

**BRIEFING FROM GLOBAL INITIATIVE**  
**TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION  
AGAINST WOMEN**

**PRE-SESSIONAL WORKING GROUP (JANUARY 2008)**

**States to be examined in the 42<sup>nd</sup> session**

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Of the state parties to be examined in the 42<sup>nd</sup> session of the Committee on the Elimination of Discrimination Against Women, two (Portugal and Uruguay) have prohibited corporal punishment of girls and boys in all settings. In others, it is lawful for parents to inflict corporal punishment on their children as a form of “discipline”. Slovenia has made a commitment to prohibition and Mongolia is considering such a move. In Canada and Belgium, prohibition in the home has been under consideration for some time but has so far been resisted. Explicit prohibition in legislation relating to schools has yet to be enacted in Myanmar and parts of Canada. The table on page 2 summarises the legality of corporal punishment in the states to be examined, and details are given in the brief country reports which follow.

We note that article 5(b) of the Convention on the Elimination of All Forms of Discrimination against Women provides for “the recognition of the common responsibility of men and women in the upbringing and development of their children, *it being understood that the interest of the children is the primordial consideration in all cases*” and that under article 16(d) men and women should enjoy “the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; *in all cases the interests of the children shall be paramount*” (emphases added). We also note the Committee’s General Recommendation No. 19 (1992) on Violence against women, which states that full implementation of the Convention requires States to eliminate all forms of violence against women (paragraph 4), and draw attention to the fact that corporal punishment of girl children potentially impairs or nullifies the enjoyment by women of all the rights and freedoms listed in paragraph 7 of the General Recommendation.

In light of the recommendation in the UN Secretary General’s Study on violence against children, submitted to the General Assembly in October 2006, that all corporal punishment of children be prohibited by 2009, and of the gathering momentum of states enacting full prohibition (another seven in 2007), we hope the Committee will rigorously pursue the issue of corporal punishment of girls in its examination of states – including corporal punishment within the home – and make recommendations that state parties prohibit corporal punishment in all settings, supported by appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

The Committee may also wish to refer to 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” (available at [www.ohchr.org/english/bodies/crc/comments.htm](http://www.ohchr.org/english/bodies/crc/comments.htm)).

**SUMMARY - CORPORAL PUNISHMENT IN STATES TO BE EXAMINED IN 42<sup>nd</sup> SESSION**

| State       | Prohibited in the home | Prohibited in schools | Prohibited in penal system |                         | Prohibited in alternative care settings |
|-------------|------------------------|-----------------------|----------------------------|-------------------------|---|
|             |                        |                       | As sentence for crime      | As disciplinary measure |   |
| Belgium     | NO <sup>1</sup>        | YES                   | YES                        | YES                     | SOME <sup>2</sup>                       |
| Cameroon    | NO                     | YES                   | YES                        | YES                     | NO                                      |
| Canada      | NO <sup>3</sup>        | YES <sup>4</sup>      | YES                        | YES                     | SOME <sup>5</sup>                       |
| Ecuador     | NO                     | YES                   | YES <sup>6</sup>           | NO                      | SOME <sup>7</sup>                       |
| El Salvador | NO                     | YES                   | YES                        | YES                     | ???                                     |
| Kyrgyzstan  | NO                     | YES                   | YES                        | YES                     | SOME <sup>8</sup>                       |
| Mongolia    | NO <sup>9</sup>        | YES                   | YES                        | NO                      | NO                                      |
| Myanmar     | NO                     | NO <sup>10</sup>      | YES <sup>11</sup>          | NO                      | NO                                      |
| Portugal    | YES                    | YES                   | YES                        | YES                     | YES                                     |
| Slovenia    | NO <sup>12</sup>       | YES                   | YES                        | YES                     | SOME <sup>13</sup>                      |
| Uruguay     | YES                    | YES                   | YES                        | YES                     | YES                                     |

**BELGIUM**

Corporal punishment is lawful in the **home**. In 2005, a proposed amendment to the Civil Code was pending before the Senate but explicit prohibition is yet to be enacted. Telephone interviews with 1,070 adults aged 15 years and over in April 2004, revealed that 77% consider it acceptable for parents to smack their children, including 17% who believe it is always acceptable and 60% who believe there are some circumstances in which it is acceptable. Just under a fifth (19%) believe it is unacceptable in any circumstances.<sup>14</sup>

Corporal punishment is unlawful in **schools** and in the **penal system**. In **alternative care settings**, some but not all communities prohibit corporal punishment in institutions for children and foster-care.

