

Corporal punishment of children in Belgium

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Child population 2,280,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings and day care. Corporal punishment is considered unlawful in schools but as yet legislation has not been reformed to include explicit prohibition. A Bill prohibiting all corporal punishment has been introduced to the House of Representatives.

There is no specific legal defence available to parents and others who use corporal punishment but corporal punishment by parents is tolerated in society and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing. The near universal acceptance of a certain degree of violence in “disciplining” children necessitates clarity in law that no corporal punishment is lawful or acceptable. Prohibition should be enacted of all corporal punishment, however light, by all persons with authority over children, including parents.

Alternative care settings – Corporal punishment is prohibited in institutions in the Flemish Community. Legislation should be enacted to prohibit it in institutional care in the French and German Communities and in non-institutional care throughout Belgium, including foster care, places of safety, emergency care, etc.

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition of corporal punishment should be enacted in legislation relating to all education settings, including public and private.

Note: Belgium is a federal state based on cooperation. There is no hierarchical distinction between federal laws and the laws of the federated entities: there is a procedure for prior consultation or subsequent judicial control, including through the Constitutional Court, as to whether the regulations of one entity might be detrimental to the interests or competences of another.¹

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Civil Code states that the parent-child relationship should be one of “mutual respect” (art. 371), but this is not interpreted as prohibiting parental corporal punishment. A Constitutional amendment in 2000 (art. 22bis) provides for the protection of the child’s moral, physical and sexual integrity but does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Penal Code as amended by the Law Concerning the Penal Protection of Minors 2000 are not interpreted as prohibiting all corporal punishment in childrearing.

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).² In the following years, a number of legislative proposals were introduced to amend the Civil Code to prohibit all corporal punishment³ but these were never discussed in Parliament.

In 2011, the Government rejected the recommendation to prohibit corporal punishment by law in all settings made during the Universal Periodic Review of Belgium, stating that while corporal punishment is not a specific offence, a number of provisions in criminal law are applicable to such acts.⁴ In reporting to the Committee Against Torture in 2012, the Government similarly indicated that existing law offers adequate protection to children from corporal punishment but also confirmed that corporal punishment is “not an offence as such”.⁵ The report draws attention to a circular of 21 October 2008 which reminds prosecution services that “depending on the circumstances, corporal punishment of children is liable to be treated as punishable assault and/or degrading treatment”.⁶ Again, in 2013, in response to a question by the Committee on Economic, Social and Cultural Rights about prohibition, the Government asserted that existing legislation adequately protects children from corporal punishment.⁷

In February 2013, a second collective complaint – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the European Committee of Social Rights, alleging

¹ 9 November 2015, A/HRC/WG.6/24/BEL/1, National report to the UPR, para. 5

² 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

³ 20 August 2003 proposal by Sabine de Béthune, 17 February 2007 proposal by Clitilde Nyssens and Christian Brotcorne, 16 January 2007 proposal by Magda Raemaekers and 14 July 2008 proposal by Christian Brotcorne

⁴ 11 July 2011, A/HRC/18/3, Report of the working group, paras. 63 and 103(10)

⁵ 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152

⁶ 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152

⁷ 28 October 2013, E/C.12/BEL/Q/4/Add.1, Reply to list of issues, para. 147

that there is no explicit prohibition of corporal punishment in the family, alternative care settings and schools throughout all communities in Belgium.⁸ The complaint was declared admissible on 2 July 2013; the Committee published its decision on 29 May 2015. The Committee concluded that the situation in Belgium is in violation of the Charter because there is “no adequate and effective prohibition [of corporal punishment] in law”.⁹

In responding to recommendations to prohibit corporal punishment made during the Universal Periodic Review of Belgium in 2016, the Government accepted one recommendation to prohibit corporal punishment in all settings including the home but delayed its response to another similar recommendation.¹⁰ Subsequently, in apparent contradiction to earlier remarks on the issue, the Government stated that it could not commit to implementing the recommendation to introduce a law prohibiting corporal punishment in all settings, that the current legal framework already punishes violence towards children, and that a study is under way to determine whether adjustments to the framework are necessary or desirable.¹¹

