



Global Initiative to
**End All Corporal Punishment
of Children**

SWAZILAND – COUNTRY REPORT

Child population: 561,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Article 29(2) of the Constitution (2005) states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”. All provisions recognising the right to administer “moderate chastisement” should be repealed and the law should explicitly prohibit all corporal punishment and other cruel or degrading forms of punishment, in the home, schools and all other settings where adults have parental authority over children.

Other legislative measures necessary

Schools – Corporal punishment is lawful under the Education Act (1982) and the Education Rules (1977). The provisions authorising corporal punishment should be repealed and explicit prohibition enacted in legislation relating to all education settings (public and private), in addition to repeal of “moderate chastisement” provisions.

Penal system – Corporal punishment is lawful as a sentence for crime under the Criminal Procedure and Evidence Act (1938). The Courts Act (1950) allows the court to impose any punishment recognised by Swazi law and custom, provided it is not repugnant to natural justice and humanity, but this is not interpreted as prohibiting corporal punishment. Corporal punishment is lawful as a disciplinary measure for males in penal institutions under the Prisons Act (1964) and possibly the Reformatories Act (1921). The provisions authorising corporal punishment should be repealed and explicit prohibition enacted in legislation relating to all forms of justice and all institutions accommodating children in conflict with the law.

Alternative care settings – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to repeal of “moderate chastisement” provisions.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 29(2) of the Constitution (2005) states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”.

The Attorney General’s Office has commissioned a Gender, Human Rights and Law Reform project to harmonise national laws with the Constitution and international human rights instruments. During the Universal Periodic Review of Swaziland in 2011, the Government confirmed that a Children’s Protection and Welfare Bill was under discussion and is expected to be enacted in mid-2012 (A/HRC/19/6, Report of the Working Group, para. 74). However, the Government did not take the opportunity to confirm that the Bill would prohibit corporal punishment of children, stating only that it would consider corporal punishment as a sentence for crime for adults (para. 75).

Schools

Corporal punishment is lawful under the Education Act (1982), the Education Rules (1977) and the provision for “lawful and moderate chastisement” in the Constitution (see above).

Penal system

Corporal punishment is lawful as a **sentence for crime**. Whipping may be ordered by the courts for males convicted of an offence under article 196(e) of the Criminal Procedure and Evidence Act (1938), and article 306 states: “... where any male child under the age of 18 is convicted of any offence the court may in lieu of any other punishment or in addition to any other punishment except a discharge in terms of s311 ... sentence that person to receive in private a moderate correction of whipping not exceeding fifteen cuts with a light cane. Such correction shall be administered by such a person and in such place as the court may appoint. The parent or guardian of such person shall have the right to be present.” Females may not be sentenced to corporal punishment (article 307). The Courts Act (1950) allows courts to impose any punishment recognised by Swazi law and custom, provided it is not repugnant to natural justice and humanity, but this is not interpreted as prohibiting corporal punishment. It was reported in 2004 that the High Court had placed a moratorium on judicial whipping and that the courts were no longer sentencing persons to corporal punishment. However, according to the Government, 388 males under 18 were sentenced to corporal punishment in 2003, 233 in 2004, and 235 in 2005 (17 August 2006, CRC/C/SWZ/Q/1/Add.1, Written replies to the Committee on the Rights of the Child).

We do not know if judicial corporal punishment would be prohibited in the Children’s Protection and Welfare Bill; prohibition was included in the draft under discussion in February 2010 but during the Universal Periodic Review of Swaziland in 2011 the Government stated only that it would consider banning judicial corporal punishment of adults. Codification of Swazi customary law has been under way since the late 1990s, and as at December 2011 was ongoing.

Corporal punishment is lawful as a **disciplinary measure** for males in penal institutions under the Prisons Act (1964), the provisions for “lawful and moderate chastisement” in the Constitution (see above) and possibly the Reformatories Act (1921).

Alternative care

Corporal punishment is lawful in alternative care settings under the provisions for “lawful and moderate chastisement” in the Constitution (see above) and possibly other legislation.

Prevalence research

A large scale survey by Save the Children in 2005 looked at the experiences over a two week period of corporal punishment of 2,366 children aged 6-18 years from all of Swaziland’s four regions. Children revealed being subjected to high levels of corporal punishment in the home and at school: 18% reported being hit with the hand in the home during the period; 28% reported being beaten with objects such as sticks, belts, sjamboks and whips. Boys were punished for such behaviour as breaking or stealing things, not tending livestock properly, playing instead of working, or playing out too late. Young children, particularly girls, were punished in connection with household chores. In school during the two weeks, 28% of children reported being hit with a hand, and 59% reported being beaten with an object, most often sticks, canes, sjamboks and blackboard dusters. Other punishments included physical labour or physical (and often humiliating) activities causing pain and discomfort. Children reported experiencing humiliating punishment, 35% in the home, 28% in school, in addition to experiencing corporal punishment itself as humiliating. Generally, corporal punishment was more commonly used in low income environments and on younger children. 77% of children considered corporal punishment to be unacceptable in the home and in school; 81% felt humiliating punishment to be unacceptable. The study also involved qualitative research with 384 children from the regions. (Clacherty, G. et al (2005), *Children’s Experiences of Corporal Punishment in Swaziland*, Pretoria: Save the Children Sweden)

According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 38% think that a husband is justified in hitting or beating his wife under certain circumstances. (UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 October 2006, CRC/C/SWZ/CO/1, Concluding observations on initial report, paras 36, 37, 67 and 68)

“The Committee is deeply concerned that corporal punishment is legal and traditionally accepted and widely practised in the family, in schools and in other settings. The Committee is further concerned that the new Constitution allows the use of ‘moderate chastisement’ of children.

“The Committee recommends that the State party consider, as a matter of priority, amending the Constitution and explicitly prohibiting by law corporal punishment in all settings, including in the family, schools, the penal system and all alternative care settings. It also recommends that the State party conduct awareness-raising and educational campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, taking into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

“While welcoming the establishment of a Children’s Court in 2005, the Committee is nevertheless concerned at the lack of a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at: ...

e) the use of corporal punishment as a sanction for juveniles.

“The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard

Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and in the light of the Committee's day of general discussion on the administration of juvenile justice. In particular the Committee recommends that the State party: ...

f) abolish, as a matter of urgency, the use of corporal punishment as a sanction in the juvenile justice system....”

Universal Periodic Review

Swaziland was examined in the first cycle of the Universal Periodic Review in 2011. The Government accepted a recommendation to raise awareness on alternatives to corporal punishment but as at December 2011 its response to recommendations to prohibit it in all settings is pending (A/HRC/19/6, Report of the Working Group, paras. 76(32), 77(31) and 77(38)); the delegation stated that it would consider enacting legislation to prohibit corporal punishment as a judicial sentence for adults (para. 75). Examination in the second cycle is scheduled for 2016.

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