

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE COMMITTEE AGAINST TORTURE PRE-SESSIONAL WORKING GROUP – April/May 2007

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Of the state parties to be examined in the 39th session of the Committee Against Torture, corporal punishment of children in all settings, including within the family home, is prohibited in Norway and Latvia, and Portugal is committed to legal reform. Corporal punishment is lawful in the home and alternative care settings in Estonia, Australia, Benin and Uzbekistan. It is prohibited in schools in Estonia, Uzbekistan and some states/territories of Australia; prohibition in schools in Benin is by circular rather than legislation. In penal systems, no state party allows corporal punishment as a sentence of the courts, but Benin has yet to explicitly prohibit its use as a disciplinary measure in penal institutions.

We hope that the Committee will encourage states in their progress towards eliminating all corporal punishment of children, and, where relevant, make recommendations that state parties prohibit corporal punishment in all settings, including the home and alternative care contexts, and support this with appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

The Committee's attention is respectfully drawn to the Committee on the Rights of the Child General Comment No. 8, issued in June 2006, on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment". The UN Secretary General's Study on violence against children, submitted to the General Assembly in October 2006, recommends universal prohibition of all corporal punishment, setting a goal of 2009.

NORWAY (fifth periodic report – CAT/C/81/Add.4)

Corporal punishment of children is **prohibited in all settings**.

ESTONIA (second periodic report – CAT/C/80/Add.1)

Corporal punishment is lawful in the **home**. Children have limited protection from violence in the home under the Child Protection Act, the Family Law Act, the Code of Administrative Offences, the Penal Code and the Constitution.

Corporal punishment is considered unlawful in **schools** under the Child Protection Act and the Basic Schools and Upper Secondary Schools Act, although there is no explicit prohibition. In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. There is no explicit prohibition in relation to **alternative care settings**.

In 2003, in its concluding observations on the state party's initial report, the **Committee on the Rights of the Child** recommended that the state party "explicitly prohibit corporal punishment and take all measures to prevent all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, in schools and in institutions" and "continue to carry out public education campaigns on the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment" (CRC/C/15/Add.196, paras. 30 and 31). In March 2005, the **European Committee of Social Rights** found the situation in Estonia to be not in conformity with article 17 of the Revised Social Charter "on the ground that corporal

punishment of children is not prohibited within the family” (March 2005, *Conclusions 2005*, vol. 1, p.196).

PORTUGAL (fourth periodic report – CAT/C/67/Add.6)

Corporal punishment is lawful in the **home**. In April 2006 the Supreme Court ruled that slaps and spankings are “legal” and “acceptable”, and that failure to use these methods of punishment could even amount to “educational neglect”. Previously, in 1991, the Supreme Court had ruled that a simple slap, which caused no injury and no physical or mental suffering, is considered as “light corporal assault” and punishable under the Criminal Code. This ruling was confirmed in subsequent Supreme Court Decisions (21 January 1999 and 4 March 1999), and a Court of Appeal Decision (12 October 1999) refers to the absence of a “right” to use physical discipline in the Civil Code.

The lack of prohibition of corporal punishment in the home is the subject of a collective complaint brought against Portugal by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter (OMCT vs Portugal Collective complaint No. 34/2006). The Committee declared the complaint admissible in June 2006. As at April 2007, Portugal is committed to introducing prohibition and the Criminal Code is under review.

Telephone interviews with 809 adults aged 18 years and over in April 2004, revealed that 83% believe it is acceptable for parents to smack their children, including one in six (16%) who believe it is always acceptable and a further two thirds (67%) who believe there are some circumstances in which it is acceptable.¹ Just over one in ten (13%) believe it is unacceptable in any circumstances.

Corporal punishment is prohibited in **schools** and in the **penal system**, but there is no explicit prohibition in relation to **alternative care settings**.

Following examination of the state party’s second report in 2001, the **Committee on the Rights of the Child** expressed concern at the lack of legislation prohibiting corporal punishment in the home, and recommended that the state party “adopt legislation prohibiting corporal punishment in the family and in any other contexts not covered by existing legislation” together with public information campaigns and mandatory reporting systems for professionals (CRC/C/15/Add.162, paras. 26 and 27). In 2005, the **European Committee of Social Rights** questioned the state party on corporal punishment in the home (September 2005, *Conclusions XVII-2*, vol. 2, p.695), as it had done in 2001 and 1996.

AUSTRALIA (third periodic report – CAT/C/67/Add.7)

Corporal punishment in the **home** is lawful throughout Australia under the right of “reasonable chastisement” or similar provisions. In New South Wales, since 2002 physical punishment by a parent or caregiver is considered unreasonable if the force is applied to a child’s head or neck, or the force is applied to any part of the body in such a way as to cause, or threaten to cause, harm to the child which lasts more than a short period, and in such cases the defence of “lawful correction” does not apply (Crimes Amendment (Child Protection – Physical Maltreatment) Act). Legal reform is being considered in Tasmania, where in 2003 the Law Reform Institute recommended abolition of the defence of reasonable correction from criminal and civil law, but as at April 2007, the Criminal Code had not been amended. Prohibition has been debated by the Queensland government, most recently in February 2007.

