

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

21-25 May 2007

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

Of the state parties to be considered by the pre-sessional working group following the 38th session of the Committee on Economic, Social and Cultural Rights, none has prohibited all corporal punishment of children in all settings, including the home. In all states – France, Paraguay, India and San Marino, corporal punishment is lawful in the home and in alternative care contexts; in France, Paraguay and India, explicit prohibition is yet to be introduced in relation to schools.

We hope that the Committee will question all states on their progress towards eliminating all corporal punishment of children, and make recommendations that states parties prohibit corporal punishment in the home, schools, the juvenile justice system, alternative care settings and situations of employment, and support this with appropriate public education and professional training on positive, non-violent forms of discipline. In India, there is a current opportunity for full legal reform. We hope the Committee will encourage the government to take this opportunity.

The Committee's attention is respectfully drawn to the Committee on the Rights of the Child General Comment No. 8, issued in June 2006, on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment".

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: this provides an additional context for progress and we hope that the Committee will encourage all states to move quickly to institute comprehensive law reforms.

FRANCE (third periodic report – E/C.12/FRA/3)

Corporal punishment is lawful in the **home** under the parental "right of correction" in customary law. Children have limited protection from violence under the Criminal and Civil Codes.

A survey of 1,000 people, carried out in 1999 by SOFRES for the organisation "Eduquer sans frapper", found that over half (51%) of respondents who had children hit them often, a third hit them rarely, and only 16% had never hit them.¹

There is no explicit legal prohibition of corporal punishment in **schools**, where "light correction" is tolerated as for parents. A High Court ruling in 1889 allowed a "right to correction" for teachers; a ruling in 2000 stated that this did not apply to habitual and "non-educational" corporal punishment. A questionnaire survey of 130 secondary school pupils in Toulon in 2001 found that fewer than one in ten had never been hit; 72 pupils reported having been hit moderately, 19 violently.²

Corporal punishment is unlawful in the **penal system**, but is not explicitly prohibited in **alternative care settings**.

¹ Reported in correspondence with the Global Initiative, January 2004

² Correspondence with author, Olivier Maurel, January 2004

Following examination of the state party's second report in 2004, the **Committee on the Rights of the Child** recommended explicit prohibition of corporal punishment "in the family, in schools, in institutions and in other childcare settings" together with awareness-raising and promotion of positive, non-violent forms of discipline (CRC/C/15/Add.240, para. 39). In 2005, the **European Committee of Social Rights** found the situation in France to be not in conformity with article 17 of the Revised Social Charter because "corporal punishment of children is not prohibited" (March 2005, *Conclusions 2005*, vol. 1, p.244), reiterating the grounds for the finding of non-conformity in its previous conclusions (October 2003, *Conclusions 2003*, vol. 1, p.178).

PARAGUAY (initial-third periodic report – E/C.12/FRA/3)

Corporal punishment is lawful in the **home**. Children have limited protection from violence under the Constitution, the Children and Adolescents Code, the Criminal Code and the Law Against Domestic Violence.

There is no explicit prohibition of corporal punishment in **schools**, though protection of a student's dignity is enshrined in the Children and Adolescents Code and the General Education Law.

Corporal punishment is unlawful in the **penal system** but is not explicitly prohibited in **alternative care settings**.

In 2001, in its concluding observations on the state party's second report, the **Committee on the Rights of the Child** recommended explicit prohibition of corporal punishment in the family, schools and other institutions, together with awareness-raising and education measures (CRC/C/15/Add.166, para. 32).

INDIA (second-fifth periodic report – E/C.12/IND/5)

Corporal punishment is lawful in the **home**. The Penal Code recognises the right of parents to use corporal punishment. As at March 2007, a draft Offences Against Children (Prevention) Bill was under discussion; a clause on corporal punishment prohibits "persistent beating, battering, pinching, twisting or any other such act", but excludes punishment which is "commensurate to the act undertaken by the child" and is not unreasonable.

The National Charter for Children (2003) recognises children's right to protection from corporal punishment (article 9).

There is no national prohibition in law of corporal punishment in **schools**. It is prohibited in the National Policy on Education and in the Free and Compulsory Education for Children Bill under discussion in April 2005. It is prohibited at state level in Andhra Pradesh, Goa, Tamil Nadu, West Bengal, Chandigarh, Delhi and Himachal Pradesh.

Large scale research in May 2006, involving 1,591 children, 215 teachers, and parents and other adults, looked at children's experiences of corporal punishment in schools and in the home.³ The study found corporal punishment to be an accepted way of life in all the schools and communities visited, the most common forms being hitting with hands and stick, pulling hair and ears, and telling children to stand for long period in various positions. In all schools, there would be at least five beatings every day, in addition to other more moderate forms of punishment, though the punishments were less severe than those experienced in the home.

The incidence rates for corporal punishment in rural areas of India, gathered as part of the World Studies of Abuse in the Family Environment (WorldSAFE) cross-national project, as self-reported by mothers covering the period of the previous 6 months, were as follows: "severe physical punishment"

³ Saath Charitable Trust/Plan International, India, 2006, *Impact of Corporal Punishment on School Children: A Research Study – Final Report*

– hitting with an object not on the buttocks 36%, kicking 10%, choking 2%, burning 1%, threatening with a knife or gun 1%; “moderate physical punishment” – spanked buttocks with hand 58%, slapped face or head 58%, pulled hair 29%, hit with knuckles 28%, hit with object on buttocks 23%, pinched child 17%, twisted ear 16%, shook child 12%, put hot pepper in mouth 3%, forced to kneel/stand in uncomfortable position 2%.⁴

In the **penal system**, corporal punishment is unlawful as a sentence for crime but lawful as a disciplinary measure in penal institutions. It is not explicitly prohibited in **alternative care settings**. The National Plan of Action for Children (2005) includes in its first objective for children in difficult circumstances protection from corporal punishment (para. 11.2.1).

In 2004, following examination of the state party’s second report, the **Committee on the Rights of the Child** recommended prohibition of corporal punishment in the family, schools and other institutions, together with public and professional education campaigns (CRC/C/15/Add.228, para. 45). The Committee had made similar recommendations in 2000 (CRC/C/15/Add.115, para. 45).

Given the current opportunity for full law reform to prohibit all corporal punishment in all settings in India, it would be particularly valuable if the Committee pursues the issue with the Government delegation and recommends explicit and full prohibition.

SAN MARINO (initial report – E/C.12/SMR/A)

Corporal punishment is lawful in the **home**. The government has claimed that the provisions on abuse of corrective and disciplinary powers in the Criminal Code effectively prohibit corporal punishment (summary record of examination by the Committee on the Rights of the Child, 2003, CRC/C/SR.893, paras. 17-20), but there is no explicit prohibition of corporal punishment.

Corporal punishment is unlawful in **schools** and in the **penal system**. It is not explicitly prohibited in **alternative care settings**.

In its concluding observations on the state party’s initial report in 2003, the **Committee on the Rights of the Child** welcomed information about the Penal Code prohibition of corporal punishment (but see above) and recommended awareness-raising campaigns (CRC/C/15/Add.214, paras. 21 and 22).

⁴ Reported in Krug, E. G. et al. (eds) (2002), *World report on violence and health*, Geneva: World Health Organization