

BRIEFING FROM GLOBAL INITIATIVE
TO END ALL CORPORAL PUNISHMENT OF CHILDREN

**BRIEFING FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN PRE-SESSION WORKING GROUP , 42ND SESSION (OCTOBER 2008)**

States to be examined in the 44th session

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Of the state parties to be examined in the 42nd session of the Committee on the Elimination of Discrimination Against Women, two (Denmark and Spain) have prohibited corporal punishment of girls and boys in all settings. In others, it is lawful for parents to inflict corporal punishment on their children as a form of “discipline”. In Switzerland, a parliamentary initiative to enact prohibition received a setback, but prohibition is still under consideration by Parliament.

Explicit prohibition in legislation relating to schools has yet to be enacted in Argentina, Timor-Leste and Tuvalu. In other states to be examined, corporal punishment remains lawful in the penal system and/or alternative care settings. The table on page 2 summarises the legality of corporal punishment in the states to be examined, and details are given in the brief country reports which follow.

We note that article 5(b) of the Convention on the Elimination of All Forms of Discrimination against Women provides for “the recognition of the common responsibility of men and women in the upbringing and development of their children, *it being understood that the interest of the children is the primordial consideration in all cases*” and that under article 16(d) men and women should enjoy “the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; *in all cases the interests of the children shall be paramount*” (emphases added). We also note the Committee’s General Recommendation No. 19 (1992) on Violence against women, which states that full implementation of the Convention requires States to eliminate all forms of violence against women (paragraph 4), and draw attention to the fact that corporal punishment of girl children potentially impairs or nullifies the enjoyment by women of all the rights and freedoms listed in paragraph 7 of the General Recommendation.

In light of the recommendation in the UN Secretary General’s Study on violence against children, submitted to the General Assembly in October 2006, that all corporal punishment of children be prohibited by 2009, and of the gathering momentum of states enacting prohibition, we hope the Committee will rigorously pursue the issue of corporal punishment of children in its examination of states – including corporal punishment within the home – and make recommendations that state parties prohibit corporal punishment in all settings, supported by appropriate public education and professional training on positive, participatory and non-violent forms of discipline.

The Committee may also wish to refer 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” (available at www.ohchr.org/english/bodies/crc/comments.htm).

SUMMARY - CORPORAL PUNISHMENT IN STATES TO BE EXAMINED IN 44th SESSION

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Argentina	NO	NO	YES	NO	NO
Denmark	YES	YES	YES	YES	YES
Egypt	NO	YES	YES	YES ¹	NO
Japan	NO ²	YES ³	YES	YES	NO
Lao PDR	NO	YES	YES	YES ⁴	NO
Spain	YES	YES	YES	YES	YES
Switzerland	NO ⁵	YES ⁶	YES	YES	YES
Timor-Leste, DR	NO	NO ⁷	YES	YES	NO ⁸
Tuvalu	NO	NO	SOME ⁹	NO	NO

ARGENTINA (sixth report – CEDAW/C/ARG/6)

Corporal punishment is lawful in the **home**. The Law for the Integral Protection of Children and Adolescents and some provincial laws recognise boys’ and girls’ right to physical integrity, but these provisions are undermined by the confirmation in the federal Civil Code of parents’ “right” to inflict corporal punishment on their children under the “power to correct” (article 278). The recognition of the child’s right to dignity and to protection from torture and cruel or degrading treatment in article 9 of the Law for the Integral Protection of Children and Adolescents is not interpreted as prohibiting all corporal punishment.

There is no explicit prohibition of corporal punishment in **schools**. The Federal Education Law, the Law on the School Coexistence System, and the Law for the Integral Protection of Children and Adolescents, recognise the child’s right to dignity and well-being in education, but we have no evidence that this is interpreted as prohibiting corporal punishment.

In the **penal system**, corporal punishment is unlawful as a sentence for crime, but it is not explicitly prohibited as a disciplinary measure in penal institutions. Research has found that boys and girls in detention are regularly subject to disciplinary sanctions such as confinement in “chastisement cells” and corporal punishment.¹⁰

Corporal punishment is lawful in **alternative care settings**.

