**BRIEFING ON MEXICO FOR THE HUMAN RIGHTS COMMITTEE, 127th session
(October – November 2019)**

*From the Global Initiative to End All Corporal Punishment of Children, September 2019*

**This briefing describes the legality of corporal punishment of children in Mexico. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and those made to Mexico by the Committee on the Rights of the Child and during the Universal Periodic Review in 2018 (which the Government accepted), we hope the Human Rights Committee will, in its concluding observations on Mexico’s sixth state party report, recommend that legislation is immediately enacted to explicitly prohibit all corporal punishment of children, in all settings including the home and in all states, and repeal the “right to correct” from federal and state legislation.**

**1 The report of Mexico to the Human Rights Committee**

* 1. Mexico’s sixth periodic report to the Human Rights Committee (CCPR/C/MEX/6) states that the 2014 General Law on the Rights of Children and Adolescents protects children from any form of corporal punishment.[[1]](#footnote-1) The report does not mention however the “right to correct” of persons with parental authority recognised in article 423 of the Federal Civil Code 1928 and in various state Civil Codes or similar, which allows for ‘lighter’ corporal punishment of children and must be repealed.

**1.2 In light of the state’s obligation to explicitly prohibit corporal punishment in all settings, we hope the Committee will raise this issue in its review of Mexico and recommend that legislation is immediately enacted to explicitly prohibit all corporal punishment of children, in all settings including the home and in all states, and repeal the “right to correct” from federal and state legislation.**

**2 The legality of corporal punishment of children in Mexico**

2.1 ***Summary:*** Corporal punishment of children in Mexico is prohibited in schools and in the penal system but it is still lawful in the home and in some alternative care and day care settings.

2.2 ***Home (lawful):***The Government has signalled its commitment to prohibiting all corporal punishment of children. In 2009, the Government accepted recommendations to ensure that children are fully protected from corporal punishment made during the Universal Periodic Review (UPR).[[2]](#footnote-2) At the second cycle UPR of Mexico in 2013, the Government noted its use of the Peaceful Resolution of Family Conflict Model as part of it System for the Comprehensive Development of the Family (SNDF)[[3]](#footnote-3) but made no reference to law reform to prohibit all corporal punishment. In 2011, the Regional Roadmap on Violence against Children was adopted by the Central American Governments of Cuba, Mexico and the Dominican Republic: it includes a recommendation to adopt national legislation to explicitly prohibit all corporal punishment and to repeal provisions allowing for “moderate” punishment/correction.[[4]](#footnote-4) Mexico is also a Pathfinder country with the Global Partnership to End Violence Against Children: in August 2017 it launched its End Violence National Action Plan 2017-2018 which identifies explicit prohibition of corporal punishment in all settings as a priority. In 2018, Mexico accepted UPR recommendations to prohibit corporal punishment of children.[[5]](#footnote-5)

2.3 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 “right of correction” in the Federal Civil Code was not explicitly repealed.

2.4 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. In 2012, despite the Federal Civil Code undergoing several amendments, those provisions remained. 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.

2.5 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. The Bill 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.

2.6 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 The first chamber of the Supreme Court issued a decision in 2016 on parental authority and the right of correction which stated that parental authority cannot be used as a justification for using violence as discipline. The decision draws on the definition of corporal punishment given by the UN Committee on the Rights of the Child’s General Comment No. 8 and highlights that all forms of corporal punishment, including cruel and degrading punishment, are incompatible with the Convention. This is however an “isolated thesis” – it is not an established binding jurisprudence – and it must be highlighted that, unlike common law systems, case law in a civil law system such as Mexico’s is below legislation in the hierarchy of norms.

2.8 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.

2.9 Corporal punishment is prohibited in the state of Guanajuato which in 2015 amended article 477 of its Civil Code to state (unofficial translation): “Those who exercise parental authority have an obligation of care, development and integral education of the people on which this exercise rests. Those exercising parental authority may not impose corporal punishment or any other humiliating treatment as a form of disciplinary correction. The authorities will assist those exercising parental authority, in a prudent and moderate manner, whenever they are required to do so.” Legislation to prohibit corporal punishment is under consideration in the state of Quintana Roo,[[6]](#footnote-6) and reportedly in the state of Oaxaca.[[7]](#footnote-7)

2.10 There are possible other 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). In other states, corporal punishment is clearly lawful under an unqualified “right of correction” (e.g. Jalisco Civil Code 1995, Jalisco Criminal Code 1982).

