

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 2010)

States to be examined in the 45th session

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Corporal punishment of girls and boys breaches their rights to protection from all forms of violence and to respect for their human dignity and integrity. Its legality breaches their right to equality under the law. Virtually all states criminalise assault, battery and other forms of physical violence. An increasing number have enacted laws prohibiting violence against women, recognising that traditional acceptance of gender-based violence excluded women from the general legal protections in criminal law, particularly in the private sphere of the family home. Yet violence against girls and boys in the name of “discipline” continues to be not only socially accepted, but legally authorised. Prohibiting “all forms of violence” against girls and boys is not sufficient to counter the deeply held views of the “right” of parents and other adults to hit their children – the law must clearly state that all forms of corporal punishment, however light, are prohibited.

Of the state parties to be examined in the 45th session of the Committee on the Elimination of Discrimination Against Women, two (Netherlands and Ukraine) have prohibited corporal punishment of girls and boys in all settings; Botswana has not prohibited it in any setting. Panama has yet to prohibit corporal punishment in schools, and UAE in the penal system. 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, 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).

SUMMARY - CORPORAL PUNISHMENT IN STATES TO BE EXAMINED IN 45th 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	
Botswana	NO	NO	NO ¹	NO	NO
Egypt	NO	YES	YES	YES ²	NO
Malawi	NO	YES ³	YES ⁴	YES ⁵	SOME ⁶
Netherlands	YES	YES	YES	YES	YES
Panama	NO	NO	YES	YES	NO
Ukraine	YES	YES	YES	YES	YES
United Arab Emirates	NO	YES	NO	NO	NO
Uzbekistan	NO	YES	YES ⁷	YES	NO

BOTSWANA (third report – CEDAW/C/BOT/3)

Corporal punishment is lawful in the **home**. A draft Children’s Act is under discussion which makes provision for positive parenting, but does not prohibit all corporal punishment in childrearing.

Corporal punishment is lawful in **schools** under the Education Act (1967) and the Education Act (Corporal Punishment) Regulations. The head teacher is authorised to use the cane, up to five strokes, and can delegate this authority to a teacher. Male teachers cannot whip female students. The punishment is supposed to be “moderate or reasonable” in nature and must be administered on the palm of the hands or across the buttocks with a light cane, each incident officially recorded. In June 2007, the Education Secretary for Ngami region reported a Baseline Study which found that 92% of students had been beaten by school, and this was supported by 67% of parents.⁸ A survey on school corporal punishment by DITSHWANELO found that about 90% of respondents said they used corporal punishment on children.⁹

In the **penal system**, corporal punishment of boys is lawful as a sentence for crime. It is lawful as a disciplinary measure in penal institutions. The Children’s Act allows for corporal punishment in industrial schools and children’s homes (article 20).

There is no explicit prohibition of corporal punishment in **alternative care settings**.

¹ As at May 2008, the draft Children’s Act would make judicial corporal punishment of children unlawful but this would not apply to customary courts

² But possibly permitted in social welfare institutions

³ Prohibited in Constitution

⁴ Prohibited in Constitution, but permitted in other legislation

⁵ See previous note

⁶ Prohibited in state institutions by Constitution

⁷ But possibly permitted under mahallyas system

⁸ Reported in *Daily News*, 13 June 2007

⁹ Reported in correspondence with the Global Initiative, February 2006

Following examination of the state party's initial report in 2004, the **Committee on the Rights of the Child** recommended prohibition of corporal punishment in the family, schools and institutions (CRC/C/15/Add.242, para. 37). In 2008, in its concluding observations on the state party's initial report, the **Human Rights Committee** recommended abolition of all forms of penal corporal punishment (CCPR/C/BWA/CO/1 Advance Unedited Version, para. 19).

EGYPT (sixth/seventh report – CEDAW/C/EGY/7)

Corporal punishment is lawful in the **home**. Article 7A of the Child Law, as amended in 2008, confirms parents' "right to discipline". Provisions against violence and abuse in the Criminal Code, the Civil Code, the Islamic Penal Code, the Islamic Penalties Act and the Law on Protection of Children and Adolescents are not interpreted as prohibiting all corporal punishment of girls and boys.

Corporal punishment is prohibited in **schools**, but continues to be used. In the National Survey of Youth and Social Changes in 1999, 54% of boys and girls said that teachers usually beat them.¹⁰

In the **penal system**, corporal punishment is unlawful as a sentence for crime. It is prohibited as a disciplinary measure with the possible exception of social welfare institutions for children under the age of 16.

There is no explicit prohibition of corporal punishment in **alternative care settings**.