A Bill was introduced in April 2016 to amend the Civil Code, adding a new article 371/1 (unofficial translation): “Children have a right to care, safety and a good education. They must be treated with due respect to their person and their individuality and cannot be subjected to degrading treatment or any other form of physical or psychological violence.” Although the Bill does not use the term “corporal punishment”, its explanatory memorandum refers to Belgium’s obligation to explicitly prohibit all forms of corporal punishment and in particular to the multiple recommendations received from UN treaty bodies and the European Committee of Social Rights. It also states that this provision would be intended to apply to parents but also all others caring for a child. As at August 2018, the Bill had not yet been discussed in Parliament.¹² Belgium’s 2017 state report to the Committee on the Rights of the Child does not mention the Bill and does not address corporal punishment.¹³

Belgium declared in November 2018 that domestic legislation already applied to corporal punishment of children, including in the family setting, but stated that discussions were underway to bring national civil legislation in conformity with article 17 of the European Social Charter. The Government further stated that it considered violent discipline as unacceptable and that a ban would apply to all with parental authority as well as guardians and those caring for a child.¹⁴

Alternative care settings

Corporal punishment is prohibited in some but not all alternative care settings. In the Flemish Community, corporal punishment is prohibited in institutions in article 28 of the Decree of the Flemish Council (7 May 2004) and articles 11 and 13 of the Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth, but there is no prohibition in relation to non-

⁸ Collective complaint No. 98/2013, *Association for the Protection of All Children (APPROACH) Ltd v Belgium*

⁹ Collective Complaint No. 98/2013, *Association for the Protection of All Children (Approach) v Belgium*, Decision on the Merits, Adoption 20 January 2015, Notification 28 January 2015, Publication 29 May 2015

¹⁰ 3 February 2016, A/HRC/WG.6/24/L.6, Draft report of the working group, paras. 139 (15) and 140(30)

¹¹ 1 June 2016, A/HRC/32/8/Add.1, Report of the working group: Addendum, paras. 6 and 10

¹² See

<http://www.dekamer.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?dossierID=1778&legislat=54&inst=K>, accessed 2 August 2018

¹³ [July 2017], CRC/BEL/5-6, Fifth/sixth report

¹⁴ 19 November 2018, CRC/C/BEL/Q/5-6/Add.1, Reply to list of issues, paras. 15 and 16

institutional care. To our knowledge, there is no explicit prohibition of corporal punishment in alternative care settings in the French Community or the German-speaking Community. This was confirmed in relation to the French Community by the Government in 2018.¹⁵

Day care

There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

Schools

Corporal punishment is considered unlawful in schools under case law relating to provisions against assault in the Criminal Code, but there is no explicit prohibition in legislation.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Act concerning the principles of the administration of prison establishments and the legal status of detainees 2005 does not include corporal punishment among its provisions for disciplinary regimes. A federal Bill amending legislation on youth protection and addressing juvenile justice was adopted in 2006 but we have no details of its provisions. The Government reported to the UPR in 2015 that a law of 5 May 2014 had reformed the regime applicable to internees:¹⁶ we have yet to see the full text of this law.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. It is not a permitted punishment under the Criminal Code.

Universal Periodic Review of Belgium's human rights record

Belgium was examined in the first cycle of the Universal Periodic Review in 2011 (session 11). The following recommendation was made and was rejected by the Government:¹⁷

“Take necessary measures to ensure that corporal punishment is explicitly prohibited by law under all circumstances (Poland)”

During the review, the Government stated that although corporal punishment is not a specific offence under Belgian law, a number of criminal provisions are applicable to such acts and that preventive, warning and assistance mechanisms are in place to protect children.¹⁸ But the Government accepted the following recommendations:¹⁹

¹⁵ 19 November 2018, CRC/C/BEL/Q/5-6/Add.1, Reply to list of issues, para. 19

¹⁶ 9 November 2015, A/HRC/WG.6/24/BEL/1, National report to the UPR, para. 13

¹⁷ 11 July 2011, A/HRC/18/3, Report of the working group, para. 103(10)

¹⁸ 11 July 2011, A/HRC/18/3, Report of the working group, para. 63

¹⁹ 11 July 2011, A/HRC/18/3, Report of the working group, paras. 100(11) and 101(15)

“Redouble effort to achieve the appropriate implementation of the Convention of the Rights of the Child, in particular with regard to full exercise of right to education ... (Ecuador);

“Ensure effective coordination at the federal, regional and community levels for the implementation of the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Economic, Social and Cultural Rights (Poland)”

