

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE COMMITTEE AGAINST TORTURE PRE-SESSIONAL WORKING GROUP – Oct/Nov 2006

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Of the state parties to be examined in the 38th session of the Committee Against Torture, corporal punishment of children in all settings, including within the family home, is prohibited in Italy, Ukraine and Denmark, and legislation is in progress in the Netherlands. Corporal punishment is lawful in the home in Luxembourg and Japan; in Poland there is some controversy as to the extent of the Constitutional prohibition. The government of Luxembourg has stated its intention to prohibit. Corporal punishment is prohibited in schools and in the penal systems of all states being examined, but it is lawful in alternative care provision in Luxembourg and Japan. 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 may be interested to see 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.

ITALY (fourth periodic report – CAT/C/67/Add.3)

Corporal punishment is **prohibited in all settings**. A 1996 Supreme Court ruling outlawed all violence in childrearing (Judge Ippolito, Supreme Court of Cassation, 18 March 1996), though this has yet to be confirmed in legislation.

UKRAINE (fifth periodic report – CAT/C/81/Add.1)

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

DENMARK (fifth periodic report – CAT/C/81/Add.2, CAT/C/82/Add.2)

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

THE NETHERLANDS (fourth periodic report – CAT/C/67/Add.4)

Corporal punishment is lawful in the **home**, but as at October 2006 a draft law prohibiting corporal punishment in the care and upbringing of children is proceeding through Parliament which would prohibit corporal punishment in all settings. It is already prohibited in **schools**, the **penal system** and residential care **institutions**.

Research for the Ministry of Justice in 1997 revealed that nearly 47% of the Dutch population had experienced recurrent intra-familial violence, especially between the ages of 10 and 25 years.¹ A survey in 1999 by a popular parenting magazine of 2,000 mothers revealed 8% slapped or shook their 2 month-old babies to try to stop them crying.²

LUXEMBOURG (fifth periodic report – CAT/C/81/Add.5)

Corporal punishment is lawful in the **home**, though the right of paternal punishment in the Civil Code was abolished in 1939. The government has stated its intention to prohibit but we have no information regarding progress towards legal reform. Children have limited legal protection from violence under the Penal Code. A public opinion survey in 1993 found that of 508 parents questioned, 49% considered that corporal punishment was a useful way of disciplining children, 29% felt that it was not very useful but that it didn't do any harm, and 22% believed that it should be forbidden.³

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

Following its examination of the state party's second report in 2005, the **Committee on the Rights of the Child** regretted the insufficient progress in relation to its previous concerns about "the absence of a provision prohibiting corporal punishment within the family and in care institutions" (CRC/C/15/Add.250, para. 6) and recommended again that the state party "introduce a provision expressly prohibiting corporal punishment within the family, and ... strengthen its efforts to raise awareness among parents and care-givers of alternative non-violent forms of discipline" (para. 39).

POLAND (fourth periodic report – CAT/C/67/Add.5)

There is some controversy as to whether or not corporal punishment is lawful in the **home**. Article 40 of the Constitution states: "No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited." The government has stated that this ban "applies also to the relationships between parents and children" (Government Response to UN Study on Violence Against Children Questionnaire, May 2005). However, the Constitution also upholds the right of parents "to rear their children in accordance with their own convictions" (article 48.1) and "to ensure their children a moral and religious upbringing and teaching in accordance with their convictions" (article 53.5), and the Family and Guardianship Code (1964, amended 2000) states that a child should be obedient to parents (article 95.2). A legal commentary to article 95.2 of the Family and Guardianship Code suggests that this article permits the use of some corporal punishment by parents.⁴ Although the Code does not explicitly prohibit corporal punishment, the Children's Rights Ombudsman and other institutions are of the opinion that, if properly interpreted, article 95.2 of the Code does not allow any corporal punishment.

A nationwide survey of adults published in 2001 found that 80% reported experiencing beatings in the home as children, by parents or guardians, more commonly for men than for women and most often reported as being used on children aged 7-14 years.⁵ Almost half of respondents (48%) believed that corporal punishment by parents should be banned; 20% had also experienced corporal punishment by teachers. Also in 2001, the State Agency for Prevention of Alcohol Related Problems commissioned attitudinal research on childrearing.⁶ Of 1,116 people aged over 15 years, more than half (54%) considered beating children with a belt acceptable, and 77% felt it was acceptable to shout at and

¹ Institute Dienst Preventie, Jeugdbescherming en Reclassering (1997), *Huiselijk geweld, Aard, omvang en hulpverlening*, Institute Dienst Preventie, Jeugdbescherming en Reclassering)

² *Our Baby*, April 1999

³ Poll carried out by Fondation Kannerschlass and Institut Luxembourgeois de Recherches Statistiques, 1993

⁴ Ciepla, H. et al. (2002), *Kodeks rodzinny i opiekuńczy z komentarzem*, Warsaw: Wydawnictwo Prawnicze LexisNexis

⁵ Fluderska, G. and Sajkowska, M. (2001), *The Problem of Child Abuse in Poland: Attitudes and Experiences*, Warsaw: Nobody's Children Foundation

⁶ Reported in Government Response to UN Study on Violence Against Children Questionnaire, May 2005

threaten children. Just under a half (44%) agreed that children are the property of their parents; 24% agreed with the statement “a child should be afraid of his/her parents, and there is no upbringing without beating”; 30% agreed with “the severe upbringing makes a child stronger and is beneficial for the child”; 27% agreed with “children deserve corporal punishments”.

