this is also the case under state legislation.
- 3.2 **Home (not fully prohibited):** The Federal Civil Code confirms that persons with parental authority have a "right of correction" ("facultad de corregirlos"). In 1997, the Federal Civil

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<sup>1</sup> Pinheiro, P. S. (2006), *World Report on Violence against Children*, Geneva: United Nations. See also Krug E. G. et al (eds) (2002), *World Report on Violence and Health*, Geneva: World Health Organisation. Further information is available from the Global Initiative to End All Corporal Punishment of Children, [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org), email [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)

Code 1928 was amended so that the exercise of this right should not involve the use of force which endangers the physical or mental integrity of children, and new provisions against family violence were added; these provisions were reiterated without further amendment in the Federal Civil Code 2012. According to article 423 of the Code, “those who exercise parental responsibility or have custody of children, have the power to correct them and the duty to set a good example with their conduct”; this power “does not imply the power to use force that violates the physical or psychological integrity of the minor according to Article 323b of this Code” (unofficial translation). Article 323bis concerns domestic violence, which is defined 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 all forms of physical punishment which is inflicted “repeatedly”, but it is not clear that isolated punitive assault on a child, whether with or without a disability, 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), but does not explicitly prohibit all corporal punishment in childrearing.

- 3.3 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, including children with disabilities, are variously protected from the use of force which causes harm,<sup>2</sup> from the repeated use of force,<sup>3</sup> from violations of their integrity<sup>4</sup> and/or from abuse.<sup>5</sup> But the near universal acceptance of physical punishment in childhood means that it is not typically perceived as harmful/abusive/to violate integrity unless it is severe or causes obvious injury: prohibition requires clarity in law that no corporal punishment should be used.
- 3.4 There are possible exceptions where state laws may prohibit corporal punishment in the home: we are currently seeking further information. For example, in Guerrero, the Civil Code 1993 states that “the right to punish does not imply the right to hit or abuse the child” (art. 589); the explanatory notes on the Criminal Code 1986 state that the offence of harm is defined as “causing harm to the wellbeing” of a person, a definition which “sets itself apart from the casuistic and redundant system that characterises most of the Criminal Codes of the Republic”, and that in this connection it was decided not to provide an exemption for those with parental authority or guardianship who cause minor injuries to a child because “this right [to correction] is not to be exercised in this way”. In Zacatecas, the definition of domestic violence in the Family Violence Act 2003 appears comprehensive and applies to isolated as well as repeated acts, including when argued they are inflicted under the right of correction (art. 283bis).
- 3.5 In some states, corporal punishment is clearly lawful under an unqualified “right of correction”.<sup>6</sup>
- 3.6 **Alternative care settings (not fully prohibited):** We have been unable to identify legislation explicitly prohibiting corporal punishment in all forms of alternative care (foster

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<sup>2</sup> 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

<sup>3</sup> Morelos Family Code 2006

<sup>4</sup> 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

<sup>5</sup> e.g. Chihuahua Criminal Code 2006

<sup>6</sup> e.g. Jalisco Civil Code 1995; Jalisco Criminal Code 1982

care, institutions, places of safety, emergency care, etc). It would seem that the legality of corporal punishment by those with parental authority/custody of a child in these settings is as for parents in the home (see above, paras. 1.2-1.5). A report on institutions including psychiatric hospitals and shelters in Mexico found that children and adults with disabilities are kept in permanent restraints, and that this constitutes cruel, inhuman or degrading treatment or punishment and sometimes torture.<sup>7</sup>

- 3.7 **Day care (*not fully prohibited*)**: We have been unable to identify legislation explicitly prohibiting corporal punishment in all forms of early childhood care and in day care for older children. It would seem that the legality of corporal punishment by those with parental authority/custody of a child in these settings is as for parents in the home (see above, paras. 1.2-1.5), leaving children with disabilities vulnerable to physical punishment in some forms. Corporal punishment is possibly considered unlawful in preschool provision under education legislation (see below, para. 1.7).
- 3.8 **Schools (*unlawful*)**: Corporal punishment is considered unlawful in schools, though it is not explicitly prohibited. The federal Law for the Protection of the Rights of Children and Adolescents 2000 states that children and adolescents “have the right to an education that respects their dignity” and that “legislation will enact the necessary measures to ... prevent the imposition in educational institutions of disciplinary measures that have not been previously established, are against their dignity, or threaten their life or their physical or psychological integrity” (art. 32, unofficial translation). 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). These provisions are also reflected in state education laws.<sup>8</sup>
- 3.9 **Penal institutions (*unlawful*)**: Corporal punishment is unlawful 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 ... (9) 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....”
- 3.10 **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.

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<sup>7</sup> Rosenthal, E. et al (2010), *Abandoned & Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities*, Disability Rights International & Comisión Mexicana de Defensa y Promoción de los Derechos Humanos

<sup>8</sup> 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

## 4 Immediate opportunities for law reform to prohibit all corporal punishment

4.1 Efforts have been underway to draft and enact a General Law on the Rights of Children and Adolescents. A draft version was published in April 2012 which confirms that children and adolescents have the right to “enjoy a life free from violence in all fields of development, including the family, school and community” (art. 8) and provides for rights within the family setting, but it does not explicitly prohibit all corporal punishment. The enactment of this new law provides a key opportunity for clarifying at federal level that no corporal punishment is lawful.<sup>9</sup> **We hope the Committee will urge the state party to ensure that the new law includes explicit prohibition of all corporal punishment, without exception, and that no form of physical punishment of children can be justified by appealing to a “right of correction”.**

## 5 Recommendations by human rights treaty bodies and during the UPR

5.1 **CRC:** The Committee on the Rights of the Child has three times expressed concern at the lack of prohibition of corporal punishment in federal and state legislation in Mexico and recommended law reform to explicitly prohibit it in the home and all settings – in its concluding observations on the second report in 1999<sup>10</sup> and on the third report in 2006.<sup>11</sup> The Committee also recommended that corporal punishment be prohibited in Mexico in its concluding observations on the initial report (OPAC) in 2011.<sup>12</sup>

5.2 **UPR:** Mexico was examined in the first cycle of the UPR in 2009 (session 4). The Government accepted recommendations to “curb prevalence of corporal punishment on children, in keeping with Mexico’s international advocacy against such offences” and to “take measures to ensure that children are fully protected from corporal punishment and other forms of violence or exploitation”.<sup>13</sup> The second cycle UPR took place in 2013 (session 17). During the review, the Government was asked about its actions taken regarding the prohibition of corporal punishment<sup>14</sup> but there is no record of any response. No recommendations were made specifically on corporal punishment, but general recommendations regarding violence against children were made to which the Government should respond no later than March 2014.<sup>15</sup>

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<sup>9</sup> *Proyecto de Ley General para la Garantía de los Derechos de Niñas, Niños y Adolescentes*, at [www3.diputados.gob.mx](http://www3.diputados.gob.mx), accessed 12 February 2014

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

<sup>11</sup> 8 June 2006, CRC/C/MEX/CO/3, Concluding observations on third report, paras. 35, 36, 72 and 73

<sup>12</sup> 7 April 2011, CRC/C/OPAC/MEX/CO/1, Concluding observations on initial report (OPAC), para. 18

<sup>13</sup> 29 May 2009, A/HRC/11/27, Report of the working group, para. 93(30)

<sup>14</sup> 25 October 2013, A/HRC/WG.6/17/L/5 Unedited Version, Draft report of the working group, para. 129

<sup>15</sup> *ibid.*, paras. 148(37), 148(41), 148(81) and 148(110)