In 2001, following examination of the state party's second report, the **Committee on the Rights of the Child** recommended prohibition of corporal punishment in the family, schools and care institutions (CRC/C/15/Add.145, para. 38).

MALAWI (sixth report – CEDAW/C/MWI/6)

Corporal punishment is lawful in the **home**. Provisions against cruelty in the Constitution and the Children and Young Persons Act are not interpreted as prohibiting all corporal punishment in childrearing. As at January 2008, a comprehensive Child (Care, Protection and Justice) Bill (2003) was under consideration but we have no details of its provisions.

Corporal punishment is unlawful in **schools** under the Constitution and is discouraged in education policy, but this is not confirmed in education law.

In the **penal system**, corporal punishment is prohibited as a sentence for crime and as a disciplinary measure in penal institutions under article 19 of the Constitution (see above), but this has not been confirmed in other legislation and corporal punishment is permitted under the Children and Young Persons Act, the Penal Code and the Old Prisons Act. The Malawi Law Commission has reviewed the Children and Young Persons Act and made recommendations regarding juvenile justice.

Corporal punishment is prohibited in state institutions by article 19 of the Constitution (see above), but this is not confirmed in other law. It is lawful in other forms of **alternative care**.

Following examination of the state party's initial report in 2002, the **Committee on the Rights of the Child** welcomed the Constitutional prohibition of corporal punishment but expressed concern at other laws authorising corporal punishment (CRC/C/15/Add.174, para. 33). The Committee recommended prohibition in law of corporal punishment in the juvenile justice system, schools, care institutions and within the family (para. 34).

¹⁰ Cited in Human Rights Center for the Assistance of Prisoners, *The Truth: Official Response to the Government of Egypt's Report to the UN Human Rights Committee*

NETHERLANDS

Corporal punishment is **prohibited in all settings**, including the home.

PANAMA (seventh report – CEDAW/C/PAN/7)

Corporal punishment is lawful in the **home**. Article 319 of the Family Code and article 188 of the Civil Code confirm the right of those with paternal authority over children to “reasonably and moderately” correct them. Provisions against violence and abuse in the Family Code, the Law No. 38 on Domestic Violence and Abuse of Children and Adolescents, the Criminal Code and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing. Law No. 38 modified the Criminal Code so as to prohibit corporal punishment which causes physical injuries, but did not prohibit all corporal punishment (article 215D).

Corporal punishment is lawful in **schools** under article 443 of the Family Code, which authorises tutors to “moderately correct” pupils.

Corporal punishment is unlawful in the **penal system**. It is not explicitly prohibited 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** welcomed Law No. 38 and made recommendations for its full implementation and the prevention of corporal punishment of children (CRC/C/15/Add.233, paras. 33, 34 and 40). The Committee also recommended prohibition in 1997, following examination of the initial report (CRC/C/15/Add.68, para. 30).

UNITED ARAB EMIRATES (initial report – CEDAW/C/ARE/1)

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

Corporal punishment is prohibited in **schools** by Ministerial Decision No. 454 (1998), but we have been unable to establish that this is confirmed in primary legislation.

In the **penal system**, corporal punishment is lawful as a sentence for crime. Under the Juvenile Delinquents and Vagrants Act (1976), girls and boys aged over 16 may be punished under the Penal Code (article 8). Under Shari’a law, corporal punishment may be ordered from the age of puberty. There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, nor in **alternative care settings**.

Following examination of the state party’s initial report in 2002, the **Committee on the Rights of the Child** recommended abolition of judicial corporal punishment for persons under 18 (CRC/C/15/Add.183, para. 33). The Committee also recommended prohibition of corporal punishment in the family, schools and institutions (para. 35).

UKRAINE

Corporal punishment is **prohibited in all settings**, including the home.

UZBEKISTAN (fourth report – CEDAW/C/UZB/4)

Corporal punishment is lawful in the **home**. Provisions against violence and abuse in the Family Code, the Civil Code and the Criminal Code are not interpreted as prohibiting all corporal punishment in childrearing. As at 2006, two bills on children's rights, prepared with the support of UNICEF, were under consideration but we have no further information.

Corporal punishment is unlawful in **schools** and in the **penal system**. However, children who commit offences are often dealt with by the mahallyas (associations of families living in the same area acting as organs of local authority) rather than the courts. We have been unable to ascertain if this includes the use of corporal punishment.

There is no explicit prohibition of corporal punishment in **alternative care settings**.

In 2006, in its concluding observations on the state party's second report, the **Committee on the Rights of the Child** recommended prohibition by law of corporal punishment in institutions and the family, and full implementation of the prohibition in schools (CRC/C/UZB/CO/2, para. 45). The Committee had made similar recommendations in 2001 (CRC/C/15/Add.168, para. 46).