

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE
PRE-SESSIONAL WORKING GROUP – March 2007

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Of the State parties to be considered in preparation for the 90th session of the Human Rights Committee, only Austria has prohibited corporal punishment of children in all settings – the home, schools, the penal system (as a sentence for crime and as a disciplinary measure in penal institutions), alternative care contexts and situations of employment. Legislation introducing universal prohibition is under discussion in Costa Rica. In Zambia, corporal punishment is prohibited in schools and in the penal system, though the latter is by Supreme Court ruling and legislation is yet to be fully amended. In the Czech Republic, Grenada and Sudan, corporal punishment is lawful in the home, schools, penal institutions and alternative care settings. In Grenada and Sudan it is also lawful as a sentence for crime.

We hope that the Committee will question States in detail on their progress towards eliminating all corporal punishment of children, and – mindful of the concluding observations of the Committee on the Rights of the Child and that Committee’s general comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” – make recommendations that State parties prohibit corporal punishment in the home, schools, juvenile justice and alternative care systems and situations of employment, and support this with appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

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 (A/61/299).

AUSTRIA

Corporal punishment of children is prohibited in all settings, including within the family.

COSTA RICA

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.” However, a judgment of the Criminal Court of Cassation in 2005 (Judgment 2005-1062, 20 October 2005) ruled that this provision “can in no way be interpreted as a general authorization for parents or guardians of minors to hurt them without being punished for that action or simply to dispose of their lives as they please” and stated: “In short, parents – even though vested with parental rights and duties have no ‘right’ to hurt their children. Accepting otherwise would breach the principle of equality Respect for physical integrity is part of respect for human dignity, and therefore, there is no legal standing to deteriorate the human rights of the victims in this case.” A draft law prohibiting corporal punishment in all settings, including within the family, is currently under discussion.

A survey in 2003 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.¹ Interviews with parents in 1997 found that one in ten always hit their child when s/he did wrong, six in ten sometimes hit them; 41.8% 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.² One in ten said they punished their children every day and over a third said once a week.

In its concluding observations on the state party's third report in 2005, the **Committee on the Rights of the Child** expressed concern at the lack of prohibition of corporal punishment in domestic legislation and its wide acceptance as "sometimes necessary" (CRC/C/15/Add.266, para. 31). The Committee recommended full prohibition in legislation, together with public awareness raising on the negative impact of corporal punishment and the promotion of alternative, non-violent means of discipline (para. 32). The Committee had made similar recommendations in 2000, following examination of the state party's second report (CRC/C/15/Add.117, para. 17).

CZECH REPUBLIC

Corporal punishment is lawful in the **home**. Children have limited protection from violence under a number of laws, including the Act on Social and Legal Protection of Children (amended 2002), the Act on the Family (1993, amended 1998), the Act on Misdemeanours (1990, amended 1999), the Criminal Code (1961, amended 2002), the Constitution (1992) and the Act amending current laws in the area of protection against domestic violence (2006). A new Criminal Code was expected to take effect in January 2006.

There is no explicit prohibition of corporal punishment in **schools** or in **alternative care settings**. 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.

Following examination of the state party's second report in 2003, the **Committee on the Rights of the Child** expressed concern "that there is no legislation explicitly prohibiting corporal punishment, and that it is practised in the family, in schools and in other public institutions, including alternative care contexts", and recommended prohibition in law in all settings, together with legislative, administrative and public education measures to ensure enforcement of prohibition (CRC/C/15/Add.201, paras. 40 and 41 (f and g)). In July 2005, the **European Committee of Social Rights** found the situation in Czech Republic to be not in conformity with article 17 of the European Social Charter "on the ground that there is no explicit prohibition in legislation of corporal punishment in the home, in schools and in other institutions" (Conclusions XVII-2).

GRENADA

Corporal punishment is lawful in the **home**. The Criminal Code allows for the use of "justifiable force" under the "authority to correct a child, servant or similar person for misconduct" (s54).

In **schools**, corporal punishment is authorised and regulated by the Education Act (2004). It is legislated for in the **penal system** by the Criminal Code, ss74 and 75 of which allow for male

¹ 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

² 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

offenders aged 7-15 years to be sentenced to be whipped. It is also lawful as a disciplinary measure in penal institutions.

In **alternative care settings**, corporal punishment is prohibited in institutions licensed by the Grenada Bureau of Standards by licensing requirements. We have been unable to ascertain the situation regarding foster care.

In 2000, following examination of the state party's initial report, the **Committee on the Rights of the Child** recommended that the state party "take all appropriate measures, including of a legislative nature, to prohibit corporal punishment within the family, schools, the juvenile justice and alternative care systems and generally within the society", conduct awareness campaigns "ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28.2", and "prohibit and eradicate the use of corporal punishment (whipping) in the juvenile justice system" (CRC/C/15/Add.121, paras. 21 and 28(b)).