Examination in the second cycle took place in 2016 (session 24). The following recommendations were made:²⁰

“Prohibit all corporal punishment of children in all settings, including in the home (Estonia);

“Introduce a law explicitly prohibiting corporal punishment of children in all settings (Poland)”

The Government accepted the first of these, categorizing it as already implemented or in the process of implementation.²¹ Subsequently, the Government stated that it could not commit to implementing the recommendation to introduce a law prohibiting corporal punishment in all settings, that the current legal framework already punishes violence towards children, and that a study is under way to determine whether adjustments to the framework are necessary or desirable.²² During the second cycle review, Belgium was also encouraged to prohibit all corporal punishment by Ireland, but this was not recorded officially as a recommendation.²³

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 February 2019, CRC/C/BEL/CO/5-6 Advance unedited version, Concluding observations on fifth/sixth report, para. 22)

“Noting the Flemish Act on the status of minors in youth care (2004) already explicitly prohibits corporal punishment in alternative care, the Committee regrets that the Bill to amend article 371/1 of the Civil Code has not been approved and with reference to its general comment No. 8 (2006) on corporal punishment, the Committee reiterates its previous recommendation (CRC/C/BEL/CO3-4, para. 40) and urges the State party to:

(a) Explicitly prohibit corporal punishment, however light, by law, at home and in alternative care in the whole country;

(b) Promote positive, non-violent and participatory forms of child-rearing and discipline, including through awareness-raising programmes and campaigns, targeting children, parents and childcare professionals.”

²⁰ 11 April 2016, A/HRC/32/8, Report of the working group, paras. 139(15) and 140(30)

²¹ 11 April 2016, A/HRC/32/8, Report of the working group, para. 139(15)

²² 1 June 2016, A/HRC/32/8/Add.1, Report of the working group: Addendum, paras. 6 and 10

²³ 3 February 2016, A/HRC/WG.6/24/L.6, Draft report of the working group, para. 86

Committee on the Rights of the Child

(18 June 2010, CRC/C/BEL/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 39 and 40)

“The Committee welcomes efforts by the State party to implement the Committee’s concluding observations on the State party’s second report in 2002 (CRC/C/15/Add.178). However, some recommendations have not been given sufficient follow-up.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the State party’s second periodic report that have not yet been, or not sufficiently, implemented including those related in particular to coordination, data collection, discrimination against children living in poverty, the right of the child to be heard, corporal punishment and juvenile justice. In this context, the Committee draws the attention of the State party to its general comment No. 5 (2004) on general measures of implementation of the Convention on the Rights of the Child.

“The Committee is concerned that the State party has not taken the necessary measures to ensure that corporal punishment in the family and non-institutional childcare settings is explicitly prohibited by law.

“In light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous recommendations (CRC/C/15/Add.178, para. 24(a)), the Committee urges the State party to prohibit corporal punishment of children in all settings, notably in family and in non-institutional childcare settings as a matter of priority. The Committee also recommends that the State party conduct awareness raising campaigns and parenting education programmes to ensure that non-violent alternative forms of discipline are used, in a manner consistent with the child’s human dignity.”

Committee on the Rights of the Child

(13 June 2002, CRC/C/15/Add.178, Concluding observations on second report, paras. 23 and 24)

“The Committee notes with satisfaction the numerous initiatives taken in the area of child abuse, including sexual abuse, such as the Law on the Criminal Protection of Minors (of 28 November 2000), amendments to the Criminal Code and the adoption of article 22 bis of the Constitution concerning the protection of the child’s moral, physical and sexual integrity. But it remains concerned that corporal punishment is not expressly prohibited by law.

“The Committee recommends that the State party:

- a) take legislative measures to prohibit corporal punishment of children in the family, in schools and in institutions;
- b) continue to carry out public education campaigns about the negative consequences of corporal punishment, and promote positive, non-violent forms of discipline;
- c) establish effective procedures and mechanisms to receive, monitor and investigate complaints, and to intervene where necessary....”

Committee on the Rights of the Child

(20 June 1995, CRC/C/15/Add.38, Concluding observations on initial report, para. 15)

“...The Committee further encourages the State party to consider reforming its legislation with a view to ensuring the prohibition of corporal punishment within the family.”

