

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE
COUNTRY REPORT TASK FORCES – October 2007

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Of the State parties to be considered by the Country Report Task Forces during the 91st session of the Human Rights Committee, none has prohibited corporal punishment of children in all settings, including the home. In its report to the HRC, the UK effectively declares its commitment to not introducing full prohibition.

Prohibition of corporal punishment in schools is yet to be enacted in Panama and Tunisia and in some of the Overseas Territories and Crown Dependencies of the UK. In all these States, corporal punishment remains lawful in some or all alternative care contexts.

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 all settings, including the home and schools, 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, paras. 97 and 116).

UK – sixth report (CCPR/C/GBR/6)

Corporal punishment is lawful in the **home** in the UK, in all of the Overseas Territories (with the possible exception of the Pitcairn Islands) and in the Crown Dependencies. Amendments to legislation in England and Wales, Scotland and Northern Ireland have restricted the defence of "reasonable chastisement": in Scotland by introducing the concept of "justifiable assault" of children and defining blows to the head, shaking and use of implements as unjustifiable (Criminal Justice (Scotland) Act 2003, s51); in England, Wales and most recently Northern Ireland by allowing use of the defence of "reasonable punishment" by parents and some other carers charged with common assault but not by those charged with more serious assaults on children (Children Act 2004, s58; Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, s2). (In England and Wales, when section 58 was implemented, the Charging Standard giving guidance to prosecutors was also revised to suggest that where an assault is by an adult on a child, it may be reasonable to substitute a charge of actual bodily harm for common assault, in which case the "reasonable punishment" defence is not available. But it must be emphasised that this is guidance, not law, and children do not have equal protection under the law on assault.)

The UK Government continues to resist strong pressure for complete removal of these defences to give children equal protection under the law on assault. This pressure comes from the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights (see below for detail), as well as from the Council of Europe Committee

of Ministers, supervising the UK's execution of the landmark judgment of the European Court of Human Rights, *A v UK*, 1998.

There have been strong calls for complete removal of the defences from the UK's four Children's Commissioners. The largest alliance ever formed to campaign on an issue for children in the UK, the Children Are Unbeatable! Alliance, includes more than 400 organisations arguing for equal protection (for full list see www.childrenareunbeatable.org.uk).

Regrettably, in its sixth report to the Human Rights Committee, the UK Government states (para. 364): "The Government is committed not to impose a blanket ban on smacking." We are hopeful that Government policy may change; recent (summer 2007) statements from Ministers have indicated that "The UK Government does not condone physical punishment by parents."

We very much hope that the Human Rights Committee will add to the pressure on the UK to reform its law adequately.

There has been no substantial research into the prevalence of corporal punishment of children by parents since that published in 1997, when a government sponsored study of physical violence to children in the home found that 91% of children had been hit, one fifth with an implement.¹ The study found that only 25% of babies aged up to one year had never been smacked by their mothers, and 14% of these had been smacked with "moderate" severity, and 38% had been smacked more than once a week. More recent large scale studies of children's views throughout the UK have repeatedly revealed the negative impact of corporal punishment on children's emotional well-being and that children themselves think hitting them is wrong and there are other positive means of discipline that should be used.²

Corporal punishment is prohibited in **schools** in the UK. Of the OTs covered by the ICCPR, only Pitcairn and St Helena have prohibited corporal punishment in schools; it is prohibited in state schools only in the Falkland Islands. It is lawful in Bermuda (under the Education Rules 1974 and the Criminal Code s266), British Virgin Islands (Education Act 2004 s55, Criminal Code s192), Cayman Islands (Education and Training Law 2005), Gibraltar (Criminal Offences Ordinance 1984 s82) and Montserrat (Education Act 2004 s49, Juveniles Ordinance 1982 s37, Penal Code 1983 s193). None of the CDs has enacted explicit prohibition of corporal punishment applicable to *all* schools (public and private).

In the **penal system**, corporal punishment is prohibited as a sentence for crime in the UK and in all OTs and CDs, although as at May 2006 it remained on the statute book in Guernsey. It is prohibited as a disciplinary measure in penal institutions in the UK (except in the "secure training centres", where children aged between 12 and 15 are held), and in Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Pitcairn Islands, St Helena, Jersey and Guernsey. There is no explicit prohibition of its use as a disciplinary measure in penal institutions in Gibraltar or Montserrat. In the Isle of Man, it is prohibited in law as a disciplinary measure against persons aged 17 and over in prison but only as a matter of policy for young people detained in the young person's secure unit.

In **alternative care settings** in the UK, corporal punishment is explicitly prohibited in foster care arranged by local authorities and voluntary organisations (but not in private foster-care) and in daycare

¹ Nobes, G. et al., 1997, "Physical punishment of children in two-parent families", *Clinical Child Psychology and Psychiatry*, vol. 2, no. 2, pp.271-281

² Scotland – Cutting, E., 2001, "*It doesn't sort anything*": A report on the views of children and young people about the use of physical punishment, Edinburgh: Save the Children; Northern Ireland – Horgan, G., 2002, *It's a hit, not a "smack"*: A booklet about what children think about being hit or smacked by adults, Belfast: Save the Children; Wales – Crowley, A. & Vulliamy, C., *Listen Up! Children Talk: About Smacking*, Cardiff: Save the Children; England – Willow, C. & Hyder, T., 1998, *It hurts you inside – children talking about smacking*, National Children's Bureau and Save the Children

(except in Northern Ireland where there is guidance against its use but no prohibition). There is no explicit prohibition of corporal punishment applicable to all alternative care settings in the OTs or CDs.