SUDAN

Corporal punishment is lawful in the **home**. There is no legislation concerning violence against children in Southern Sudan. Drafting of a children's act was due to begin in April 2005 but we have no further information.

Corporal punishment of boys is lawful in **schools** under the School Regulations (1993), and in **alternative care settings**.

In the **penal system**, corporal punishment is lawful as a sentence for crime. The Sudanese Criminal Code (1991) is partly based on Shari'a law, reinstating *hadd* offences and the law of *qisas* and *diyat*, and allowing for flogging and amputation. Article 47 states that among the measures a court may order is "flogging as a disciplinary punishment for any person having attained 10 years of age, although not more than 20 lashes of the whip may be administered". Flogging is a penalty for other offences in the Criminal Code and the Public Order Act (1996), and the manner in which it should be carried out is regulated by the Criminal Procedure Act (1983). Amputation is also a penalty under the Criminal Code, e.g. for armed robbery (article 168). Corporal punishment is also lawful as a disciplinary measure in penal institutions.

Research by Save the Children Sweden in Sudan looked at children's experiences of physical punishment at home and in school; two reformatories and custody centres were also visited.³ Nine out of ten (89%) of interviewed parents believed corporal punishment to be the best technique for achieving desirable behaviour in their children. The most common form of corporal punishment by teachers and parents was reported by the children as whipping (87%). In the reformatories and custody centres visited, 65% of juvenile offenders said they had received corporal punishment at some stage of the juvenile justice process; 87% of those interviewed while in custody said they had been beaten by police to obtain a confession.

In its concluding observations on the state party's second report in 2002, the **Committee on the Rights of the Child** recommended that the state party "prohibit under law the practice of corporal punishment in the family, in schools and in all other contexts and make use of legislative and administrative measures, as well as public education initiatives, to end the use of corporal punishment, including the provision of information on alternative non-violent methods of discipline" and "end the imposition of corporal punishment, including flogging, amputation and other forms of cruel, inhuman or degrading treatment or punishment, on persons who may have committed crimes while under 18"

³ Save the Children Sweden (2005), *Ending Physical and Psychological Punishment against Children: Sudan*, Ethiopia: Save the Children Sweden

(CRC/C/15/Add.190, paras. 36 (a) and 70 (e)). The Committee had recommended the abolition of the punishment of flogging in 1993 (CRC/C/15/Add.10, para. 17). This has also been addressed by recommendations of the **Committee on Economic, Social and Cultural Rights** in 2000 (E/C.12/1/Add.48, paras. 24 and 34) and the **Human Rights Committee** in 1997 (CCPR/C/79/Add.85, para. 9).

ZAMBIA

Corporal punishment is lawful in the **home**. Article 46 of the Juveniles Act (1956, amended 1994) punishes cruelty to juveniles, but states: “Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him.” A nationwide survey conducted by Save the Children in 2005, involving 2,321 children aged 6-18 years, looked at children’s experiences of corporal punishment over a two week period. One in four (24%) reported experiencing corporal punishment in the home during the period, including being beaten with hands, sticks and belts. It was more common for younger (6-12 years) than older (13-18 years) children and was most often inflicted by mothers.⁴

Corporal punishment is unlawful in **schools**. Article 12 of the Education Act allowing the Minister to make regulations regulating the administration of corporal punishment was repealed by the Education Amendment Act (2003), though there is no explicit prohibition of corporal punishment. In the research cited above, 32% reported being hit in school with a hand and 38% with an object, most commonly a stick or hosepipe. In the **penal system**, corporal punishment is unlawful following a 1999 Supreme Court ruling (*John Banda v The People* HPA/6/1998). However, legislation allowing its use as a judicial sentence for juveniles and as a disciplinary measure in penal institutions (Juveniles Act and Rules) has yet to be repealed. Corporal punishment is lawful in **alternative care settings**, where article 46 of the Juveniles Act (see above) applies and rules made under the Act provide for corporal punishment in childcare facilities. There is no explicit prohibition of corporal punishment in **situations of employment**.

Following examination of the state party’s initial report in 2003, the **Committee on the Rights of the Child** expressed concern that corporal punishment “is still practised and accepted in schools, families, and care and juvenile detention institutions” (CRC/C/15/Add.206, para. 30). The Committee recommended that the state party “take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, in schools and care institutions, as well as in families” and “reinforce its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society” (para. 31).

⁴ Clacherty, G., Donald, D. & Clacherty, A. (2005), *Zambian Children’s Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden