

**BRIEFING ON BELGIUM FOR THE COMMITTEE AGAINST TORTURE PRESESSIONAL WORKING GROUP, 54th session (Apr/May 2015)**

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***This briefing has the full support of The Flemish Children’s Rights Commissioner and The General Delegate of Children’s Rights of the Belgian French Community***

**This briefing describes the legality of corporal punishment of children in Belgium. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the previous recommendations to prohibit corporal punishment made to Belgium by the Committee Against Torture, and the repeated recommendations by the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and during the UPR (rejected by the Government), as well as the findings of the European Committee of Social Rights, we hope the Committee Against Torture will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for Belgium, in particular asking what measures are being taken to explicitly prohibit corporal punishment in the home and all other settings, and**
* **recommend to Belgium, following its examination of the state party’s report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in the home and all other settings so as to enable Belgium to meet its human rights obligations in this respect.**

**1 The legality of corporal punishment of children in Belgium**

1.1 ***Summary:***In Belgium, corporal punishment of children is unlawful in schools, the penal system and some alternative care settings, but it is not prohibited in the home, other alternative care settings and in day care.

1.2 ***Home (lawful):***The Civil Code (amended 1995) 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) provided for the protection of the child’s moral, physical and sexual integrity but did 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 the 2003 collective complaint brought to the European Committee of Social Rights against Belgium by the World Organisation Against Torture (see below, para. 3.4), a number of legislative proposals were introduced to amend the Civil Code to prohibit all corporal punishment[[1]](#footnote-1) but these were never discussed in Parliament.

1.3 In 2011, the Government rejected the recommendation to prohibit corporal punishment by law in all settings made during the Universal Periodic Review, stating that while corporal punishment is not a specific offence, a number of provisions in criminal law are applicable to such acts.[[2]](#footnote-2) 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”.[[3]](#footnote-3) 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”.[[4]](#footnote-4) 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.[[5]](#footnote-5)

1.4 ***Alternative care settings (partially prohibited):***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-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.

1.5 ***Day care (lawful):***There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

1.6 ***Schools (unlawful):***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. The lack of explicit prohibition in law is the subject of a collective complaint brought to the European Committee of Social Rights.

1.7 ***Penal institutions (unlawful):***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.

1.8 ***Sentence for crime (unlawful):***There is no provision for judicial corporal punishment in criminal law.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CAT:*** The Committee Against Torture has twice recommended to Belgium that the law be reformed to prohibit corporal punishment of children in the family – in its concluding observations on the second state party report in 2009[[6]](#footnote-6) and on the third report in 2014.[[7]](#footnote-7) In 2014, the Committee also recommended prohibition in non-institutional childcare settings.[[8]](#footnote-8)

2.2 ***CRC:*** The Committee on the Rights of the Child has recommended prohibition of corporal punishment of children in the family and other settings in Belgium on three occasions – following examination of the state party’s initial report in 1995,[[9]](#footnote-9) the second report in 2002[[10]](#footnote-10) and the third/fourth report in 2010.[[11]](#footnote-11)

2.3 ***CESCR:*** In 2007, the Committee on Economic, Social and Cultural Rights recommended prohibition of corporal punishment of children in the family in Belgium.[[12]](#footnote-12) The Committee reiterated its recommendation in 2013.[[13]](#footnote-13)

2.4 ***ESCR:*** In its systematic monitoring of implementation of the European Social Charter and Revised Charter, the European Committee of Social Rights has three times found the situation in Belgium to be not in conformity with article 17 of the Revised Charter because all corporal punishment, including in the home, is not prohibited.[[14]](#footnote-14) In addition, following a collective complaint against Belgium brought in 2003 by the World Organisation Against Torture, the Committee 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).[[15]](#footnote-15) A second collective complaint on the issue was submitted in 2013, by the Association for the Protection of All Children (APPROACH) Ltd. The complaint was declared admissible on 2 July 2013 and the Committee’s decision is expected shortly.

2.5 ***UPR:*** During the Universal Periodic Review of Belgium in 2011, the Government rejected a recommendation to prohibit all corporal punishment.[[16]](#footnote-16)

*Briefing* *prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 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 [↑](#footnote-ref-1)
2. 11 July 2011, A/HRC/18/3, Report of the working group, paras. 63 and 103(10) [↑](#footnote-ref-2)
3. 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152 [↑](#footnote-ref-3)
4. 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152 [↑](#footnote-ref-4)
5. 28 October 2013, E/C.12/BEL/Q/4/Add.1, Reply to list of issues, para. 147 [↑](#footnote-ref-5)
6. 19 January 2009, CAT/C/BEL/CO/2, Concluding observations on second report, para. 24 [↑](#footnote-ref-6)
7. 3 January 2014, CAT /C/BEL/CO/3, Concluding observations on third report, para. 27 [↑](#footnote-ref-7)
8. ibid. [↑](#footnote-ref-8)
9. 20 June 1995, CRC/C/15/Add.38, Concluding observations on initial report, para. 15 [↑](#footnote-ref-9)
10. 13 June 2002, CRC/C/15/Add.178, Concluding observations on second report, paras. 23 and 24 [↑](#footnote-ref-10)
11. 18 June 2010, CRC/C/BEL/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 39 and 40 [↑](#footnote-ref-11)
12. 3 December 2007, E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33 [↑](#footnote-ref-12)
13. 23 December 2013, E/C.12/BEL/CO/4 Draft, Concluding observations on fourth report, para. 17 [↑](#footnote-ref-13)
14. July 2005, Conclusions XVII-2 ; 2007, Conclusions XVIII-1, vol.1 ; January 2012, Conclusions 2011 [↑](#footnote-ref-14)
15. 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 [↑](#footnote-ref-15)
16. 11 July 2011, A/HRC/18/3, Report of the working group, para. 103(10) [↑](#footnote-ref-16)