In 2002, the **Committee on the Rights of the Child**, in its concluding observations on the state party's second report, expressed concern at the lack of prohibition in law of corporal punishment and recommended that the state party enact explicit prohibition of corporal punishment in the family, in schools and in institutions (CRC/C/15/Add.178, paras. 23 and 24). The Committee had previously recommended prohibition in the family in 1995 (CRC/C/15/Add.38, para. 15). The **European**

<sup>1</sup> Bill which would prohibit under discussion (2005)

<sup>2</sup> Prohibited in institutions and foster care by decrees in some communities; not prohibited in non-institutional childcare

<sup>3</sup> Bill which would prohibit under discussion (2007)

<sup>4</sup> Prohibited by 2004 Supreme Court ruling

<sup>5</sup> Prohibited in state provided care in Alberta, British Colombia and Manitoba; in Ontario prohibited in provincially-licensed childcare programmes and foster homes and for all children receiving services from a child protection agency or other service provider licensed or approved by the province; in Quebec no right of correction under the Civil Code but right of correction in Federal Criminal Code applies

<sup>6</sup> But possibly lawful among indigenous communities

<sup>7</sup> Prohibited in institutions but lawful in other childcare settings

<sup>8</sup> Prohibited in residential institutions

<sup>9</sup> Government considering prohibition (2007)

<sup>10</sup> Prohibited by Government directive

<sup>11</sup> But some legislation not amended/repealed

<sup>12</sup> Government committed to prohibition (2004); bill which would prohibit under discussion (2007)

<sup>13</sup> Prohibited in day care centres and residential schools

<sup>14</sup> Market & Opinion Research International, 2004, "Attitudes towards smacking children: Belgium", Research conducted for the Association for the Protection of All Children

**Committee of Social Rights** has twice found the situation in Belgium to be not in conformity with article 17 of the European Social Charter because there is no prohibition of corporal punishment in the family, in 2007 (Conclusions XVIII-1, vol.1) and in 2005 (Conclusions XVII-2). 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). The Committee had first raised concerns about prohibition in the family in 2001 (Conclusions XV-2 vol. 1).

## **CAMEROON**

Corporal punishment is lawful in the **home**. In 2004, a law against violence against women was being finalised and a draft Family Code and a draft Child Protection Code were under consideration but we have no further details. According to a study on corporal punishment made by the NGO EMEDA with UNICEF support in December 2000, 81.4% of families admitted to using corporal punishment against children as an educational measure.<sup>15</sup>

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

In 2001, following examination of the state party's initial report, the **Committee on the Rights of the Child** expressed concern about abuse within the family and in schools and recommended monitoring and enforcement of the ban on corporal punishment in schools (CRC/C/15/Add.164, paras. 40, 41, 54 and 55).

## **CANADA**

Corporal punishment is lawful in the **home** under section 43 of the Criminal Code which states: "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances." A Supreme Court ruling on 30 January 2004 stated that this section justifies only "minor corrective force of a transitory and trifling nature" and that it rules out corporal punishment of children under the age of two years or over the age of 12 years, as well as degrading, inhuman or harmful conduct, discipline using objects such as rulers or belts and blows or slaps to the head (*Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113). In Quebec, reference to a "right of correction" was removed from the Civil Code in 1994, and a number of rulings have stated that the right of correction is no longer recognised in Quebec's civil law, but section 43 of the federal Criminal Code applies nevertheless. As at November 2007, Bill S-209 which would repeal section 43 of the Criminal Code was under discussion in the Senate, and the Standing Senate Committee on Human Rights had recommended repeal of the defence by 2009.

Research has repeatedly highlighted widespread acceptance of corporal punishment in the home. In a survey of 1,000 people in an SES/Sun Media poll on the eve of the 2004 Supreme Court ruling, 64% supported the use of force such as spanking by parents to discipline a child, though most opposed physical force being used by others.<sup>16</sup> A 2002 survey found that 50% of parents reported that they or

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<sup>15</sup> reported by UNICEF, June 2004

<sup>16</sup> "Spanking poll backs ruling", *Winnipeg Sun*, Manitoba, 1 February 2004

their spouse had “inflicted light corporal punishment, like a slap” on their children.<sup>17</sup> In a sample of mothers of preschoolers in Manitoba and Ontario, 70% reported having used physical punishment at some time; one third of those who used it did so at least once per week.<sup>18</sup>

Corporal punishment is unlawful in **schools** under the 2004 Supreme Court judgment but this is not yet confirmed in the laws of all provinces and territories. Corporal punishment is unlawful in the **penal system**. Corporal punishment is not prohibited in all **alternative care settings** in all states and territories: it is not prohibited in child care in New Brunswick and in foster care in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon.

