

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE
PRE-SESSIONAL WORKING GROUP – October/November 2006

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Of the State parties to be examined in the 89th session of the Human Rights Committee, none 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. Corporal punishment is lawful in the home in all four State parties, and only Zambia has prohibited its use in schools. In Barbados it is lawful as a sentence of the courts and as a disciplinary measure in penal institutions. 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 – 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 Committee may be interested to see 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”. 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.

BARBADOS

Corporal punishment is lawful in the **home**. The Prevention of Cruelty to Children Act punishes assault, neglect and “unnecessary suffering” of children under 16 years (section 5), but states (section 4): “Nothing in this Act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.”

Corporal punishment is lawful in **schools** under the Education Act, confirmed in a Supreme Court decision (*Mayers v the Attorney-General of Barbados and King*). In August 2004, the Minister of Education approved the recommendation of the National Commission on Law and Order to retain the use of corporal punishment in schools. Research has consistently found a high level of support for the use of corporal punishment in schools and in the home.¹

In the **penal system**, corporal punishment is lawful both as a sentence for crime and as a disciplinary measure in penal institutions. The Juvenile Offenders Act and the Corporal Punishment Act provide for the whipping of children and young people from the age of 11 years. The Magistrate’s Court Act allows for children aged between 7 and 16 years to be “privately whipped at the police station in the district in which the magistrate’s court is situated on one occasion only by a member of the Police Force in the presence of a registered medical practitioner and a sergeant of police with a tamarind or other similar rod, with not more than 12 strokes” (section 71). Corporal punishment as a punishment

¹ Payne, M.A. (1989), “Use and abuse of corporal punishment: A Caribbean view”, *Child Abuse and Neglect*, vol. 13, pp.389-401; Anderson, S. & Payne, M. A. (1994), “Corporal punishment in elementary education: Views of Barbadian schoolchildren”, *Child Abuse & Neglect*, vol.18, no.4, pp.377-386

for breaches of internal discipline in penal institutions is explicitly provided for in the Prisons Act (section 40) and the Reformatory and Industrial Schools Act (sections 31 and 34).

In the **alternative care system**, corporal punishment is prohibited in state-arranged foster care, pre-school settings, and day care centres or residential children's homes run by the Child Care Board, but is lawful in private foster care. There is no explicit prohibition of corporal punishment in **situations of employment**.

In its concluding observations on the state party's initial report in 1999, the **Committee on the Rights of the Child** expressed concern "about legislation and policies that allow the use of flogging of children as a disciplinary measure in prisons and its use as a judicial sentence" and recommended that the state party "conduct a public awareness-raising campaign and ... review its legislation and policies in order to eliminate flogging as a judicial sentence and as a disciplinary measure in the prison system" (CRC/C/15/Add.103, para 19). The Committee also expressed concern at "the subjective element involved in legislation that permits a 'reasonable degree' of physical chastisement as a disciplinary method" and that "the tolerance of corporal punishment in schools will make it extremely difficult to educate parents about alternative forms of discipline", recommending that the state party "review its policies and legislation in order to eliminate corporal punishment as a method of discipline and to implement fully the provisions of articles 19 and 39 of the Convention", "increase its efforts to educate the public about the negative impact of corporal punishment on the development of the child" and "seek international assistance and advice on successful examples of how to overcome traditional social attitudes regarding corporal punishment" (para 22).

CHILE

Corporal punishment is lawful in the **home**. Under the Civil Code, parents have the power to "correct" their children, though this must not adversely affect their health or development (article 234).

In 1994, a survey of 423 parents from two public schools and 104 parents from a private catholic school found that child battering was admitted by 80.4% and 57% respectively; in surveys of 192 students, 85% at one of the public schools and 54% at the private school reported having been physically punished.² In the World Studies of Abuse in the Family Environment (WorldSAFE) cross-national project, self-reports by mothers covering the period of the previous 6 months revealed that "moderate physical punishment" was common: spanked buttocks with hand 51%, shook child 39%, twisted ear 27%, pulled hair 24%, hit with object on buttocks 18%, slapped face or head 13%, hit with knuckles 12%, pinched child 3%.³

Corporal punishment is lawful in **schools**. According to the third state party report to the Committee on the Rights of the Child in 2005 (CRC/C/CHL/3), corporal punishment is "strictly forbidden" in **penal institutions** and **alternative care settings** but we have been unable to identify any legislation carrying an explicit prohibition. It is unlawful as a sentence for crime. There is no explicit prohibition of corporal punishment in **situations of employment**.

Following examination of the state party's second periodic report in 2002, the **Committee on the Rights of the Child** expressed concern "that corporal punishment of children remains socially acceptable in Chile and it is still practised in families, schools and other institutions" (CRC/C/15/Add.173, para 31). The Committee recommended that the state party "develop measures to raise awareness on the harmful effects of corporal punishment and engage in the promotion of alternative forms of discipline in families to be administered in a manner consistent with the child's

² Vargas, N., et al. (1995) "Parental attitude and practice regarding physical punishment of school children in Santiago de Chile", *Child Abuse & Neglect*, vol.19, no.9, pp.1077-1082

³ Reported in Krug, E. G. et al. (eds) (2002), *World report on violence and health*, Geneva: World Health Organization

dignity and in conformity with the Convention” and “explicitly prohibit corporal punishment in the family, in schools and in other institutions” (para 32).

RWANDA

Corporal punishment is lawful in the **home**. Parents have a right of correction under article 347 of Law No. 42. Children have limited protection from violence and abuse under the Penal Code and Law No. 27 concerning the rights of the child and protection of children against violence.

There is no explicit prohibition of corporal punishment in **schools**. In 2005, legislation was being prepared which was to provide for sanctions against teachers using corporal punishment but we have no further information. Corporal punishment is unlawful in the **penal system** as a sentence for crime and as a disciplinary measure in penal institutions, but there is no explicit prohibition of its use in **alternative care contexts** or in **situations of employment**.

In 2004, the **Committee on the Rights of the Child** noted that “the Rwandan legislation does not include an explicit prohibition of corporal punishment and is concerned at the persistent practice of corporal punishment by parents, teachers and law enforcement officers” (concluding observations on the state party’s second report, CRC/C/15/Add.234, para 34). The Committee recommended that the state party “introduce legislation explicitly prohibiting corporal punishment” and “make use of information and education campaigns to sensitize parents, teachers, other professionals working with children and the public at large to the harm caused by corporal punishment and promote alternative, non-violent forms of discipline” (para 35).

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,

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

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).