

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

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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 San Marino, corporal punishment of children is lawful, despite recommendations that it should be prohibited by the Committee on the Rights of the Child and during the UPR of San Marino in 2010 (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in San Marino. We hope states will raise the issue during the review in 2014 and make a specific recommendation that legislation is enacted to explicitly prohibit corporal punishment in the home and all settings and that the “power of correction or discipline” is explicitly repealed from the Criminal Code.

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

- 1.1 San Marino was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). The issue of corporal punishment was raised in the compilation of UN information¹ and the summary of stakeholders information.² A number of recommendations on corporal punishment of children, including to prohibit it in all settings, were made during the review.³ The Government accepted the recommendations, stating that it would amend the Criminal Code to achieved this.⁴
- 1.2 Despite the Government’s positive commitment in accepting the recommendations, there has been no change in the legality of corporal punishment of children in San Marino since the review in 2010. Corporal punishment is unlawful in schools and the penal system but it remains lawful in the home, alternative care settings and day care. We are not aware of any moves towards amending the Criminal Code to prohibit corporal punishment.

¹ 30 November 2009, A/HRC/WG.6/7/SMR/2, Compilation of UN information, para. 16

² 30 November 2009, A/HRC/WG.6/7/SMR/3, Summary of stakeholders' information, para. 15

³ 10 March 2010, A/HRC/14/9, Report of the working group, paras. 71(23), 71(24), 71(25) and 71(26)

⁴ 1 June 2010, A/HRC/14/9/Add.1, Report of the working group: Addendum, para. 13

1.3 The human rights obligation to prohibit and eliminate all corporal punishment of children is one which is frequently ignored or evaded by Governments. The longstanding and near universal acceptance of some degree of violent punishment in childrearing and education – among lawmakers and other professionals as among the general public – can challenge efforts to achieve prohibition. But an ever growing number of states are achieving this fundamental reform.⁵ No excuse can justify not embarking on the process of enacting prohibiting legislation. **We respectfully urge members of the Working Group to make specific recommendations to San Marino that it honours the commitment made in 2010 by enacting legislation which explicitly prohibits all corporal punishment of children in the home, including through repeal of the “power of correction or discipline”.**

2 Legality of corporal punishment in San Marino

2.1 **Summary:** Corporal punishment of children in San Marino is unlawful in schools and in the penal system, but it is not prohibited in the home or in all alternative care and day care settings.

2.2 **Home (lawful):** In reporting to the UN Committee on the Rights of the Child in 2003, the Government stated that article 235 of the Criminal Code punishes “any form of violence against a family member by anyone exercising authority and custody”.⁶ However, the article itself punishes “maltreatment” and there is nothing to indicate that this is intended to prohibit all forms of physical punishment, without exception. Under examination by the Committee, the Government delegation stated that article 243 of the Criminal Code “stipulated that corporal punishment constituted an abuse of the authority to discipline”.⁷ In fact, there is no such provision in the Code.⁸ Article 234 of the Criminal Code confirms the concept of “powers of correction or discipline” (“poteri di correzione o disciplina”) and makes its abuse an offence, punishing “anyone who abuses such power in a way that harms the body or mind of a person under his/her authority, or in such a way as to cause a disease”. This therefore protects children from corporal punishment of some severity, but not from all forms of corporal punishment.

2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings, where corporal punishment is lawful as for parents (see para. 2.2).

2.4 **Day care (?partial prohibition):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children. It is possibly unlawful in preschool settings under education law (unconfirmed, see para. 2.5).

2.5 **Schools (unlawful):** Corporal punishment is unlawful under article 4 of the General Provisions on Education 1998.⁹

2.6 **Penal institutions (unlawful):** Corporal punishment is considered unlawful, but there is no explicit prohibition. Article 26 of the Penitentiary Law 1997 states: “The use of physical force on detainees and interned people is not allowed except when indispensable to

⁵ As at February 2014, 35 states worldwide have prohibited all corporal punishment of children, including in the home.

⁶ 17 March 2003, CRC/C/8/Add.46, Initial state party report, para. 77

⁷ 22 September 2003, CRC/C/SR.893, Summary record of 893rd meeting, para. 19

⁸ Article 243 concerns matters irrelevant to corporal punishment of children

⁹ Law No. 21/1998

prevent or impede acts of violence, attempts of jailbreak, to overcome resistance, also of a passive nature, to the execution of orders or to guarantee the safety of the detainee.”

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:** In 2003, the Committee on the Rights of the Child recommended that awareness raising be undertaken in San Marino on the negative impact of corporal punishment. No recommendations were made in relation to law reform: as noted above (para. 2.2), the Committee had been led to believe this had been achieved.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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.