Corporal punishment is prohibited in **schools**, in the **penal system** and in **alternative care settings**.

In 2002, in its concluding observations on the state party’s second report, the **Committee on the Rights of the Child** expressed concern “that corporal punishment is widely practised in the home, in schools and other institutions, such as prisons, and in alternative care contexts” (CRC/C/15/Add.194, para. 34). The Committee recommended that the state party “expressly prohibit corporal punishment in the home, schools and all other institutions” and “carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment” (para. 35). In its previous concluding observations, on the state party’s initial report in 1995, the Committee recommended that corporal punishment be prohibited in legislation (CRC/C/15/Add.31, para. 30). In 1999, the **Human Rights Committee** expressed concern that the prohibition of corporal punishment in schools “is not fully being implemented” (CCPR/C/79/Add.110, para. 25). In 2003 and again in 2005 the **European Committee of Social Rights** declared that the situation in Poland is not in conformity with article 17 of the Revised Social Charter “on the grounds that corporal punishment in the home is not prohibited” (30 September 2003, *Conclusions XVI-2*, page 658; March 2005, *Conclusions XVII-2*).

JAPAN (initial report – CAT/C/JPN/1)

Corporal punishment is lawful in the **home**. Under the Civil Code a child is subject to “parental power” (article 818), which may be removed if abused (article 834). Children have limited legal protection from violence under the Penal Code, the Revised Child Abuse Prevention Law, and the Law Concerning Punishment of Physical Violence and Others. A retrospective survey in 1998 on the socialisation of pre-school and school-age children (aged 3-12 years) found that more than 80% of children had been hit by their parents.⁷ Of the 435 cases of child abuse encountered at paediatric departments of general and children’s hospitals registered with the Department of Child Ecology, National Children’s Medical Research Center, and the National Children’s Hospital from 1986 to 1995, the rationale of “discipline and education” or the child’s misbehaviour was given in 36.3% of cases.⁸

Corporal punishment is prohibited in **schools**. According to Ministry of Education reports, schools using and suspected of using corporal punishment during the years 1990 to 1995 numbered from 600 to 850 per year, about 2% of all public schools.⁸ The number of cases of corporal punishment reported during the period was 700 to 1,000 per year, with 30% to 45% of teachers responsible receiving legal sanctions, showing an increase in the use of corporal punishment. In a survey by the All Japan Parents and Teachers Association in 1996, only 25.6% of respondents stated that corporal punishment should never be administered by a teacher.⁹

Corporal punishment is prohibited in the **penal system**. It is reportedly prohibited in day care and residential **institutions** for children. However, heads of Child Welfare Institutions may temporarily

⁷ Benesse Educational Research Centre (1999), *Kosodate seikatsu kihon chosa houkokusholl Kenkyu shoho*, vol. 19, Tokyo: Benesse Corporation, reported in Save the Children (2005), *Discipline and punishment of children: a rights-based review of laws, attitudes and practices in East Asia and the Pacific – Save the Children Sweden Southeast Asia and the Pacific, regional submission to the UN Secretary General’s Global Study on Violence against Children*, Save the Children Sweden

⁸ Kobayashi, N., Tanimura, M. & Shimauchi, Y. (1997), “Corporal punishment in the schools and homes of Japan”, *IPA Journal (INCH)*, vol.8, no.3 Pre-congress workshops: Prevention of childhood injuries: intentional and unintentional – 9th Asian Congress of Paediatrics, Hong Kong, 22-23 March 1997

⁹ Goodman (2003), cited in Save the Children, 2005, *Discipline and punishment of children: a rights-based review of laws, attitudes and practices in East Asia and the Pacific*, Save the Children Sweden

exercise parental authority and it would seem that corporal punishment could be administered in such circumstances. It is lawful in foster care as for parents.

Following examination of the state party's second report in 2004, the **Committee on the Rights of the Child** expressed concern "that corporal punishment, although legally prohibited in schools, is widely practised in schools, institutions and the family" (CRC/C/15/Add.231, para. 35). The Committee recommended that the state party "prohibit corporal punishment in institutions and the home" and "carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes towards corporal punishment, and promote positive, non-violent forms of discipline in schools, institutions and at home as an alternative to such punishment" (para. 35). In its previous concluding observations in 1998, the Committee recommended "that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying", "that corporal punishment be prohibited by law in the family and in child-care and other institutions" and "that awareness-raising campaigns be conducted to ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention" (CRC/C/15/Add.90, para. 45).