



Global Initiative to
End All Corporal Punishment
of Children

BRIEFING ON IRELAND FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 109th session (Oct/Nov 2013)

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1 The human rights obligation to prohibit corporal punishment

- 1.1 The legality and practice of corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity and to equal protection under the law, and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment – rights guaranteed in the International Covenant on Civil and Political Rights and other international human rights instruments.

This briefing describes the legality of corporal punishment of children in Ireland. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General's Study on Violence against Children, the repeated recommendations to Ireland by the treaty monitoring bodies, and the recommendation to prohibit made during the Universal Periodic Review in 2011, we hope the Human Rights Committee will:

- **raise the issue of corporal punishment of children in its List of Issues for Ireland, in particular asking what measures are being taken to explicitly prohibit corporal punishment in the home and all other settings, and**
- **recommend to Ireland, following its examination of the state party's fourth report, that legislation is enacted and enforced which explicitly prohibits corporal punishment in all settings, including the home, as a matter of priority, together with appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

2 Ireland's report to the Human Rights Committee

- 2.1 Ireland's fourth report to the Committee (CCPR/C/IRL/4) contains much information relating to children's rights (paras. 713-772) but provides inadequate and incomplete information on corporal punishment of children. Under the heading "corporal punishment", the report refers only to child protection procedures in schools (para. 747). It makes no reference to corporal punishment which may lawfully be inflicted on children in the home and in some care settings. It notes that during the consultation on the report with civil society it was recommended that the Government consider providing details on any plans to repeal the "reasonable chastisement" defence with regard to corporal punishment in the family and care settings (para. 880). The report is silent on this issue and the Government offers no rationale for rejecting this recommendation.
- 2.2 The obligation to prohibit and eliminate corporal punishment is one frequently evaded by Governments. The near universal acceptance of a degree of violence in childrearing, together with deeply held views that parents and other adults have a "right" to physically punish children, means that corporal punishment is not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence: it is imperative that corporal punishment be *explicitly* prohibited. It is difficult to view silence on the issue in the face of repeated calls for law reform and specific recommendations from treaty bodies as anything other than avoidance of obligations towards children in this respect.

3 Legality of corporal punishment of children in Ireland

- 3.1 Corporal punishment of children in Ireland is unlawful in schools, the penal system and some care settings, but it is lawful in the home and in some alternative care and day care.
- 3.2 *Home (lawful)*. The common law right to use "reasonable and moderate chastisement" in disciplining children was confirmed in article 37 of the Children Act 1908. The Children Act 2001 repealed article 37, but removal of the common law defence requires an explicit provision in addition to this repeal.
- 3.3 *Alternative care (partial prohibition)*: The Child Care (Special Care) Regulations 2004 regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit "corporal punishment or any form of physical violence". Guidance (National Standards) relating to foster care states that corporal punishment should not be used, but there is no prohibition in legislation. Similarly, Health Boards recommend the avoidance of corporal punishment in residential services in favour of "reasonable and humane sanctions", and the National Standards for Children's Residential Centres state that young people should not be subjected to humiliating or degrading treatment, but there is no prohibition of corporal punishment in legislation.
- 3.4 *Day care (partial prohibition)*: Corporal punishment is explicitly prohibited in pre-school establishments in Regulation 8 of the Child Care (Pre-School Services) Regulations 1996, but under section 58 of the Child Care Act 1991, childminders caring for children of relatives, children of the same family or not more than three children of different families are exempt from these regulations.
- 3.5 *Schools (unlawful)*: In 1982, Department Circulars 9/82 and 5/82 stated that corporal punishment should not be used. Teachers' immunity from criminal prosecution was

removed in article 24 of the Offences Against the Person (Non Fatal) Act 1997, which states: “The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished.”

3.6 *Penal institutions (unlawful)*: Corporal punishment is prohibited in article 12(2) of the Criminal Law Act 1997 and article 201 of the Children Act 2001 (as amended in 2007).

3.7 *Sentence for crime (unlawful)*: Corporal punishment is prohibited in article 12(1) of the Criminal Law Act 1997.

4 Recommendations by human rights treaty bodies and during the UPR

4.1 *CAT*: In 2011, the Committee Against Torture recommended that all corporal punishment of children be prohibited in all settings in Ireland.¹

4.2 *CRC*: The Committee on the Rights of the Child has twice recommended that corporal punishment of children be prohibited in the home and other settings in Ireland – in its concluding observations on the state party’s initial report in 1998 and on the second report in 2006.²

4.3 *ECSR*: In 2012, the European Committee of Social Rights concluded that the situation in Ireland is not in conformity with the European Social Charter on the grounds that corporal punishment is not explicitly prohibited in the home.³ Prior to that, in 2003, following a complaint against Ireland brought by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded that Ireland was in violation of article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings.⁴ In February 2013, a second complaint – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the Committee; the complaint alleges that the existence of the Irish common law of “reasonable chastisement” allows parents and some other adults to assault children with impunity, and that Ireland has taken no effective action to remedy the violation of article 17 in this respect that was found by the Committee in the previous complaint in 2003.⁵

4.4 *UPR*: Ireland was examined in the first cycle of the Universal Periodic Review in 2011. The Government partially accepted the recommendations to prohibit all corporal punishment of children, stating that the “matter is under continuous review”.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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¹ 17 June 2011, CAT/IRL/CO/1, Concluding observations on initial report, para. 24

² 4 February 1998, CRC/C/15/Add.85, Concluding observations on initial report, paras. 16 and 39 ; 29 September 2006, CRC/C/IRL/CO/2, Concluding observations on second report, paras 39 and 40

³ January 2012, Conclusions 2011

⁴ Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005

⁵ Collective complaint No. 93/2013, *Association for the Protection of All Children (APPROACH) Ltd v Ireland*

⁶ 6 March 2012, A/HRC/19/9/Add.1, Report of the Working Group: Addendum, para. 53