

Corporal punishment of children in Italy: Briefing for the Universal Periodic Review, 20th session, 2014

*From Dr Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Italy, legislation has not been reformed to explicitly prohibit corporal punishment of children in the home, despite repeated recommendations to do so by the Committee on the Rights of the Child and during the UPR of Italy in 2010 (rejected by the Government).

We hope the Working Group will note with concern the failure to complete law reform to prohibit corporal punishment of children in Italy and the over-reliance on a 1996 Supreme Court ruling against violence in childrearing. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted in Italy to enshrine the 1996 Supreme Court ruling and explicitly prohibit corporal punishment in the home and all settings.

1 The initial review of Italy by the Human Rights Council (2010)

1.1 Italy was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the summary of stakeholders information¹ and the following recommendation was made: ²

“To incorporate in its legislation the 1996 Supreme Court judgement that corporal punishment was not a legitimate method of discipline in the home, and criminalize corporal punishment in all cases, including in education (Spain)”

1.2 The Government rejected the recommendation, stating that corporal punishment has been unlawful in schools since 1928 and that it does not apply in the penal system, but gave no details of prohibiting legislation in this regard. The Government stated that corporal punishment is also unlawful in the private sphere: “In 1996 the Supreme Court ruled that the legislation in force already prohibits any forms of violence in child-rearing and confirmed that this is no longer a legitimate method of discipline nor defensible under the

¹ 17 November 2009, A/HRC/WG.6/7/ITA/3, Summary of stakeholders' views, para. 29

² 18 March 2010, A/HRC/14/4, Report of the working group, para. 84(38)

right to correction (“jus corrigendi”). Therefore Italy deems that there is no need to adopt a specific supplementary law.”³

1.3 Compliance with the Convention on the Rights of the Child and other human rights treaties involves enacting legislation to explicitly prohibit all corporal punishment of children in all settings, including the home. It is true that corporal punishment may be rendered unlawful by virtue of a Supreme Court ruling, but it is equally true that subsequent rulings may conflict with this interpretation of the law. The acceptance of some degree of physical punishment in childrearing is deeply rooted in societies the world over, among the legal profession as among the general public. For this reason, it is imperative that high level court rulings are confirmed through law reform which explicitly prohibits all corporal punishment, without exception, and removes any legal defences or justifications for its use. This reform then sends a clear message that all corporal punishment is unlawful and provides a firm foundation for the establishment of mechanisms to ensure its elimination in practice. **For all these reasons, we respectfully urge members of the Working Group to make specific recommendations to Italy that legislation is enacted to enshrine the 1996 Supreme Court ruling in legislation and explicitly prohibit all corporal punishment of children in the home.**

2 Legality and practice of corporal punishment in Italy

2.1 **Summary:** Corporal punishment in Italy is unlawful as in alternative care settings, day care, schools and the penal system. A Supreme Court judgment in 1996 ruled against the use of violence in childrearing but this has not been confirmed by enacting legislation prohibiting corporal punishment in the home.

2.2 **Home (lawful):** In 1996, a Supreme Court judgment outlawed all violence in childrearing.⁴ Article 571 of the Criminal Code 1975 states: “Whoever misuses means of correction or discipline to harm a person subject to his authority, or entrusted to him for purposes of education, instruction, treatment, supervision or custody ... shall be punished.” The offence of abuse of correctional methods is applicable if there is a relationship of authority between the abuser and the abused, if the abuse results in physical or mental injury, and if it involves legitimate correctional methods. Since, according to the 1996 ruling, corporal punishment is no longer a legitimate method of discipline, it is not defensible under the right to correction (“jus corrigenda”). However, there has been no law reform to confirm the judgment in legislation by amending/repealing article 571 or enacting explicit prohibition of corporal punishment in the home; a number of Bills have been proposed over the years but have not achieved progression through Parliament.

2.3 **Alternative care settings (unlawful):** Corporal punishment is unlawful under the 1996 Supreme Court ruling (see para. 2.2), but there appears to be no explicit prohibition in law.

2.4 **Day care (unlawful):** Corporal punishment is unlawful in early childhood care and in day care for older children under the 1996 Supreme Court ruling (see para. 2.2), but there appears to be no explicit prohibition in law.

³ 31 May 2010, A/HRC/14/4/Add.1, Report of the working group: Addendum

⁴ Judge Ippolito, Supreme Court of Cassation, 18 March 1996

- 2.5 **Schools (unlawful):** Corporal punishment has been unlawful in schools since 1928, but we have yet to identify prohibiting legislation.
- 2.6 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions but we have no details of applicable law. In 2011, Bill No. 3912 was under discussion which would regulate the juvenile justice system: we have no further information.
- 2.7 **Sentence for crime (unlawful):** There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has twice recommended to Italy that the law be reformed to explicitly prohibit corporal punishment of children in the home – in its concluding observations on the initial report in 1995⁵ and on the third/fourth report in 2011.⁶ In 2005, the Committee made recommendations concerning implementation of prohibition of corporal punishment in schools.⁷
- 3.2 **ECSR:** The European Committee of Social Rights has repeatedly raised the issue of the legality of corporal punishment in the home in Italy, in 2001, 2003, 2007 and 2012.⁸ In 2003, following a complaint on the issue brought against Italy by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the Committee concluded that there was no violation of the Revised Charter because the prohibition of all forms of corporal punishment of children has a legislative basis.⁹ Since that decision, the Committee has confirmed that compliance with article 17 of the Charter requires explicit prohibition in domestic law. The Committee is currently considering a second complaint – submitted by the Association for the Protection of All Children (APPROACH) Ltd – alleging that Italy has failed to adopt the necessary legislation, that many children are still being subjected to corporal punishment and that violent punishment of children is still culturally and socially accepted.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
 March 2014

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 27 November 1995, CRC/C/15/Add.41, Concluding observations on initial report, paras. 12 and 20

⁶ 31 October 2011, CRC/C/BHR/CO/2-3, Concluding observations on third/fourth report paras. 34 and 35

⁷ 18 March 2003, CRC/C/15/Add.198, Concluding observations on second report, paras. 43 and 44

⁸ 1 January 2001, Conclusions XV-2 vol. 1, pages 315-317; 1 October 2003, Conclusions 2003 Vol. 1, page 300; 2007, Conclusions XVIII-1, vol.2; January 2012, Conclusions 2011

⁹ Resolution ResChS(2005)1, Collective complaint No. 19/2003 by the World Organisation against Torture (OMCT) against Italy, adopted by the Council of Ministers on 20 April 2005

¹⁰ Collective complaint No. 94/2013, *Association for the Protection of All Children (APPROACH) Ltd v Italy*, declared admissible on 2 July 2013