



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

**BRIEFING ON SWITZERLAND FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – June 2014**

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This briefing describes the legality of corporal punishment of children in Switzerland. 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 previous recommendations on the issue, the recommendations made during the UPR in 2012 (rejected by the Government) and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will include the following question in its List of Issues for Switzerland:

“Information received by the Committee suggests that current legislation on assault does not adequately protect children from all corporal punishment because of the existence of a ‘right of correction’, still recognised by the courts. What steps are being taken to reform federal legislation to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and other settings, including through explicit repeal of the persisting ‘right of correction’?”

We hope the Committee will include in its concluding observations on Switzerland’s second to fourth report a recommendation that legislation is enacted to explicitly prohibit all corporal punishment in all settings and explicitly repeal the “right of correction”.

1 Switzerland’s report to the Committee on the Rights of the Child

- 1.1 In describing legislative measures to protect children from corporal punishment, the Government in its second to fourth report to the Committee refers to provisions against bodily harm and assault in the Swiss Penal Code.¹ It states that prohibition in schools is “ad hoc”, explicitly included in some cantons in education law, in others falling under criminal laws on assault, and in

¹ 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, paras. 159

others in the regulations of schools and institutions.² A 2003 Federal Court judgment is cited which concluded that repeated striking of a child by the mother's boyfriend constituted assault under the Penal Code, "exceed[ing] what might be permissible under any law of a correction".³ An amendment to the Penal Code in 2011 provides for the withdrawal of parental authority in some circumstances involving violence against children; this reform is described as "fix[ing] an additional limit on any right of correction of parents".⁴

- 1.2 As noted below, explicit confirmation of parents' punishment rights was deleted from the Civil Code in the 1970s, but this silent repeal did not bring about legal clarity that all corporal punishment of children is prohibited. On the contrary, and as is clear from the Government's report to the Committee, the "right of correction" continues to be recognised in court judgments and in legal amendments aimed at "limiting" this right. The existence of a "right of correction" – whether in written legislation or in case law – prevents children having equal protection with other persons under criminal provisions on assault: it means that some level of violent punishment of children will inevitably be considered lawful in some circumstances. **We hope the Committee will urge the state party to ensure that the "right of correction" is explicitly repealed and that there is clarity in law that all corporal punishment is unlawful.**

2 The legality of corporal punishment of children in Switzerland

- 2.1 **Summary:** Corporal punishment of children in Switzerland is unlawful in the penal system; it is considered unlawful in schools and day care settings, though with the exception of some cantonal education legislation it is not explicitly prohibited; it is lawful in the home and in some alternative care settings.
- 2.2 **Home (lawful):** Corporal punishment is lawful under the parental "right of correction". According to the Civil Code 1907 as amended, parents must take care of their child "with his or her best interests in mind" (art. 301) and must "safeguard the child's physical, mental and moral development" (art. 302). The Code provides for the intervention of the child protection authority where a child's wellbeing is threatened, including "to remind parents, foster parents or the child of their duties, issue specific instructions regarding care, upbringing or education" (art. 307); when such measures fail, parental authority may be withdrawn (art. 311). The Penal Code 1937 punishes the causing of physical injury (arts. 122, 123 and 125) and assault (art. 126) and specifies that repeated assault of a child (or other specified vulnerable person) by a person having care of that child (or other specified vulnerable person), will automatically lead to prosecution (art. 126). But neither of these Codes explicitly prohibits all corporal punishment in childrearing.
- 2.3 In 2007, Parliamentary initiative 06.419 to prohibit all corporal punishment was adopted by the Committee for Legal Affairs; in 2008, the Government accepted a recommendation made during the Universal Periodic Review (UPR) of Switzerland to "consider the explicit prohibition of all practices of corporal punishment of children". However, the Parliamentary initiative was defeated, and proposed new legislation was rejected by Parliament because it was considered that the law already prohibited all corporal punishment.⁵ Since then, the Government has repeatedly asserted, to human rights treaty monitoring bodies as well as during the second UPR of Switzerland in 2012, that existing legislation on bodily injury and assault adequately protects

² *ibid.*, para. 160

³ *ibid.*, para. 161

⁴ *ibid.*, para. 162

⁵ 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

children from all corporal punishment.⁶ The Government rejected the recommendation made during the 2012 UPR to prohibit corporal punishment in the home.⁷

2.4 While there have been amendments to criminal and civil legislation which strengthen the protection of children from assault, including from corporal punishment, the “right of correction” has not been explicitly repealed and some level of corporal punishment in childrearing remains legally and socially acceptable in Switzerland.

