**BRIEFING ON THE PHILIPPINES FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, SESSION 87 PRE-SESSIONAL WORKING GROUP – June 2020**

*From the Global Initiative to End All Corporal Punishment of Children, February 2020*

**This briefing describes the legality of corporal punishment of children in the Philippines. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its repeated recommendations on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations to prohibit all corporal punishment made by the Committee Against Torture and during the Universal Periodic Review in 2012 (which the Government accepted), and the global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee will:**

* **in its List of Issues for the Philippines, raise the issue of corporal punishment of children, in particular asking what steps the Government is taking to fulfil its obligation to prohibit all corporal punishment of children; and,**
* **in its concluding observations on the fifth/sixth report of the Philippines, recommend that legislation is immediately drafted and enacted to explicitly prohibit corporal punishment of children, in all settings including the home, as a matter of priority.**

**1 The report of the Philippines to the Committee on the Rights of the Child**

* 1. The Philippines’ fifth/sixth state report states that the Philippines’ current legislative agenda include “prohibiting corporal punishment and promoting positive and non-violent discipline”.[[1]](#footnote-2) Though this may have been accurate at time of writing, in February 2019 the President of the Philippines vetoed the Bill which had been adopted in Congress in late 2018 and would have prohibited corporal punishment in the home.
  2. The Philippines has a commitment and an obligation to prohibit corporal punishment, both as a signatory to the Convention on the Rights of the Child, and as a Pathfinding country for the Global Partnership to End Violence against Children.

**2 The legality and practice of corporal punishment of children in the Philippines**

2.1 ***Summary:***Corporal punishment of children in the Philippines is unlawful in every setting outside the home.

2.2 ***Home (lawful):*** Corporal punishment is lawful in the home. There are a number of legal defences for the use of corporal punishment in childrearing. The Family Code 1987 states that the rights and duties of those exercising parental authority over children include “to impose discipline on them as may be required under the circumstances” (art. 220). The Child and Youth Welfare Code 1974 confirms the right of parents “to discipline the child as may be necessary for the formation of his good character” (art. 45). The Code of Muslim Personal Laws confirms parents’ “power to correct, discipline, and punish [their children] moderately” (art. 74); the Revised Penal Code states that the higher penalties for serious physical injuries “shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement” (art. 263); the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases state that “discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein” (art. 2).

2.3 Since 2007, a number of bills which would prohibit corporal punishment have been introduced to Parliament but have failed to progress through both houses. In reporting to the Universal Periodic Review in 2012, the Government included Bill No. HB 4455 “on the promotion of positive discipline in lieu of corporal punishment” in a list of “priority bills” in the House of Representatives;[[2]](#footnote-3) in 2013 its counterpart Bill No. SB 873 was pending in the Senate. Also pending in the Senate were Bill No. SB 1597 which would amend the Family Code to prohibit all corporal punishment and Bill No. 1107 which would amend the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Republic Act 7610 1992) to prohibit all corporal punishment. As at December 2014, the Anti-Corporal Punishment Bill (No. SB2182), which would prohibit all corporal punishment including in the home, was pending in the Senate, having been sent in May to the Committees on Youth and on Women, Family Relations and Gender Equality. The Bill was approved by the Committee on Children’s Welfare in the House of Representatives in September 2014. House Bill 155 was filed in the House of Representatives, has been approved at Committee stage and is awaiting second reading.

2.4 House Bill 4907 – An Act Promoting Positive and Nonviolent Discipline of Children and Appropriating Funds Therefor” – was passed on third reading at the House of Representatives in December 2014 but failed to progress through the Senate. The Bill prohibits corporal punishment in the home and all other setting (s5): “Corporal punishment of children, as defined in Section 3(b), is hereby prohibited in homes, schools, institutions, alternative care systems, workplaces, the juvenile welfare system, places of religious worship, and in all other settings. Parents, yayas, househelpers and caregivers, foster parents, guardians, relatives who have custody of the child, or other persons legally responsible for the child, including those exercising special or substitute parental authority, school teachers, personnel, and officers of both public and private academic and vocational institutions, employers and supervisors, service providers, priests, nuns, pastors and other members of religious congregations or churches, or any other person under whose care the child has been entrusted to and who inflicts corporal punishment on the child shall be liable in accordance with existing penal laws.” Section 3(b) defines corporal punishment as “an act or acts which involve physical force and humiliating or degrading acts imposed upon a child as punishment for an alleged or actual offense inflicted by an adult or another child, who has been given or has assumed authority or responsibility for punishment or discipline. It includes physical, humiliating or degrading forms of punishment such as: (1) Blows including beating, kicking, slapping, lashing on any part of a child’s body, with or without the use of an instrument such as cane, broom, stick, whip or belt; (2) Pulling hair, shaking, twisting joints, cutting or piercing skin, ragging or throwing a child; (3) Forcing a child, through the use of power, authority or threats, to perform physically painful or damaging acts, such as holding a weight or weights for an extended period or kneeling on stones, salt or pebbles; (4) Refusal to provide the child’s physical needs; (5) Use of or exposure to substances that can cause discomfort or threaten the child’s health, including fire, ice, water, smoke, pepper, alcohol, or dangerous chemicals such as bleach or insecticides, excrement, or urine; (6) Tying up a child; (7) Imprisoning a child; (8) Verbal abuse, or assaults including intimidation or threat of bodily harm, swearing or cursing, ridiculing or denigrating the child; (9) Making a child look or feel foolish in front of one’s peers or the public such as shaving hair; and (10) Other analogous acts.” Section 21 would repeal all laws or parts of laws inconsistent with the prohibition.