¹ But possibly permitted in social welfare institutions

² But prohibited in Kawasaki City by local ordinance

³ Prohibited in 1947 School Education Law but 1981 Tokyo High Court judgment stated that some physical punishment may be lawful in some circumstances

⁴ But no explicit prohibition

⁵ 2003 Federal Court ruling stated repeated and habitual corporal punishment unacceptable, but did not rule out right of parents to use corporal punishment. Parliamentary initiative 06.419 to prohibit all corporal punishment, adopted by the Committee for Legal Affairs in October 2007, was defeated, but prohibition still under consideration by Parliament (May 2008)

⁶ Prohibited by federal law pursuant to cantonal legislation; 1991 Federal Court ruled it permissible in certain circumstances, but this considered impossible under current legislation

⁷ Government committed to prohibition (2005)

⁸ Prohibited by policy in child care centres, orphanages and boarding houses

⁹ Unlawful under the Penal Code and the Code of Criminal Procedure, but Island Courts may order

¹⁰ SERPAJ/Argentina, Hogares Don Bosco (1998), *Informe carcel y ninos*, cited in World Organisation Against Torture (2002), *Rights of the Child in Argentina*, OMCT

In 2002, in its concluding observations on the state party's second report, the **Committee on the Rights of the Child** recommended that the state party "expressly prohibit corporal punishment in the home and all institutions and carry out public education campaigns to promote positive, non-violent forms of discipline as an alternative to corporal punishment" (CRC/C/15/Add.187, para. 39).

DENMARK (seventh report – CEDAW/C/DEN/7)

Corporal punishment is **prohibited in all settings**, including the home.

EGYPT (sixth/seventh report – CEDAW/C/EGY/7)

Corporal punishment is lawful in the **home**. Article 7A of the Child Law, as amended in 2008, confirms parents' "right to discipline".

Corporal punishment is prohibited in **schools**, but continues to be used. In the National Survey of Youth and Social Changes in 1999, 54% of boys and girls said that teachers usually beat them.¹¹

In the **penal system**, corporal punishment is unlawful as a sentence for crime. It is prohibited as a disciplinary measure with the possible exception of social welfare institutions for children under the age of 16.

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

In 2001, 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 care institutions (CRC/C/15/Add.145, para. 38).

JAPAN (sixth report – CEDAW/C/JPN/6)

Corporal punishment is lawful in the **home**. According to article 822(1) of the Civil Code those with parental authority may punish their child, and article 14(a) of the Child Abuse Prevention Law states that "those who have parental authority have to take an appropriate way when disciplining a child".

Corporal punishment is explicitly prohibited in **schools** under article 11 of the School Education Law (1947). However, a ruling by the Tokyo High Court on 1 April 1981 suggested that this provision did not prohibit all physical punishment in all cases, and in 2007 a ministerial guideline issued to public schools relied on this in suggesting that some forms of physical punishment may be permitted in some circumstances.

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

Corporal punishment is lawful in **alternative care settings** under the power of those with parental authority to punish and discipline children in the Civil Code and the Child Abuse Prevention Law (see above). As at May 2008, proposed revisions to article 33 of the Child Welfare Law would protect children in day care and residential institutions from abusive behaviour which physically or mentally impacts on them, but would not explicitly prohibit all corporal punishment.

In 2004, the **Committee on the Rights of the Child** expressed concern at the widespread use of corporal punishment in schools, institutions and the family, and recommended prohibition in

¹¹ Cited in Human Rights Center for the Assistance of Prisoners, *The Truth: Official Response to the Government of Egypt's Report to the UN Human Rights Committee*

institutions and at home (CRC/C/15/Add.231, Concluding observations on second report, paras. 35 and 36). The Committee had previously expressed concern at school corporal punishment following examination of the state party's initial report in 1998 (CRC/C/15/Add.90, para. 24).

LAO PEOPLE'S DEMOCRATIC REPUBLIC (sixth/seventh report – CEDAW/C/LAO/7)

Corporal punishment is lawful in the **home**. Children have limited protection from violence and abuse under the Penal Code (1990), the Family Law (1990) and the Law on the Protection of the Rights and Interests of Children (2006).

Corporal punishment is considered unlawful in **schools** under article 27 of the Law on the Protection of the Rights and Interests of Children, which confirms the state's policy to create "child-friendly" schools in which students are protected from corporal punishment. We have yet to establish definitively that this law is interpreted as prohibiting all corporal punishment in all educational institutions.

In the **penal system**, corporal punishment is unlawful as a sentence for crime. It is considered unlawful as a disciplinary measure in penal institutions and is not among permitted disciplinary measures in vocational training centres in the Law on the Protection of the Rights and Interests of Children, but there is no explicit prohibition. In a study reported in 2003, 30% of detained children reported experiencing physical or mental punishment, including beating, crawling, sitting in the sun and withholding meals.¹²

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

The **Committee on the Rights of the Child** expressed concern about corporal punishment in the family and society generally as long ago as 1997 (CRC/C/15/Add.78, Concluding observations on initial report, para. 20).

SPAIN (sixth report – CEDAW/C/ESP/6)

Corporal punishment is **prohibited in all settings**, including the home.