In telephone interviews with a representative sample of 720 adults in 2006, 45% of respondents believed it was reasonable to leave a mark on a child as a result of physical punishment (a decrease

¹ Market & Opinion Research International, 2004, “Attitudes towards smacking children: Portugal”, Research conducted for the Association for the Protection of All Children

from 55% recorded in 2002 research).² One in 10 believed that it was appropriate to use implements such as canes, sticks, belts, or slippers to punish a child (compared with 4% in 2002); one in seven (14%) supported the use of a wooden spoon. Two out of five (41%) believed that smacking a child is effective in shaping his or her behaviour, while one in ten believed that smacking a teenager is an effective way of discipline.

Corporal punishment is prohibited by law in government and independent **schools** in Australian Capital Territory and Tasmania, by guidelines and registration conditions in New South Wales, by policy in Queensland and Western Australia and by regulations in Victoria. It is lawful in Northern Territory and South Australia. In its report to the Committee, the government states that corporal punishment is prohibited in schools in South Australia, but the Administrative Instructions and Guidelines (version January 2005, consulted April 2007), in a section on school records and returns, lists “Punishment Register” and states “Record instances of corporal punishment. Must contain full details of circumstances leading to imposition of corporal punishment recorded in a manner agreeable to parent or guardian.”

In the **penal system**, corporal punishment is prohibited as a sentence for crime and as a disciplinary measure in penal institutions. In **alternative care settings**, it is prohibited by policy guidelines or departmental instructions in most, but not all, institutions and forms of childcare but is lawful in child care centres in Northern Territory, residential centres in Northern Territory and Western Australia, and foster care in Northern Territory and Victoria. The “reasonable chastisement” defence is potentially available in alternative care settings in other states and territories.

In its concluding observations on the state party’s second and third report in 2005, the **Committee on the Rights of the Child** expressed concern at the legality of “reasonable chastisement” throughout Australia and that corporal punishment in schools was not prohibited in South Australia and Northern Territory. The Committee recommended prohibition “at home and in public and private schools, detention centres and all alternative care settings in all states and territories”, as well as public education and awareness raising (CRC/C/15/Add.268, paras. 35 and 36). Similar recommendations were made in 1997 (CRC/C/15/Add.79, paras. 15 and 26)

BENIN (second periodic report – CAT/C/38/Add.3)

Corporal punishment is lawful in the **home**. Children have limited protection from violence in the home under the Criminal Code, the Code on Persons and the Family and the Constitution.

Corporal punishment is prohibited in **schools** by Circular letter No. 100/MENC (1962), but not in law. In the **penal system**, corporal punishment is unlawful as a sentence for crime but is not explicitly prohibited as a disciplinary measure in penal institutions. There is no explicit prohibition in **alternative care settings**.

In 2006, following examination of the state party’s second report, the **Committee on the Rights of the Child** expressed concern at the legality of corporal punishment in the home and in schools and other institutions and recommended explicit prohibition by law in all settings, a comprehensive study of the causes, nature and prevalence of corporal punishment, and public education and awareness raising measures (CRC/C/BEN/CO/2, paras. 39, 40, 41 and 62). The Committee had expressed similar concerns following examination of the state party’s initial report in 1999 (CRC/C/15/Add.106, para. 19).

² Tucci, J., Mitchell, J. & Goddard, C., 2006, *Crossing the Line: Making the case for changing Australian laws about the physical punishment of children*, Ringwood, Victoria, Australia: Australian Childhood Foundation

UZBEKISTAN (third periodic report – CAT/C/UZB/3)

Corporal punishment is lawful in the **home**. Children have limited protection from violence in the home under the Family Code, the Civil Code and the Criminal Code. As at 2006, two bills on children's rights were under consideration.

Corporal punishment is unlawful in **schools** and in the **penal system**, although we have been unable to confirm unequivocally that children who commit offences and are dealt with under the mahallyas rather than the courts are not subjected to corporal punishment. There is no explicit prohibition of corporal punishment in **alternative care settings**.

In 2006, the **Committee on the Rights of the Child**, following examination of the state party's second report, expressed concern at corporal punishment in the family and in institutions. The Committee recommended prohibition in law, effective implementation of the prohibition, and public education campaigns aimed at changing attitudes (CRC/C/UZB/CO/2, paras. 44 and 45). The Committee made similar recommendations in 2001, as well as expressing concern at corporal punishment of children by the militia (CRC/C/15/Add.168, paras. 39, 40, 45 and 46).

LATVIA (second periodic report – CAT/C/...)

Corporal punishment of children is **prohibited in all settings**.