The **Committee on the Rights of the Child** first expressed concern at the “reasonable chastisement” provisions in UK law in 1995, following examination of the state party’s initial report (CRC/C/15/Add.34, paras. 16 and 31). In 2002, following examination of the second periodic report, the Committee stated (CRC/C/15/Add.188, paras. 36, 37 and 38):

“In light of its previous recommendation (ibid., para. 31), the Committee deeply regrets that the State party persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family.

“The Committee is of the opinion that the Government’s proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.

“The Committee recommends that the State party:

- a) with urgency adopt legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- b) promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.”

In relation to the OTs, the Committee addressed the obligation to prohibit all corporal punishment, including in the home, in its concluding observations on the initial report concerning the OTs in 2000. It stated (CRC/C/15/Add.135, paras. 35 and 36):

“The Committee expresses grave concern that corporal punishment is still widely practised in many of the Overseas Territories and that domestic legislation generally does not prohibit and eliminate its use in schools, care institutions and homes....

“The Committee recommends that all appropriate measures, including of a legislative nature, be taken to prohibit and eliminate all forms of corporal punishment within the school, juvenile justice and alternative care systems and in the home. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially articles 19 and 28.2.”

In 2002, the **Committee on Economic, Social and Cultural Rights** stated in its concluding observations on the fourth report of the UK, the CDs and the OTs (E/C.12/1/Add.79, para.36):

“Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No.13) and in the light of article 10.1 and 10.3 of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (see paragraph 31 of the 1995 concluding observations of that Committee (CRC/C/15/Add.34)).”

In 2005, the **European Committee of Social Rights** – building on concerns expressed in 2001 (Conclusions XV-2 vol. 2) – found the situation in the UK to be not in conformity with Article 17 of

the European Social Charter “on the grounds that ... corporal punishment in the home is not prohibited ...” (July 2005, Conclusions XVII-2), stating:

“The Committee notes that corporal punishment within the family is not prohibited. It further notes from the abovementioned source that the defence of ‘reasonable chastisement’ still exists and the State has taken no significant action towards prohibiting all corporal punishment of children in the family. Therefore, it considers that since there is no prohibition in legislation of all corporal punishment in the home, the situation is not in conformity with Article 17 of the Charter.”

PANAMA – third report (CCPR/C/PAN/3)

Corporal punishment is lawful in the **home**. Under article 319 of the Family Code (1994, revised 2001) one of the duties associated with paternal authority over children is “to reasonably and moderately correct them”. The Civil Code also recognises the right of guardians to “reasonably and moderately” correct the child or adolescent in their care (article 188). Corporal punishment resulting in injuries constitutes abuse under article 501 of the Criminal Code.

Corporal punishment is lawful in **schools**. Article 443 of the Family Code states: “The pupil must respect and obey the tutor. The tutor can moderately correct them.” Corporal punishment resulting in injuries is punishable under the Criminal Code (see above).

Corporal punishment is unlawful in the **penal system** as a sentence for crime and as a disciplinary measure in penal institutions.

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

There is no explicit prohibition of corporal punishment of children in **situations of employment**, though injurious corporal punishment is an offence under the Criminal Code (see above).

The **Committee on the Rights of the Child** made recommendations on prohibition of corporal punishment, including in the home, on examination of the state party’s initial report in 1997 and the second report in 2004 (CRC/C/15/Add.233, paras. 33, 34 and 40).

SAN MARINO – second report (CCPR/C/SMR/2)

Corporal punishment is lawful in the **home**. The Criminal Code makes it an offence for a person to mistreat a family member under his or her authority (article 235) and to abuse corrective and disciplinary powers (article 234). Under examination by the Committee on the Rights of the Child in 2003, the government delegation stated that article 234 effectively prohibited corporal punishment, but there is no explicit prohibition.

Corporal punishment is unlawful in **schools**.

In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions.

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

We have no information relating to **situations of employment**.

The **Committee on the Rights of the Child** made recommendations concerning prohibition of corporal punishment following examination of the state party’s initial report in 2003 (CRC/C/15/Add.214, paras. 21 and 22).

TUNISIA – fifth report (CCPR/C/TUN/5)

Corporal punishment is lawful in the home under article 313 of the Criminal Code.

Corporal punishment is prohibited in schools by Ministerial Circular No. 101 (1997) but there is no explicit prohibition in legislation.

In the **penal system**, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions.

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

We have no information relating to **situations of employment**.

In 2002, following examination of the state party's second report, the **Committee on the Rights of the Child** recommended prohibition of corporal punishment, including in the family (CRC/C/15/Add.18, paras. 33 and 34), reiterating concerns previously made in 1995 (CRC/C/15/Add.39, para. 17).