SWITZERLAND (third report – CEDAW/C/CHE/3)

Corporal punishment is lawful in the **home**. Articles 301-303 of the Civil Code (1907) oblige parents to direct their child's education, to determine the care and education to be given children "for their good". Under Swiss case-law, this has included a "right of correction" ("droit de correction"), although explicit confirmation of parents' punishment rights was deleted from the Civil Code in 1978. A 2003 Federal Court judgment ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment (5 June 2003, ATF 129 IV 216ss). Parliamentary initiative 06.419 to prohibit all corporal punishment, adopted by the Committee for Legal Affairs in October 2007, received a setback, but as at May 2008 prohibition was still under consideration by Parliament.

Research in 2004 by Fribourg University commissioned by the Federal Social Insurance Office involved interviews with 1,240 parents with children under the age of 16 years and found that despite a decline in the use of corporal punishment by parents, it is still used extensively, with smaller children

¹² Sandvik-Nylund (2003), *Regional Assessment: Violence against children in East Asia and the Pacific region*, Bangkok: UNICEF. Cited in Nogami, N. (2005), *Discipline and punishment of children: a rights-based review of laws, attitudes and practices in East Asia and the Pacific - Save the Children Sweden Southeast Asia and the Pacific, regional submission to the UN Secretary General's Global Study on Violence against Children*, Stockholm, Save the Children Sweden

are more often subjected to beatings than older ones. Based on the findings, the study estimates that 13,000 boys and girls under the age of 30 months have been slapped, nearly 18,000 have been pulled by the hair and about 1,700 hit with objects.¹³

Corporal punishment is unlawful in **schools** under federal law, pursuant to cantonal legislation. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances, but a ruling in 1993 stated that there can be no customary law that would allow teachers or other persons taking care of children to exercise corporal punishment against them (BGE 117 IV 18) and its lawful use is considered impossible under current (2005) legislation.

Corporal punishment is unlawful in the **penal system** and **alternative care settings**.

In 2002, following examination of the state party's initial report, the **Committee on the Rights of the Child** expressed concern that despite the prohibition of school corporal punishment, "according to the jurisprudence of the Federal Tribunal, corporal punishment is not considered as physical violence if it does not exceed the level generally accepted by society". The Committee recommended explicit prohibition of all corporal punishment in the family, schools and institutions (CRC/C/15/Add.182, paras. 32 and 33).

TIMOR-LESTE, DR (initial report – CEDAW/C/TLS/1)

Corporal punishment is lawful in the **home**. Children have limited protection from abuse under the Indonesian Penal Code and the Constitution. As at January 2008, the process of adopting a new Children's Code, Penal Code and Civil Code was under way.

Corporal punishment is lawful in **schools**. A draft Education policy refers to the "promotion of nonviolent and positive disciplining methods in schools" and the Ministry of Education is committed to addressing the issue of corporal punishment. As at 2006, an Education Bill was under discussion, but we have no further information.

In research carried out in 2004/5 by the Ministry of Education and Culture, the Ministry of Labour and Community Reinsertion, UNICEF and Plan International, over two thirds of children (67%) reported being beaten with a stick by teachers, and 39% reported being slapped on the face by teachers. Three out of five (60%) reported being beaten with a stick by their parents. Almost two thirds of parents (63%) felt it acceptable to yell violently at a child; almost two in five (39%) said it was acceptable to beat a child with a stick, and just over a third considered other physical punishments such as ear twisting and face slapping acceptable.¹⁴

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 in law of corporal punishment in **alternative care settings**.

In February 2008, the **Committee on the Rights of the Child** recommended that the state party explicitly prohibit corporal punishment in all settings (CRC/C/TLS/CO/1 Unedited Version, Concluding observations on initial report, para. 43).

TUVALU (initial/second report – CEDAW/C/TUV/2)

Corporal punishment is lawful in the **home**. Cruelty to children is addressed in article 226 of the Penal Code, but this also states: "Nothing in this section shall be construed as affecting the right of any

¹³ Schöbi, D. & Perrez, M. (2004), *Bestrafungsverhalten von Erziehungsberechtigten in der Schweiz: Eine vergleichende Analyse des Bestrafungsverhaltens von Erziehungsberechtigten 1990 und 2004*, Universität Fribourg

¹⁴ UNICEF (2006), *Speak Nicely to Me – A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*

parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

Corporal punishment is lawful in **schools** under article 29 of the Education Act (1976) and article 226 of the Penal Code (see above).

In the **penal system**, corporal punishment is lawful as a sentence for crime. It is not available under the Penal Code, the Criminal Procedure Code, the Magistrates Court Act or the Superior Courts Act, but article 8(8) of the Island Courts Act states that an island court may order a parent or guardian of a male child or young person to cane their child in lieu of any other sentence. Failure to carry out the order is an offence under article 8(9). There is no provision for corporal punishment as a disciplinary measure in the Prisons Act (1985), but it is not explicitly prohibited and in the case of children and young people article 226 of the Penal Code (see above) presumably applies.

Corporal punishment is lawful in **alternative care settings** under article 226 of the Penal Code (see above).