2.5 In 2016, House Representative Herrera-Dy reintroduced the text of House Bill No. 4907 as House Bill No. 516. In parallel in 2017, senators who had filed separate bills to prohibit corporal punishment and promote positive discipline (Senate Bills No. 1136, 1170, 1189 and 1348) joined forces and introduced Senate Bill No. 1477, which closely mirrors the text of House Bill No. 4907, as a consolidated Bill. Both Bills were adopted in their respective House and reconciled into a single version during a bicameral committee conference in late 2018. However, in February 2019, the President of the Philippines vetoed the Bill.

2.6 The Philippines is a Pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. A Discussion Paper entitled “An historic opportunity to end violence against children” published in May 2016 suggested the enactment of the Positive Discipline Bill. This was reiterated in the Philippines Plan of Action to End Violence Against Children 2017-2022. The Constitution is under review. A Magna Carta for Children’s Rights is being developed in the House of Representatives.[[3]](#footnote-4)

2.7 ***Alternative care settings (unlawful):*** Corporal punishment is unlawful in alternative care settings under article 233 of the Family Code 1987: “The person exercising substitute parental authority shall have the same authority over the person of the child as the parents. In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.” It is prohibited in residential institutions under article 1.4 of the Standards in the Implementation of Residential Care Services 2002 (Administrative Order No. 141).

2.8 ***Day care settings (unlawful):*** Corporal punishment is prohibited in early childhood care and in day care for older children in article 233 of the Family Code 1987.

2.9 ***Schools (unlawful):***Corporal punishment is prohibited in public and private schools in article 233 of the Family Code 1987, confirmed in the Public Schools Service Manual 1992 and the Manual of Regulations for Private Schools 1992 (s75, art. XIV), as well as in the 2012 Department of Education Child Protection Policy (Departmental Order No. 40 of 2012, s15). In 2013, a Bill which aims to strengthen implementation of the prohibition (SB 3073, the Ending Corporal Punishment in Schools Bill) was pending in the Senate. House Bill No. 58 was introduced in 2016 to clarify rules of discipline in public schools through the mandatory publication of a “code of discipline or student manuals” and teachers’ training in classroom management and positive discipline. It was reported to have passed the Committee stage in April 2018,[[4]](#footnote-5) but this is not confirmed by the House of Representatives’ website.[[5]](#footnote-6)

2.10 ***Penal institutions (unlawful):*** Corporal punishment is unlawful as a disciplinary measure in penal institutions under article 61 of the Juvenile Justice and Welfare Act 2006: “The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited: … (b) employment of abusive, coercive and punitive measures such as cursing, beating, stripping and solitary confinement; (c) employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity….”

2.11 Further protection is given under Republic Act No. 9745 – “An Act Penalising Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor” 2009. To support its implementation, the Bureau of Jail Management and Penology (BJMP) promotes non-violent discipline and in 2013 issued a Memorandum ordering the confiscation of instruments used for corporal punishment, including sticks, paddles and belts.[[6]](#footnote-7)

2.12 ***Sentence for crime (unlawful):*** Corporal punishment is unlawful as a sentence for crime. It is not a permitted sanction under the Revised Penal Code and is explicitly prohibited in the Rule on Juveniles in Conflict with the Law 2002 (Administrative Matter No. 02-1-18-SC) and the Juvenile Justice and Welfare Act 2006.

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

3.1 ***CRC***: The Committee on the Rights of the Child has twice made recommendations to the Philippines to prohibit and eliminate corporal punishment in all settings including the home – in 2005 in concluding observations on the second state party report[[7]](#footnote-8) and in 2009 on the third/fourth report.[[8]](#footnote-9)

3.2 ***CAT***: In 2016, the Committee Against Torture expressed concern that corporal punishment of children was still lawful in the home and recommended the expedited adoption of legislation prohibiting corporal punishment in all settings.[[9]](#footnote-10)

3.3 ***UPR***: The Philippines was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 13). A number of recommendations were made to prohibit all corporal punishment of children, all of which the Government accepted.[[10]](#footnote-11)

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

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1. [2019], CRC/C/PHL/5-6, Fifth/sixth report, para. 11 [↑](#footnote-ref-2)
2. 19 March 2012, A/HRC/WG.6/13/PHL/1, National report to the UPR, para. 82 [↑](#footnote-ref-3)
3. Communications with Save the Children Philippines, January 2020; see also <https://news.mb.com.ph/2019/11/18/swift-passage-of-magna-carta-for-children-pushed/>, last accessed 13 February 2020 [↑](#footnote-ref-4)
4. See <http://politics.com.ph/house-committe-approves-bill-protecting-teachers-from-bad-students/>, accessed 25 June 2018 [↑](#footnote-ref-5)
5. See <http://www.congress.gov.ph/legisdocs/?v=bills>, last accessed 25 June 2018 [↑](#footnote-ref-6)
6. 28 January 2015, CAT/C/PHL/3, Third state party report, para. 4 [↑](#footnote-ref-7)
7. 21 September 2005, CRC/C/15/Add.259, Concluding observations on second report, paras. 41, 42 and 43 [↑](#footnote-ref-8)
8. 22 October 2009, CRC/C/PHL/CO/3-4, Concluding observations on third/fourth report, paras. 10, 11, 12, 42 and 43 [↑](#footnote-ref-9)
9. (2 June 2016, CAT/C/PHL/CO/3, Concluding observations on third report, paras. 41 and 42) [↑](#footnote-ref-10)
10. 9 July 2012, A/HRC/21/12, Report of the working group, para. 129(24) [↑](#footnote-ref-11)