Committee Against Torture

(3 January 2014, CAT /C/BEL/CO/3, Concluding observations on third report, para. 27)

“While taking note of the awareness-raising campaigns organized to prevent violence against children, the Committee notes with concern that the State party has not yet adopted specific legislation expressly prohibiting corporal punishment under all circumstances, particularly in the family and non-institutional childcare settings (arts. 2 and 16).

The Committee recommends that the State party expressly prohibit corporal punishment of children in all settings, and, as a matter of priority, in the family and non-institutional childcare settings.”

Committee Against Torture

(19 January 2009, CAT/C/BEL/CO/2, Concluding observations on second report, para. 24)

“While it welcomes measures adopted by the State party to combat and eliminate violence against women, such as the adoption of the Federal Action Plan 2004-2007 to combat domestic violence, the Committee notes with concern the lack of any coordinated national strategy or programme to combat all forms of violence against women and girls. The Committee is likewise concerned at the persistence of corporal punishment of children within the family and the fact that this practice is not prohibited by law (arts. 2 and 16).

The Committee recommends that the State party adopt and implement a coherent and comprehensive national strategy for the elimination of violence against women and girls that includes legal, educational, financial and social components. It also requests the State party to strengthen its cooperation with NGOs working in the area of violence against women. The State party should take the necessary steps to include provisions banning corporal punishment of children within the family in its legislation. The State party should guarantee women and child victims of violence access to complaint mechanisms, punish the perpetrators of such acts in an appropriate manner and facilitate victims’ physical and psychological rehabilitation.”

Committee on Economic, Social and Cultural Rights

(23 December 2013, E/C.12/BEL/CO/4 Draft, Concluding observations on fourth report, para. 17)

“The Committee is concerned by the persistence of the practice of corporal punishment, including in the family context. It regrets the State party’s decision not to enact specific legislation expressly prohibiting corporal punishment in all places. The Committee is also disturbed by the extent of child abuse and the persistence of the problem of street children (art. 10).

The Committee recommends that the State party review its position and consider enacting specific legislation expressly prohibiting corporal punishment everywhere. It further recommends that the State party take additional measures to combat child abuse, including in terms of protection and assistance. The State party is also encouraged to step up its campaigns to raise public awareness concerning child abuse.”

Committee on Economic, Social and Cultural Rights

(3 December 2007, E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33)

“The Committee notes that corporal punishment of children within the family has not yet been included in the Criminal Code as a specific offence.

“The Committee recommends that the State party adopt specific legislation prohibiting all forms of corporal punishment of children within the family.”

European Committee of Social Rights

(January 2012, Conclusions 2011)

“The report, again, describes the legislation concerning the respect for moral, physical and psychological integrity of a child which is reflected in the Constitution as well as the Civil Code. The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2005) para 24) that the absence of legislation explicitly banning corporal punishment of children does not mean that it is authorised in the Belgian law or is not taken into account. In practice, as the Belgian courts have clearly demonstrated, current legislation undoubtedly applies to corporal punishment.

“According to Decree of 13 July 1994 of the Flemish Community, stipulates that all corporal punishment (correction) and physical violence is banned in the institutions. Decree of 7 May 2004 stipulates that corporal punishment is forbidden in the structures for assistance to the youth. The Committee notes that the legislation that would ban corporal punishment in the home is still missing in the Flemish Community.

“The Committee notes from another source that Belgium has not taken the necessary measures to ensure that corporal punishment in the family and in non-institutional childcare settings is explicitly prohibited by law. It further notes from another source that corporal punishment is unlawful in schools under case law relating to provisions against assault in the Criminal Code, but there is no explicit prohibition in legislation. Corporal punishment is lawful in the home.

“The Committee considers that the situation which it has previously found not to be in conformity on this ground has not changed. Therefore, it reiterates its previous conclusion of non-conformity.

...

“The Committee concludes that the situation in Belgium is not in conformity with Article 17§1 of the Revised Charter on the following grounds:

- corporal punishment is not prohibited in the home and in childcare institutions in all communities of Belgium....”

