



Global Initiative to
**End All Corporal Punishment
of Children**

SOUTH AFRICA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 1st session, 2007

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Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

The Global Initiative to End All Corporal Punishment of Children has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment, setting a goal of 2009.

This briefing describes the gaps in prohibition in South Africa, despite recommendations to introduce prohibition by international human rights mechanisms. It notes in particular the resistance to removing the “reasonable chastisement” defence from law.

We hope the Review will highlight with concern South Africa’s record of ignoring treaty body recommendations and strongly recommend that South Africa introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

I: Legality of corporal punishment in South Africa

The home

Corporal punishment is lawful in the **home**. Under common law, parents have the power “to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (*R v Janke and Janke* 1913 TPD 382). This power may be delegated to a person acting in the parent’s place, though not in the case of teachers.

Children are protected from ill-treatment by parents, guardians or persons having custody of a child under the Child Care Act (1983). A new Children’s Act (No. 38 of 2005) was given presidential assent in June 2006, but as at November 2007 is still to be inserted by way of an Amendment Bill. In May 2007, a version of the Children Amendment Bill which removed the “reasonable chastisement” defence was passed by the National Council of Provinces but in October 2007 its passage was halted by the ANC following heated public and political debate on prohibiting all corporal punishment by parents.

Research has revealed a high prevalence of corporal punishment of children by parents. In 2003, the first national survey of attitudes to child rearing and the use of corporal punishment by caregivers surveyed 952 parents with children surveyed on corporal punishment. Over half (57%) reported using corporal punishment, most commonly on children aged 3 years, with 33% using severe corporal punishment (beating with a belt or stick), most commonly on 4-year-olds. The study concluded that the strongest predictor of severe corporal punishment was an attitude supportive of the use of physical punishment.¹

Schools and other settings

Corporal punishment is unlawful in **schools** under the South African Schools Act (1996, effective 1997), although it continues to be used. The National Youth Victimisation Study released in May 2006 by the Centre for Justice and Crime Prevention reported on a survey of 4,409 young people aged between 12 and 22 years which found that nationally 51% of children continue to be subjected to corporal punishment in schools.²

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

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

II: Recommendations by human rights treaty monitoring bodies

In its concluding observations on the state party’s initial report in 2000, the **Committee on the Rights of the Child** expressed concern at the lack of prohibition of corporal punishment in the family and at its continued use in schools and care institutions, and recommended prohibition by law of corporal punishment in the family (CRC/C/15/Add.122, paras. 28):

“While the Committee is aware that corporal punishment is prohibited by law in schools, care institutions and the juvenile justice system, it remains concerned that corporal punishment is still permissible within families and that it is still regularly used in some schools and care institutions as well as generally within society. The Committee recommends that the State party

¹ Dawes, A. et al., 2004, *Partner violence, attitudes to child discipline & the use of corporal punishment: A South African national survey*, Cape Town: Child Youth & Family Development, Human Sciences Research Council. See also Clacherty, G., Donald, D. & Clacherty, A., 2005, *South African Children’s Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden

² Reported in Shlensky, A. (2006), “Corporal punishment still rife in classrooms despite being banned”, *Cape Times*, 11 May 2006

take effective measures to prohibit by law corporal punishment in care institutions. The Committee further recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and change cultural attitudes to ensure that discipline is administered in a manner consistent with the child's dignity and in conformity with the Convention. It is also recommended that the State party take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation."

In 2006, the **Committee Against Torture** expressed concern at the continued use of corporal punishment in schools and other public institutions and recommended that the state party "ensure that legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children, and establish a monitoring mechanism for such facilities" (CAT/C/ZAF/CO/1, Advanced Unedited Version, para. 25).