



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

## **BRIEFING ON BELGIUM FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Mar 2014**

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### **The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence**

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

**This briefing describes the legality of corporal punishment of children in Belgium. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the repeated recommendations of treaty monitoring bodies, we hope the Committee on the Elimination of Discrimination Against Women will:**

- **raise the issue of corporal punishment of girls in its List of Issues for Belgium, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Belgium, in the concluding observations on the seventh state party report, that corporal punishment is explicitly prohibited in all settings, including the home, as a matter of priority.**

## 1 The state party's report to CEDAW

1.1 The seventh state report of Belgium to CEDAW includes extensive information on violence against women and on sexual violence against children but appears to make no reference to corporal punishment of children – punitive violence which may lawfully be inflicted on them in the home and other settings.<sup>1</sup> **We hope the Committee will, during the review of Belgium, emphasise the importance of prohibiting and eliminating physical punishment of girls and boys within the family when taking measures against family violence.**

## 2 The legality and practice of corporal punishment of children in Belgium

2.1 **Summary:** In Belgium, corporal punishment is unlawful in the penal system and in some but not all care settings; it is considered unlawful in schools but is not explicitly prohibited; it is lawful in the home and in day care settings. The Government has repeatedly stated that the law adequately protects children from all corporal punishment, but this assertion is not supported by legal analysis or by research on the prevalence of corporal punishment; the Government has also acknowledged that corporal punishment is not a specific offence (see below).

2.2 **Home (lawful):** The Civil Code states that the parent-child relationship should be one of “mutual respect” (art. 371) and a Constitutional amendment in 2000 (art. 22bis) provides for the protection of the child’s moral, physical and sexual integrity: these provisions do not send a clear message that all physical punishment in childrearing is prohibited. Provisions against violence and abuse in the Penal Code as amended by the Law Concerning the Penal Protection of Minors 2000 do not include prohibition of all forms of corporal punishment. Over the years, a number of legislative proposals have been introduced to amend the Civil Code to prohibit all corporal punishment<sup>2</sup> but these have never been discussed in Parliament.

2.3 In 2011, the Government rejected the recommendation to prohibit corporal punishment 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.<sup>3</sup> Similar statements have been made in other contexts.<sup>4</sup> However, the absence of explicit prohibition of corporal punishment in legislation means that the law fails to send a clear message that no form of corporal punishment should ever be imposed on a child. Indeed, research undertaken in 2010-2011, involving nearly 2,000 10-18 year olds in Flanders, found a high prevalence of corporal punishment. In the family home, 32.4% of respondents had been pinched or had their hair or ears pulled, 29.7% beaten, hit or smacked and 23.4% pushed, kicked or grabbed; nearly a quarter of respondents 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). In school, 22.9% of respondents had been punished by having their ear pulled, 18% their hair pulled and 19.8% hit with a hand on their hand or fingers; 42% had experienced at least one form of “extreme punishment” in school (including being shut outside in hot or cold temperatures, being forced to stand or kneel in a painful position and being denied food) (12.5%). Children were also physically punished in youth clubs and sports clubs.<sup>5</sup>

2.4 **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,

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<sup>1</sup> 1 November 2013, CEDAW/C/BEL/7 Advance Unedited Version, as at 21 January in French only

<sup>2</sup> 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

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

<sup>4</sup> For example, see 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152; 28 October 2013, E/C.12/BEL/Q/4/Add.1, Reply to list of issues, para. 147

<sup>5</sup> Kinderrechtencommissariaat (2011), *Geweld gemeld en geteld*, Brussels: Kinderrechtencommissaris

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.

- 2.5 **Day care (lawful):** There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.
- 2.6 **Schools (no explicit prohibition):** 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.
- 2.7 **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.
- 2.8 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

### **3 Recommendations by human right treaty monitoring bodies and during the UPR**

- 3.1 **CRC:** The Committee on the Rights of the Child has three times recommended to Belgium that corporal punishment be prohibited in the family and other settings – in its concluding observations on the initial report in 1995, the second report in 2002 and the third/fourth report in 2010.<sup>6</sup>
- 3.2 **CAT:** In 2009 and again in 2013, the Committee Against Torture recommended that legislation be reform in Belgium to prohibit corporal punishment in the family and other settings.<sup>7</sup>
- 3.3 **CESCR:** In 2013, the Committee on Economic, Social and Cultural Rights recommended to Belgium that corporal punishment of children be prohibited in all settings; the Committee first recommended prohibition in the family in Belgium in 2007.<sup>8</sup>
- 3.4 **ECSR:** In the course of its periodic examinations of Belgium, the European Committee of Social Rights has three times concluded that the national situation does not conform with article 17 of the European Social Charter because corporal punishment of children is not prohibited in the family – in 2005, in 2007 and again in 2012.<sup>9</sup> In addition, in 2003 the Committee considered a complaint against Belgium brought by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, and 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).<sup>10</sup> A second collective complaint on the issue – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the European Committee of Social Rights in February 2013 and declared admissible in July 2013.<sup>11</sup>

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<sup>6</sup> 20 June 1995, CRC/C/15/Add.38, Concluding observations on initial report, para. 15; 13 June 2002, CRC/C/15/Add.178, Concluding observations on second report, paras. 23 and 24; 18 June 2010, CRC/C/BEL/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 39 and 40

<sup>7</sup> 19 January 2009, CAT/C/BEL/CO/2, Concluding observations on second report, para. 24; [November 2013], CAT/C/BEL/CO/3 Advance Unedited Version, Concluding observations on third report, para. 27, as at 5 January 2014 in French only

<sup>8</sup> 23 December 2013, E/C.12/BEL/CO/4 Draft, Concluding observations on fourth report, para. 17; 3 December 2007, E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33

<sup>9</sup> July 2005, Conclusions XVII-2 ; 2007, Conclusions XVIII-1, vol.1 ; January 2012, Conclusions 2011

<sup>10</sup> 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

<sup>11</sup> Collective complaint No. 98/2013, *Association for the Protection of All Children (APPROACH) Ltd v Belgium*

3.5 **UPR:** The Government rejected the recommendation made during the Universal Periodic Review of Belgium in 2011 to “take the necessary measures to ensure that corporal punishment is explicitly prohibited by under all circumstances”.<sup>12</sup>

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<sup>12</sup> 11 July 2011, A/HRC/18/3, Report of the working group, para. 103(10)