European Committee of Social Rights

(2007, Conclusions XVIII-1, vol.1)

“The Committee recalls that the situation, which was found not to be in conformity with the Charter in both the previous conclusion and in its decision on the merits of the World Organisation against Torture (OMCT) v Belgium (complaint No. 21/2003 decision on the merit, 7 September 2004), has not changed. Since then the Committee clarified that in order ‘to comply with Article 17, states’ domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The

relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice' (World Organisation against Torture (OMCT) v Portugal, complaint No. 34/2006, decision on the merits of 5 December 2006, §§19-21). The Committee concludes that Belgium is not in conformity with Article 17 on the ground that domestic law does not fulfill the conditions set above as far as corporal punishment of children is concerned.

...

"The Committee concludes that the situation in Belgium is not in conformity with Article 17§1 of the Revised Charter on the ground that domestic law does not penalize all form of violence against children in the family."

European Committee of Social Rights

(July 2005, Conclusions XVII-2)

"The Committee furthermore recalls that corporal punishment is unlawful in schools and that by Decision of the Flemish Government regarding youth care of 1994 (*Besluit van de Vlaamse regering inzake de erkenningsvoorwaarden en de subsidiënormen voor de voorzieningen van de bijzondere jeugbijstand*), corporal punishment is prohibited in institutional care. It asks whether such a regulation exists for the French Communities.

"The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It considers that this prohibition in legislation must be combined with adequate sanctions in penal or civil law.

"In this regard, the Committee recalls its decision on the merits in World Organisation against Torture ('OMCT') v. Belgium (Collective Complaint No. 21/2003, decision on the merits, 7 December 2004), in which it found that Belgium was in violation of Article 17 of the Charter since there was no prohibition in legislation of corporal punishment of children within the family. The Committee notes that the situation has not been remedied.

...

"The Committee concludes that the situation in Belgium is 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."

European Committee of Social Rights

(1 January 2001, Conclusions XV-2 vol. 1, pages 109-112)

"The Committee observes from Summary Record on the 226th meeting of the United Nations Committee on the Rights of the Child that corporal punishment is unlawful in schools in Belgium. There is however no prohibition of corporal punishment of children within the family. The Committee observes that the United Nations Committee encourages Belgium to reform its legislation with a view to ensuring the prohibition of corporal punishment within the family. This would be in line with the relevant provision in the Convention on the Rights of the Child.

Referring to its general observation with respect to Article 17, the Committee asks the Government whether Belgian legislation contains a prohibition against corporal punishment exercised within the family and in institutions other than schools...

“The Committee defers its conclusion pending an answer to the questions asked about the extent to which legislation in Belgium prohibits the corporal punishment of children.”

Prevalence/attitudinal research in the last ten years

In a survey of 1,050 parents of children aged 6-18 carried out in September 2013, 57% thought it was acceptable to give their children a “pedagogical smack” on the buttocks.

(Reported in *Het Nieuwsblad*, 14 October 2013)

A study carried out in 2010-2011, which involved nearly 2,000 10-18 year olds in Flanders, revealed a high prevalence of corporal punishment in homes, schools, sports clubs and youth clubs. In the family home, 32.4% had been pinched or had their hair or ears pulled, 29.7% had been beaten, hit or smacked and 23.4% pushed, kicked or grabbed. Parents were the main perpetrators. Nearly half had experienced at least one of these three kinds of violence, 12% had experienced all three. Nearly a quarter had experienced “extreme violence” (including being beaten with an object, locked in a small room or tied up and forced to stand in the same position or do physical exercises), fathers being the main perpetrators. In school, 22.9% had been punished by having their ear pulled, 18% by having their hair pulled and 19.8% by being hit with a hand on their hand or fingers. Forty-two per cent had experienced at least one form of “extreme punishment” in school, most commonly being shut outside in hot or cold temperatures (15%), forced to do something dangerous (14.6%), forced to stand or kneel in a painful position (13.8%) and being denied food (12.5%). Extrapolated to the whole of Flemish society, the results suggest that around 38,000 children have had “extreme punishment” inflicted on them by teachers. Similar punishments were inflicted on children in sports and youth clubs. In youth clubs, 23.7% had been punished by being forced to remain in a painful position, 12.7% had been placed in hot or cold water. In sports clubs, 9.3% had been punished by being hit on the face or head, 8.7% by being hit on the arm or fingers. The majority of children said all corporal punishment was unacceptable. The report of the study recommends prohibition of all corporal punishment.

(Kinderrechtencommissariaat (2011), *Geweld gemeld en geteld*, Brussels: Kinderrechtencommissaris)