2.5 In the 1970s, article 278 of the Civil Code 1907 which provided for parents’ “right of correction” (“droit de correction”) over their children was removed from the law. The purpose of this law reform was not to prohibit corporal punishment but was because it was considered unnecessary to explicitly provide for this right in the legislation. In its message on the reform of the Civil Code, issued in 1974, the Federal Council confirmed: “Parental authority includes the right to correct the child to the extent that his/her education requires. However, there is no need to mention this right expressly in the law.”⁸

2.6 When the Penal Code was amended in 1985 to strengthen children’s protection from abuse, the message of the Federal Council again referred to the right of correction. The Council confirmed that the “right of correction” did not provide a defence in cases where bodily harm had been inflicted on a child (“the education of a child never justifies inflicting bodily harm”).⁹ The amendments included new provisions against repeated assault in article 126 of the Penal Code, intended to protect children from the damage caused by repeated assault even when the harmful effects are not immediately visible. The Council reported that it had received in this context many requests to expressly confirm parents’ right of correction, but believed this was “superfluous” because “the right is deduced in particular in article 302 of the Civil Code”.¹⁰ The Council sought to “dispel the doubts expressed by those who fear a pair of slaps already constitutes assault prosecuted ex officio. As we have explained, the term ‘repeated occasions’ requires much more than that”.¹¹ Subsequent case law has confirmed the “right of correction”.¹²

2.7 ***Alternative care settings (?partial prohibition):*** Corporal punishment is considered unlawful under Federal Court judgement BGE 117 IV 18 (see below, para. 2.9), but there is no explicit prohibition in law.

2.8 ***Day care (no explicit prohibition):*** Corporal punishment is considered unlawful in early childhood care and in day care for older children under Federal Court judgement BGE 117 IV 18 (see below, para. 2.9), though it is not explicitly prohibited.

2.9 ***Schools (no explicit prohibition):*** Corporal punishment is considered unlawful but there is no explicit prohibition. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances if it does not exceed the level generally accepted by society.¹³ A ruling in 1993 stated there can be no customary law that would allow teachers or other persons taking care of children to exercise corporal punishment against them.¹⁴ In some of the 26 cantons, corporal punishment is explicitly prohibited in school laws; in others it is prohibited in regulations, and in others there are school rules which state that it should not be

⁶ For example, see 3 March 2010, CAT/C/CHE/Q/6/Add.1, Reply to list of issues, para. 135; 6 August 2012, A/HRC/WG.6/14/CHE/1, National report to the UPR, para. 28; 28 May 2008, A/HRC/8/41, Report of the working group, paras. 8 and 55; 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 159

⁷ 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

⁸ “Message du Conseil fédéral à l’Assemblée fédérale concernant la modification du code civil Suisse (Filiation) (Du 5 juin 1974)”, *Feuille Fédérale*, 8 July 1974, II, No. 27, p. 78

⁹ “Message concernant la modification du code pénal et du code pénal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1042

¹⁰ *ibid.*, p. 1045

¹¹ *ibid.*, p. 1046

¹² For example, 5 June 2003, ATF 129 IV 216ss

¹³ Reported in 3 June 2002, CRC/C/SR.791, Summary record of 791st meeting, para. 66

¹⁴ BGE 117 IV 18

used. The Government has acknowledged the fragmented nature of legislation relating to corporal punishment in schools.¹⁵

- 2.10 **Penal institutions (unlawful)**: Corporal punishment is considered unlawful but there appears to be no explicit prohibition. The Federal Act on Juvenile Criminal Procedure 2011 does not explicitly prohibit corporal punishment.
- 2.11 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC**: In 2002, the Committee on the Rights of the Child expressed concern that corporal punishment was not considered physical violence unless it exceeded the level generally accepted by society and that corporal punishment was not prohibited in the family. The Committee recommended explicit prohibition of all corporal punishment in the family, schools and institutions.¹⁶
- 3.2 **CAT**: In 2010, the Committee Against Torture noted that protection for children afforded by article 126 of the Criminal Code but expressed concern at the lack of explicit prohibition and recommended that the state party specifically prohibit corporal punishment in its legislation.
- 3.3 **UPR**: Switzerland was examined in the first cycle of the UPR in 2008 (session 2). The Government accepted the recommendation “to consider explicit prohibition of all practices of corporal punishment of children”.¹⁷ Examination in the second cycle took place in 2012 (session 14). The Government accepted a recommendation raise awareness concerning the negative effects of corporal punishment on children but rejected the recommendation to prohibit corporal punishment in the home, stating existing law already prohibits corporal punishment.¹⁸

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¹⁵ 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 160

¹⁶ 7 June 2002, CRC/C/15/Add.182, Concluding observations on initial report, paras. 32 and 33

¹⁷ 28 May 2008, A/HRC/8/41, Report of the working group, para. 57(23)

¹⁸ 7 December 2012, A/HRC/22/11, Report of the working group, paras. 122(44) and 123(81); 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)