

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE

PRE-SESSIONAL WORKING GROUP – July 2007

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Of the State parties to be considered in preparation for the 91st session of the Human Rights Committee, none has prohibited corporal punishment of children in all settings, including the home. In Botswana, corporal punishment has not been prohibited in any setting and is lawful in the home, schools, the penal system – including as a sentence for crime – and alternative care contexts. Libyan Arab Jamahiriya also authorises corporal punishment as a sentence for crime. In Georgia and Algeria corporal punishment is lawful in alternative care settings and in Algeria it is lawful as a disciplinary measure in penal institutions.

We hope that the Committee will question States in detail on their progress towards eliminating all corporal punishment of children, and – mindful of the concluding observations of the Committee on the Rights of the Child and that Committee’s general comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” – make recommendations that State parties prohibit corporal punishment in the home, schools, juvenile justice and alternative care systems and situations of employment, and support this with appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

The UN Secretary General’s Study on violence against children, submitted to the General Assembly in October 2006, recommends universal prohibition of all corporal punishment, setting a goal of 2009 (A/61/299).

ALGERIA – third report (CCPR/C/DZA/3)

Corporal punishment is lawful in the **home**. Children have limited protection from violence and abuse under the Family Code (1984), the Penal Code (amended 2004), the Code of Criminal Procedure (1966, amended 2004), the Code of Civil Procedure (1975, amended 1990) and the Constitution (1976, amended 1996).

Corporal punishment is prohibited in **schools**.

In the **penal system**, it is prohibited as a sentence for crime but not explicitly as a disciplinary measure in penal institutions.

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

In its concluding observations on the state party’s second report in 2005, the **Committee on the Rights of the Child** recommended that the state party “adopt legislation explicitly prohibiting corporal punishment in the home, in public and private alternative care, in schools and in all other settings, and to conduct public education and awareness-raising campaigns promoting children’s right to protection from all forms of violence as well as alternative, participatory, non-violent forms of discipline” (CRC/C/15/Add.269, para. 42). In both 2005 and 1997, the Committee expressed concern at the continued use of corporal punishment in schools, despite its prohibition (CRC/C/15/Add.269, para. 41 and CRC/C/15/Add.76, para. 21).

BOTSWANA – initial report (CCPR/C/BWA/1)

Corporal punishment is lawful in the **home**. Children have limited protection from violence under the Children’s Act (1981) and the Penal Code (1986, amended 2004).

Corporal punishment is lawful in **schools** and is regulated by the Education Regulations for Primary Schools (part VII, section 25-29) and the Education Regulations for Secondary Schools (part V, section 21-26) pursuant to the Education Act. Only the head teacher is authorised to use the cane, up to five strokes, but this authority can be delegated 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 of corporal punishment should be officially recorded.

In the **penal system**, corporal punishment is lawful both as a sentence for crime and as a disciplinary measure in penal institutions. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is enshrined in article 7 of the Constitution (1961, amended 1999). A Court of Appeal in 1984 found that to administer corporal punishment in instalments is inhuman and degrading, but that corporal punishment *per se* is constitutional (*Clover Petrus and Another vs The State*). The Penal Code (article 28) allows a maximum of 6 strokes as a sentence for boys under 18 years, its infliction regulated by the Criminal Procedure and Evidence Act. The Customary Courts Act allows corporal punishment as a sentence for crime (article 17), and was amended in 2000 to allow caning to be imposed for all offences instead of being restricted mainly to cases of assault occasioning actual bodily harm and stock theft.

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

In its concluding observations on the state party’s initial report in 2004, the **Committee on the Rights of the Child** expressed concern at the legality and use of corporal punishment in the home, schools, and juvenile justice system, and recommended that the state party “take legislative measures to expressly prohibit corporal punishment in the family, schools and other institutions and to conduct awareness-raising campaigns to ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, as an alternative to corporal punishment at all levels of society” (CRC/C/15/Add.242, paras. 36 and 37).

GEORGIA – third report (CCPR/C/GEO/3)

Corporal punishment is lawful in the **home**. Children have limited protection from violence under the Penal Code (1999, in force 2000, amended 2005), the Law on the Elimination of Domestic Violence (2006) and the Constitution (1995).

Corporal punishment is unlawful in **schools**, although there is no explicit prohibition.

In a 2000 study by the Red Cross Committee of Georgia involving structured interviews with 4,382 children aged 6-17 years, 39% reported being subject to corporal punishment within the family, mostly by the mother; 32% reported experiencing physical punishment in schools, predominantly (in 96% of cases) by school teachers.¹

Corporal punishment is unlawful in the **penal system**.

In **alternative care settings**, corporal punishment is reportedly prohibited in institutions (second report to the Human Rights Committee, 2001, CCPR/C/GEO/2000/2, para.117) but we have no details of applicable law. There is no explicit prohibition of corporal punishment in other forms of childcare.

¹ Red Cross Committee of Georgia, 2000, “Child Abuse and Neglect”, Red Cross/UNICEF

Following examination of the state party's second report in 2003, the **Committee on the Rights of the Child** recommended prohibition of corporal punishment in the family and full implementation of the prohibition in schools and other settings (CRC/C/15/Add.222, paras. 44 and 45). The Committee had made similar recommendations in 2000 (CRC/C/15/Add.124, paras. 42 and 43).

LIBYAN ARAB JAMAHIRIYA – fourth report (CCPR/C/LBY/4)

Corporal punishment is lawful in the **home**. Children have limited protection from violence under Act No. 17 (1992), the Penal Code (1953) and the Child Protection Act (1997).

Corporal punishment is prohibited in **schools**.

In the **penal system**, corporal punishment is lawful as a sentence for crime. In the 1970s amendments to the Penal Code introduced *hadd* punishments into state legislation. Law No. 70 (1993) Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law (1973) criminalises *Zina* (adultery) and provides for a punishment of 100 lashes (article 2). Law No. 148 (1972) provides for amputation as punishment for theft. We have been unable to ascertain the legality of corporal punishment as a disciplinary measure in penal institutions.

We have no information relating to **alternative care settings**.

Following examination of the state party's second report in 2003, the **Committee on the Rights of the Child** recommended the promotion of positive, non-violent forms of discipline and legislative measure to abolish flogging as a punishment (CRC/C/15/Add.209, paras. 33, 34 and 46). Following examination of the initial report in 1998, the Committee recommended prohibition in the home (CRC/C/15/Add.84, para. 29). In 1999, the **Committee Against Torture** recommended that corporal punishment "be abolished by law" (A/54/44, paras. 180 and 189).

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA – second report (CCPR/C/MKD/2)

Corporal punishment is lawful in the **home**. Article 9 of the Law on Protection of Children (2000) prohibits corporal maltreatment, punishment and other inhuman treatment and abuse, but these terms have not been defined and the law has not been interpreted as prohibiting parental corporal punishment. Other protection is given by the Criminal Code (2004), the Family Code (2004) and the Constitution (1991).

Corporal punishment is prohibited in **schools**, the **penal system** and **alternative care settings**.

In 2000, following examination of the state party's initial report, the **Committee on the Rights of the Child** expressed concern at the continued use of corporal punishment in schools and other settings and recommended monitoring of its use in all contexts and awareness raising campaigns if its harmful effects particularly among parents (CRC/C/15/Add.118, paras. 23 and 24).