

Corporal punishment of children in Slovenia: 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 Slovenia, corporal punishment of children is lawful, despite recommendations that it should be prohibited by the Committee on the Rights of the Child and other treaty monitoring bodies. The Government’s attempt to introduce full prohibition was unsuccessful through no fault of its own and it remains fully committed to law reform.

We hope the Working Group will note with concern the legality of corporal punishment of children in Slovenia. 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 alternative care and day care settings as a matter of priority.

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

- 1.1 Slovenia was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 7). In its national report, the Government drew attention to the new Family Code under public debate which included prohibition of corporal punishment.¹ The issue of corporal punishment was also raised in the compilation of UN information² and the summary of stakeholders information.³ The Government accepted recommendations made during the review to adopt the draft law prohibiting corporal punishment.⁴ The Government’s mid-term report on the implementation of UPR recommendations confirmed that as per this commitment, the Family Code Bill was adopted by the National Assembly in June 2011.⁵
- 1.2 Despite the Government’s positive introduction of prohibiting legislation, the above mentioned Family Code Bill was rejected by public referendum in 2012. It is understood that the rejection was due to opposition to the provisions on same sex marriages, and not

¹ 3 November 2009, A/HRC/WG.6/7/SVN/1, National report to the UPR, para. 24

² 19 November 2009, A/HRC/WG.6/7/SVN/2, Compilation of UN information, para. 20

³ 12 November 2009, A/HRC/WG.6/7/SVN/3, Summary of stakeholders' views, para. 18

⁴ 15 March 2010, A/HRC/14/15, Report of the working group, paras. 111(8) and 111(9)

⁵ March 2012, Mid-term implementation report

to the child protection provisions which included prohibition of corporal punishment.⁶ In September 2013, the Ombudsman reported that the intention is to draft a new family law in 2014, again to include prohibition.⁷ **We respectfully urge members of the Working Group to make specific recommendations to Slovenia that the re-introduction and enactment of new legislation to explicitly prohibit all corporal punishment be pursued as a matter of priority.**

2 Legality and practice of corporal punishment in Slovenia

- 2.1 **Summary:** Corporal punishment of children in Slovenia is unlawful in schools, in some forms of day care and in the penal system; it is lawful in the home, in alternative care settings and in some day care settings.
- 2.2 **Home (lawful):** According to the Law on Marriage and Family Relations 2004, parents must ensure their children's successful physical and mental development (art. 4) and are obliged to support, care for and educate their children (art. 103). There is no confirmation of a "right" or "duty" to correct or punish children, but neither is there an explicit prohibition of corporal punishment in childrearing. Provisions against violence and abuse in the Criminal Code 2008 are not interpreted as prohibiting all corporal punishment in childrearing.
- 2.3 The Law on Prevention of Domestic Violence 2008 defines domestic violence as "any form of physical, sexual, psychological or economic violence by one family member against another family member ... irrespective of age, gender or any other personal circumstance of the victim or perpetrator of violence"; physical violence is defined as "any use of physical force by a family member that can cause pain, fear or shame, regardless of whether injuries were inflicted". However, these provisions are not interpreted as prohibiting all forms of corporal punishment.
- 2.4 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment. The Provision of Foster Care Act 2002 sets out the standards required for foster care and the obligations of foster carers but makes no reference to corporal punishment or related matters; similarly, there is no prohibition of corporal punishment in the Rules on the Conditions and Procedures for Implementing Foster Care 2003.
- 2.5 **Day care (lawful):** Corporal punishment is considered unlawful in educational day care centres and residential school institutions under the rules relating to schools (see para. 2.6), but there is no explicit prohibition in other early childhood care and in day care for older children. The Kindergarten Act 1996 does not prohibit corporal punishment.
- 2.6 **Schools (unlawful):** The Law on Primary Schools 1996 is silent on the issue of corporal punishment, stating only that the rights and duties of students and matters concerning discipline shall be determined by the Minister (art. 59). The Regulations on rights and responsibilities in primary school 2004 explicitly state that corporal punishment is not allowed (art. 34).
- 2.7 With regard to secondary education, the Law on Gymnasiums 1996, which regulates general education and technical secondary schools, does not include corporal punishment among permitted measures for dealing with disciplinary violations (art. 27), though it does

⁶ UNOG Summary of meeting, 6 June 2013

⁷ Correspondence from the Ombudsman to the Global Initiative, 20 September 2013

not explicitly prohibit it. Similarly, the Law on Vocational Education and Training 2006 makes no provision for corporal punishment among permitted disciplinary measures (art. 56). The Rules of behaviour for upper secondary schools 2004⁸ state that students have the right to protection from all forms of violence in school (art. 2) and do not include corporal punishment among the specified measures for dealing with violations of school rules (art. 32).

2.8 **Penal institutions (unlawful):** Corporal punishment is unlawful under the Constitution 1991 and the Criminal Code 2008 but there is no explicit prohibition. The Rules on the Implementation of Education Measures in the Juvenile Detention Centre 2000, the Rules on the Enforcement of the Sentence of Imprisonment 2000 and the Law Amending the Law on Enforcement of Penal Sanctions 2008 do not provide for corporal punishment as a disciplinary measure, though they do not explicitly prohibit it.

2.9 **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 prohibition of all corporal punishment in the home and other settings in Slovenia – in its concluding observations on the second state party report in 2004⁹ and on the third/fourth report in 2013.¹⁰

3.2 **CAT:** In 2011, the Committee Against Torture recommended the adoption of legislation prohibiting corporal punishment of children in the home.¹¹

3.3 **ECSR:** The European Committee of Social Rights has concluded three times that the situation in Slovenia is not in conformity with the Revised European Social Charter because corporal punishment is not prohibited in the home – in 2003¹², in 2005¹³ and again in 2012.¹⁴ The Committee is currently considering a complaint brought against Slovenia by the Association for the Protection of All Children (APPROACH) Ltd, under the collective complaints procedure.¹⁵ The complaint alleges that, in breach of the European Social Charter, there is no explicit and effective prohibition of all corporal punishment of children, in the family and other settings, and that Slovenia has failed to act with due diligence to eliminate such punishment in practice. The complaint was registered by the Committee in February 2013; it was declared admissible on 2 July 2013.

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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

⁸ Official Gazette, 82/2004

⁹ 26 February 2004, CRC/C/15/Add.230, Concluding observations on second report, paras. 40 and 41

¹⁰ 8 July 2013, CRC/C/SVN/CO/3-4, Concluding observations on third/fourth report, paras. 37 and 38

¹¹ 20 June 2011, CAT/C/SVN/CO/3, Concluding observations on third report, para. 15

¹² 1 October 2003, Conclusions 2003 Vol. 1, page 511

¹³ March 2005, Conclusions 2005

¹⁴ January 2012, Conclusions 2011

¹⁵ Collective complaint No. 95/2013, *Association for the Protection of All Children (APPROACH) Ltd v Slovenia*

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.