

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

**BRIEFING FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
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*From Peter Newell, Coordinator, Global Initiative
info@endcorporalpunishment.org*

Of the state parties to be considered by the pre-sessional working group at the 37th session of the Committee on Economic, Social and Cultural Rights, only Ukraine has explicitly prohibited in law all corporal punishment of children in all settings. In Nepal, a Supreme Court ruling in January 2005 removed the exemption of “minor beating” of children by parents and others from the provisions against child cruelty, and in Costa Rica, legislation prohibiting all corporal punishment has been under consideration. There are no such moves towards prohibiting all corporal punishment in Belgium.

We hope that the Committee will question all states on their progress towards eliminating all corporal punishment of children, and make recommendations that states parties prohibit corporal punishment in the home, schools, the juvenile justice system, alternative care settings and situations of employment, and support this with appropriate public education and professional training on positive, 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.

NEPAL (second report – E/C.12/NEP/2)

There is no explicit prohibition of corporal punishment in the **home**. The Civil Code (*Muluki Ain*) (1963) states that guardians and teachers shall not be held responsible for grievously hurting a child in the course of education or defence. Section 7 of the Child Act (1991, in force 1993) states that “no child shall be subject to torture or cruel treatment” but also that “any act by the mother, father, family member, guardian or teacher to scold the child or give him/her minor beating for the sake of his or her interests shall not be deemed to violate this Section”. In January 2005, the Supreme Court ruled that the restrictive clause in section 7 was unconstitutional and declared the portion “or give him/her minor beating” null and void with immediate effect (*Mr Devendra Ale et al v Office of the Prime Minister & Cabinet et al*, Supreme Court decision 6 January 2005). The judgment also issued a directive to the government “to pursue appropriate and effective measures to prevent physical punishment as well as other cruel, inhuman or degrading treatment or punishment or abuse being imposed or inflicted on and likely to be imposed or inflicted on children”. As at November 2005, the Child Act was being amended but we have no further information on progress in this regard. Research by UNICEF ROSA in 2001 found that 33% of respondents reported being physically punished in the home.¹

There is no explicit prohibition of corporal punishment in **schools**, though the 2005 Supreme Court ruling applies. In December 2003, the Centre for Victims of Torture (CVICT), in collaboration with UNICEF, conducted a focus group study on “Existing Systems of Discipline in Schools” among

¹ UNICEF ROSA, 2001, *Corporal Punishment in Schools in South Asia*, submission to the Committee on the Rights of the Child, Day of General Discussion on Violence Against Children 28 September 2001, Kathmandu: UNICEF ROSA, cited in Jabeen, F., 2004, *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark

students, teachers and parents in four regions.² The study revealed that corporal punishment was being used in most schools, more commonly in the private than the public schools.

In the **penal system**, corporal punishment is not available as a sentence for crime for children up to the age of 16 years under the Child Act (sections 11 and 15) and the general prohibition of cruel treatment in section 7. However, rural areas come increasingly under the jurisdiction of Maoist courts, where corporal punishment may be ordered as a sentence. There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions but section 7 of the Child Act and the 2005 Supreme Court decision presumably apply. As at November 2005 a draft Penal Code was under discussion.

There is no explicit prohibition of corporal punishment in **other institutions and forms of childcare**. Section 39 of the Child Act allows the chief of a children's welfare home to impose "light punishment" on a child in order to maintain discipline. The 2005 Supreme Court ruling applies.

We have no information on the legality of corporal punishment of children in **situations of employment**.

In its concluding observations on the state party's second and third combined report in June 2005, the **Committee on the Rights of the Child** expressed concern at "the provisions in the 1992 Children's Act and the 1963 Muluki Ain (Civil Code) which provide for corporal punishment in the home, in schools and in other institutions and forms of childcare, which is in a clear contravention of article 19 of the Convention" (CRC/C/15/Add.261, para. 47) and recommended that the state party "expressly prohibit corporal punishment and ill-treatment of children by law in the family, schools and other institutions", "expedite the process of amending the relevant provision of the Children's Act and the 1963 Muluki Ain to ensure compliance with article 19 of the Convention", "strengthen awareness-raising campaigns to inform parents, teachers and professionals working with children, particularly in institutions, as well as the public at large about the negative impact of corporal punishment and ill-treatment on children and actively involve children and the media in the process" and "ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, in particular article 28 (2) as an alternative to corporal punishment at all levels of society" (para. 48).