The **Committee on the Rights of the Child** has twice expressed concern at the legality of corporal punishment of children in the home in penal legislation and recommended explicit prohibition in the home and in schools (CRC/C/15/Add.215, Concluding observations on second report, 2003, paras. 32, 33 and 45; and CRC/C/15/Add.37, Concluding observations on initial report, 1995, paras. 14 and 25). In its most recent recommendations, the Committee stated it was “deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment” and recommended “that the State party adopt legislation to remove the existing authorization of the use of ‘reasonable force’ in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed” (paras. 32 and 33).

## **ECUADOR**

Corporal punishment is lawful in the **home**. Article 76 of the Childhood and Adolescence Code states that abusive practices suffered by children cannot be justified on the grounds that they are educative methods or traditional cultural practices, but this is not interpreted as prohibiting all forms of corporal punishment of children. In survey research in December 2000 on the situation of children in households, 40% of children reported that their parents hit them as a “disciplinary” measure. One in ten children reported being hit by teachers.<sup>19</sup>

Corporal punishment is unlawful in **schools**. In the **penal system**, it is unlawful as a sentence for crime under state law, but indigenous communities not served by police forces may apply vigilante justice as a form of “traditional” law, and public humiliation and beatings are reportedly common. In November 2005, a draft law for indigenous justice was under discussion, and in practice authorities may forbid any practice that is harmful to the integrity of the person. There is no explicit prohibition of corporal punishment as a disciplinary measure against children in detention. In **alternative care settings**, corporal punishment is unlawful in institutions but there is no explicit prohibition of its use in other childcare settings.

In its concluding observations on the state party’s combined second and third report in 2005, the **Committee on the Rights of the Child** expressed concern “that corporal punishment is still traditionally accepted and widely practised in the family and in other settings as a form of discipline”

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<sup>17</sup> Canadian Press and Leger Marketing, 2002, *Child Abuse Report*, Montreal, PQ: Canadian Press and Leger Marketing

<sup>18</sup> Durrant, J. E., Rose-Krasnor, L. & Broberg, A., 2003, “Maternal beliefs about physical punishment in Sweden and Canada”, *Journal of Comparative Family Studies*, 34, pp.586-604

<sup>19</sup> EMEDINHO/National Statistics and Census Institute/Ministry of Social Welfare/National Institute for Children and the Family/Centre for Population Studies and Social Development (2000), reported in *Children Now*, Ecuador Integrated System of Social Indicators, cited in the second and third combined periodic state party report to the Committee on the Rights of the Child, 2004, CRC/C/65/Add.28, paras. 156, 173-176, and third report to the Committee Against Torture, 2003, CAT/C/39/Add.6, paras. 256-259

and recommended “that the State party introduce and enforce legislation prohibiting all forms of corporal punishment in all settings, including in the family and alternative childcare system, as well as strengthening awareness-raising campaigns to ensure that alternative forms of discipline are administered in a manner consistent with the human dignity of the child and in conformity with the Convention, in particular article 28(2)” (CRC/C/15/Add.262, paras. 37 and 38).

## **EL SALVADOR**

Corporal punishment is lawful in the **home**. Article 215 of the Family Code (1994) states: “It is the parents’ duty to correct their children appropriately and moderately ....”

Corporal punishment is prohibited in **schools** and in the **penal system**. We have been unable to establish the legality of corporal punishment in **alternative care settings**.

In its concluding observations on the state party’s second report in 2004, the **Committee on the Rights of the Child** expressed concern at the prevalence of corporal punishment of children in the family and recommended legislative and other measures to ensure its prohibition (CRC/C/15/Add.232, paras. 43 and 44).

## **KYRGYZSTAN**

Corporal punishment is lawful in the **home**.

Corporal punishment is unlawful in **schools** and in the **penal system**. In **alternative care settings**, it is prohibited in residential institutions but not in foster care and other childcare settings.

The **Committee on the Rights of the Child** first recommended prohibition of corporal punishment in the family to the state party in 2000, following examination of its initial report (CRC/C/15/Add.127, para. 40). In 2004, in its concluding observations on the second report, the Committee reiterated its concerns “about the abuse and neglect that take place in families, in particular with regard to children and against adolescent girls” and recommended that the state party “carry out effective public-awareness campaigns and adopt measures to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against children, including the use of corporal punishment” (CRC/C/15/Add.244, paras. 43 and 44). The Committee expressed concern about the legality of corporal punishment and recommended that the state party “expressly prohibit corporal punishment by law in the family, in schools, in institutions and in other childcare settings” (paras. 45 and 46). The **Human Rights Committee** has also recommended prohibition of corporal punishment of children in educational institutions (CCPR/CO/69/KGZ, Concluding observations on initial report, 2000, para. 19).