2.11 ***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.

2.12 ***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. 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.

2.13 ***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”.

2.14 Article 263(IX) of the National Law for a Comprehensive Juvenile Justice System 2016 puts an obligation on educational institutions to eliminate “severe disciplinary measures, in particular corporal punishment” (unofficial translation), as part of the social prevention of violence and crime. 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).

2.15 ***Penal institutions (unlawful):***Corporal punishment is unlawful as a disciplinary measure in penal institutions under the National Law for a Comprehensive Juvenile Justice System 2016, which repealed the federal Law for the Treatment of Juvenile Offenders 1991 as well as the provisions on juvenile justice in the various state laws. Article 15 of the Law explicitly prohibits “corporal punishment, imprisonment in a dark cell, and solitary confinement, as well as any other penalties or disciplinary measures contrary to the human rights of the adolescent person” (unofficial translation). Juveniles’ right to protection from corporal punishment and any “kind of measure that violates their rights or jeopardizes their physical or mental health” (unofficial translation) is also recognised in article 46(V). 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.

2.16 ***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 and during the UPR**

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,[[8]](#footnote-8) the third report in 2006[[9]](#footnote-9), the fourth/fifth report in 2015,[[10]](#footnote-10) and in concluding observations on the initial report to OPAC in 2011.[[11]](#footnote-11)

3.2 ***UPR:*** In 2009duringthe first cycle of theUniversal Periodic Review,Mexico accepted a recommendation to protect children from corporal punishment in 2009.[[12]](#footnote-12) In the second cycle review in 2013, the Government accepted more general recommendations to ensure the protection of children’s rights.[[13]](#footnote-13) During the third cycle examination in 2018, the Government received a recommendation to prohibit corporal punishment of children “in the General Act on the Rights of Children and Adolescents and the civil and family codes of the 32 federative entities” which it later accepted.[[14]](#footnote-14)

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

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1. 11 June 2018, CCPR/C/MEX/6, Sixth report, para. 133 [↑](#footnote-ref-1)
2. 29 May 2009, A/HRC/11/27, Report of the working group, paras. 93(30) [↑](#footnote-ref-2)
3. 11 December 2013, A/HRC/25/7, Report of the working group, para. 142 [↑](#footnote-ref-3)
4. Regional Road Map on Violence against Children, adopted in 2011, 1 and 2 December in Santo Domingo, as a follow-up to the recommendations of the UN Study on Violence against Children, available at <http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Hoja%20de%20Ruta%20Final%20EVCN%20Centroamericano%20Dic%202012.pdf>, accessed 21 February 2015 [↑](#footnote-ref-4)
5. 27 December 2018, A/HRC/40/8, Report of the Working Group, paras. 132(226) and 132(234); 12 February 2019, A/HRC/40/8/Add.1 Advance version, Report of the Working Group: Addendum [↑](#footnote-ref-5)
6. See <https://congresoqroo.gob.mx/iniciativas/>, accessed 13 August 2018 [↑](#footnote-ref-6)
7. See <http://oaxacapolitico.com/oaxaca/politica/busca-diputada-oaxaquena-prohibir-y-sancionar-castigo-corporal-en-infantes>, accessed 13 August 2018 [↑](#footnote-ref-7)
8. 10 November 1999, CRC/C/15/Add.112, Concluding observations on second report, para. 25 [↑](#footnote-ref-8)
9. 8 June 2006, CRC/C/MEX/CO/3, Concluding observations on third report, paras. 35, 36, 72 and 73 [↑](#footnote-ref-9)
10. 8 June 2015, CRC/C/MEX/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 31 and 32 [↑](#footnote-ref-10)
11. 7 April 2011, CRC/C/OPAC/MEX/CO/1, Concluding observations on initial report (OPAC), para. 18 [↑](#footnote-ref-11)
12. 29 May 2009, A/HRC/11/27, Report of the working group, para. 93(30) [↑](#footnote-ref-12)
13. 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 [↑](#footnote-ref-13)
14. 9 November 2018, A/HRC/WG.6/31/L.5 Unedited version, Draft report of the working group, paras. 6(226) and 6(234); 12 February 2019, A/HRC/40/8/Add.1 Advance version, Report of the working group: Addendum, para. 5 [↑](#footnote-ref-14)