



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

BRIEFING ON SWAZILAND FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Oct 2013

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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 Swaziland. 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 recommendations of treaty monitoring bodies and during the UPR, 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 Swaziland, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to Swaziland, in the concluding observations on the initial/second 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 initial/second state report of Swaziland to CEDAW (CEDAW/C/SWZ/1-2) includes information concerning violence against women but makes no reference to corporal punishment – violence inflicted on girls and boys in the guise of discipline in childrearing and education.

2 The legality of corporal punishment of children in Swaziland

- 2.1 *Summary*: In Swaziland, corporal punishment is lawful in all settings – the home, alternative care settings, day care, schools and the penal system.
- 2.2 *Home (lawful)*: Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”. The Children’s Protection and Welfare Act 2012 came into force in July 2013. We have yet to examine the text as enacted, but as at February 2012 the Bill provided for the concept of “justifiable” discipline, stating in article 14: “(1) A child has a right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child. (2) A child has the right to be disciplined in accordance with his age, physical, psychological, emotional and mental condition and no discipline is justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.” Article 18 of the Bill stated that parents/guardians have the responsibility to protect children from violence and abuse but did not prohibit all corporal punishment.
- 2.3 *Alternative care settings (lawful)*: Corporal punishment is lawful in alternative care settings under the provisions for “lawful and moderate chastisement” in the Constitution 2005 and for “justifiable” discipline in the Children’s Protection and Welfare Act 2012 (see para. 2.2).
- 2.4 *Day care (lawful)*: Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for “lawful and moderate chastisement” in the Constitution 2005 and for “justifiable” discipline in the Children’s Protection and Welfare Act 2012 (see para. 2.2).
- 2.5 *Schools (lawful)*: Corporal punishment is lawful under the Education Act 1982, the Education Rules 1977 and the provision for “lawful and moderate chastisement” in the Constitution (see para. 2.2). The Children’s Protection and Welfare Act 2012 does not prohibit corporal punishment in schools.
- 2.6 *Penal institutions (lawful)*: Corporal punishment is lawful as a disciplinary measure for males in penal institutions under the Prisons Act 1964, the provisions for “lawful and moderate chastisement” in the Constitution 2005 (see para. 2.2) and possibly the Reformatories Act 1921. It is not prohibited in the Children’s Protection and Welfare Act 2012.
- 2.7 *Sentence for crime (lawful)*: It appears that despite the prohibition of judicial corporal punishment as a sentence of the Children’s Court in the Children’s Protection and Welfare Act 2012, boys (but not girls) may lawfully be whipped as a sentence of the High Court (unconfirmed).

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

- 3.1 *CRC*: In 2006, in its concluding observations on the state party’s initial report, the Committee on the Rights of the Child recommended prohibition of corporal punishment in all settings as a matter of urgency.¹

¹ 16 October 2006, CRC/C/SWZ/CO/1, Concluding observations on initial report, paras 36, 37, 67 and 68

3.2 *UPR*: The Government accepted recommendations to raise awareness on alternatives to corporal punishment made during the UPR of Swaziland in 2011, but stated that recommendations to prohibit all corporal punishment were acceptable only “in so far as adults are concerned”.²

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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² 12 December 2011, A/HRC/19/6, Report of the working group, paras. 76(32), 77(31) and 77(38); 6 March 2012, A/HRC/19/6/Add.1, Report of the working group: Addendum, para. 12