## **MONGOLIA**

Corporal punishment is lawful in the **home**. As at May 2007, the government was considering prohibition. Large scale comparative research into the views and experiences of over 3,000 across Southeast Asia and the Pacific was carried out by Save the Children in 2005. Physical punishments mentioned by the 607 children in Mongolia included slapping, hitting with implements, forcing to the ground, bearing with a rubber baton, pinching, grabbing, pulling hair and scratching. Children in

institutions mentioned adults stomping on their stomachs, being forced to the ground, having to stand in the hot sun, being hit with a rubber baton.<sup>20</sup>

Corporal punishment is prohibited in **schools**. In the **penal system** it is unlawful as a sentence for crime but there is no explicit prohibition of its use as a disciplinary measure in penal institutions. It is lawful in **alternative care settings**.

In its concluding observations on the state party's second report in 2005, the **Committee on the Rights of the Child** expressed concern "that corporal punishment of children remains socially acceptable in Mongolia and it is still practised in families and also in places where it has been formally prohibited, such as schools and other institutions" and "that Mongolian legislation does not expressly prohibit corporal punishment in the family" (CRC/C/15/Add.263, para. 29). The Committee recommended explicit prohibition of corporal punishment in the family (para. 30).

## **MYANMAR**

Corporal punishment is lawful in the **home**. Article 66 of the Child Law provides for "admonition by a parent, teacher, or other person having the right to control the child". In a comparative study of 10,073 children aged 9-17 years across East Asia and the Pacific by UNICEF and Research International Asia (Thailand) in 2001, 40% of those surveyed in Myanmar reported having been beaten by their parents.<sup>21</sup>

Corporal punishment is prohibited in **schools** under government directives issued regularly since the 1950s, but as at 2004, the prohibition had not been confirmed in law and article 66 of the Child Law (see above) applies. In the **penal system**, corporal punishment is prohibited as a sentence for crime but there is no explicit prohibition of its use as a disciplinary measure in penal institutions. It is lawful in **alternative care settings**, where article 66 of the Child Law applies.

The **Committee on the Rights of the Child** first raised concerns about the legality of corporal punishment, and recommended its prohibition, following examination of the state party's initial report in 1997 (CRC/C/15/Add.69, para. 28). In 2004, in its concluding observations on the second report, the Committee reiterated its concerns (CRC/C/15/Add.237, para. 38): "The Committee is deeply concerned that article 66 (d) of the 1993 Child Law provides for possible 'admonition by a parent, teacher, or other person having the right to control the child' and that corporal punishment continues to be regarded as acceptable in society. The Committee is also concerned that the State party has not repealed the Whipping Act and that the orders prohibiting corporal punishment in schools do not seem to be effective." The Committee recommended "that the State party repeal article 66 (d) of the 1993 Child Law and prohibit corporal punishment in the family, the schools and other institutions, and undertake education campaigns to educate families and professionals on alternative forms of discipline" (para. 39).

## **PORTUGAL**

Since 2007, corporal punishment is prohibited in all settings, including the home.

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<sup>20</sup> Beazley, H., S. Bessell, et al., 2006, *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific, 2005*, Stockholm, Save the Children Sweden

<sup>21</sup> UNICEF, 2001, *Speaking Out! Voices of Children and Adolescents in East Asia and the Pacific*

## **SLOVENIA**

Corporal punishment is lawful in the **home**. As at January 2007, a draft Family Act was under consideration which would prohibit corporal punishment in the family.

Corporal punishment is prohibited in **schools** and in the **penal system**. In **alternative care settings**, it is prohibited in educational day care centres and residential school institutions but not explicitly in foster care.

Following examination of the state party's second report in 2004, the **Committee on the Rights of the Child** expressed concern at the lack of prohibition in legislation of corporal punishment within the home and recommended that the state party enact prohibition (CRC/C/15/Add.230, paras. 40 and 41). The **European Committee of Social Rights** has twice found the situation in Slovenia to be not in conformity with article 17 of the Revised Charter because corporal punishment in the family is not prohibited (Conclusions 2005; Conclusions 2003).

## **URUGUAY**

Since 2007, corporal punishment is prohibited in all settings, including the home.