BELGIUM (third report – E/C.12/BLG/3)

Corporal punishment is lawful in the **home**. A Constitutional amendment in 2000 (article 22 bis), concerning the protection of the child's moral, physical and sexual integrity, was not regarded as changing the ways in which parental authority should be exercised. Following a complaint against Belgium brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded that Belgium was in violation of Article 17 of the Charter because there is no explicit prohibition in law of corporal punishment of children by parents and other carers (including non-institutional childcare facilities and arrangements) (Resolution ResChS(2005)10, Collective complaint No. 21/2003 by the World Organisation against Torture (OMCT) against Belgium, adopted by the Council of Ministers on 8 June 2005).

In telephone interviews in 2004 with 1,070 adults aged 15 years and over, 77% believed it acceptable for parents to smack their children, including 17% who believed it always acceptable and 60% who believed there are some circumstances in which it is acceptable.³ Just under a fifth (19%) believed it unacceptable in any circumstances.

² Reported in CVICT, Monthly Update, June 2004

³ Market & Opinion Research International, 2004, "Attitudes towards smacking children: Belgium", Research conducted for the Association for the Protection of All Children

Corporal punishment is unlawful in **schools** and the **penal system**. In **alternative care settings**, there are decrees in some communities which prohibit corporal punishment in institutions for children and foster-care, and in 2004 the Flemish government ratified the Decree to the minor's statute regarding integral help to youth, which prohibits corporal punishment and mental violence, but there is no explicit prohibition of corporal punishment in non-institutional childcare settings. We have no information on the legality of corporal punishment in **situations of employment**.

Following examination of the state party's second report in 2002, the **Committee on the Rights of the Child** expressed concern that corporal punishment is not prohibited by law (CRC/C/15/Add.178, para. 23). The Committee recommended that the state party "take legislative measures to prohibit corporal punishment of children in the family, in schools and in institutions", "continue to carry out public education campaigns about the negative consequences of corporal punishment, and promote positive, non-violent forms of discipline" and "establish effective procedures and mechanisms to receive, monitor and investigate complaints, and to intervene where necessary" (para. 24). In July 2005, the **European Committee of Social Rights** found Belgium to be "not in conformity with Article 17 of the Charter on the ground that there is no prohibition in legislation of all corporal punishment of children within the family" (Conclusions XVII-2).

COSTA RICA (second-fourth report – E/C.12/CRI/4)

Corporal punishment is lawful in the **home**. Article 143 of the Family Code (1974, amended 2004) states: "Paternal authority confers rights and imposes the duty to educate, care for, watch over and, with moderation, correct the son or daughter." A draft law on the Abolition of Corporal Punishment Against Minors (2004) has been presented before the Legislative Commission on Youth, Children and Adolescents.

In 2003, a survey by the Paniamor Foundation of 1,034 school children aged 9-16 found that nearly half (47.8%) experienced physical punishment occasionally in the home, while 4.2% experienced it frequently, more so for boys than girls in both cases; 11% said they had been punished in the past 15 days.⁴ Interviews with parents in 1997 revealed that one in ten mothers and fathers always hit their child when she or he did wrong, six in ten sometimes.⁵ Asked about objects used to hit their children, 41.8% of mothers and fathers said they always used a belt, 12.2% sometimes used a rope or cord, 52.5% always or sometimes used their hand, and 8.1% used a cane. One in ten said they punished their children every day and over a third said once a week.

There is no explicit prohibition of corporal punishment in **schools** and in **alternative care settings**. It is explicitly prohibited in the draft law on the Abolition of Corporal Punishment Against Minors.

Corporal punishment is unlawful in the **penal system**. We have no information concerning **situations of employment** of children.

In its concluding observations on the state party's third report in 2005, the **Committee on the Rights of the Child** expressed concern "that corporal punishment is still not explicitly prohibited in domestic law, as recommended by the Committee in its previous concluding observations, and still perceived as 'sometimes necessary' by a large portion of the population (CRC/C/15/Add.117, para. 17)" (CRC/C/15/Add.266, para. 31). The Committee reiterated its previous recommendations that the state

⁴ Paniamor Foundation/Save the Children Sweden, 2004, "National Survey of Children and Adolescents on Physical Punishment", part of project "Prevencion de la Violencia desde la Familia y la Adolescencia", presented at Costa Rica, March 2004

⁵ Barrantes, Z., Castillo, E. & Ortega, X., 1997, "Problems of child aggression and the role of the administrator teacher in the one-teacher (unidocente) schools of Circuit 1 of the Guapiles Regional Education Management in 1997", Latina University, cited in paper on draft law abolition of physical punishment of children and adolescents, presented in Costa Rica, March 2004

party should prohibit corporal punishment in legislation “and continue to take appropriate measures to raise the awareness of the general public on the negative consequences of corporal punishment and other forms of violence in the upbringing of children, and to sensitize parents, teachers and others working with and for children about the alternative, non-violent means of discipline in light of article 28 (2) of the Convention” (para. 32).

UKRAINE (fifth report – E/C.12/UKR/5)

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