

Corporal punishment of children in Eswatini: Briefing for the Universal Periodic Review, 39th session, 2021

From the Global Partnership to End Violence Against Children, March 2021



This submission provides an update on the legality of corporal punishment of children in Eswatini since its review in the second cycle UPR in 2016. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, schools and penal institutions.

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 Eswatini, corporal punishment of children is still lawful despite recommendations to prohibit it by the Committee on the Rights of the Child, other Treaty Bodies and during the 2nd cycle UPR of Eswatini in 2016.

We hope the Working Group will note with concern the legality of corporal punishment of children in Eswatini. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Eswatini enacts legislation to explicitly prohibit corporal punishment of children in every setting of their lives and repeal section 14 of the Children’s Protection and Welfare Act 2012 and section 29(2) of the Constitution 2005, as a matter of priority.

1. Review of Eswatini in the 2nd cycle UPR (2016) and progress since

1.1 Eswatini was reviewed in the second cycle of the Universal Periodic Review in 2016 (session 25). The issue of corporal punishment of children was raised in the compilation of UN information and the summary of stakeholders’ information.¹ A recommendations to

¹ 13 July 2016, A/HRC/33/14, Report of the working group, paras. 24, 39, 78

prohibit corporal punishment in all settings was made.² The Government only accepted the recommendation in part but stated that education sector policy (but not law) prohibits corporal punishment, and that “Swaziland is not yet ready to accept prohibiting corporal punishment of children in the home.”³

1.2 Since the review, no law reform appeared to have been initiated with a view to explicitly prohibit corporal punishment of children in all settings. The Offences and Domestic Violence Act 2018 was passed and gazetted in July 2018. The definition of “domestic violence” includes physical abuse as well as emotional, verbal and psychological abuse (section 77 (1) (a) and (c)). The Act does not prohibit all corporal punishment of children.

1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Eswatini. We hope states will raise the issue during the review in 2021 and make a specific recommendation that Eswatini enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal section 14 of the Children’s Protection and Welfare Act 2012 and section 29(2) of the Constitution 2005, as a matter of urgency.

2. Legality of Corporal Punishment in Eswatini

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Eswatini is lawful in the home, alternative care settings, day care, schools and penal institutions. Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”; article 14 of the Children’s Protection and Welfare Act 2012 provides for “justifiable” discipline. These provisions should be repealed and the law should prohibit all corporal punishment, in the home, schools and all other settings where adults have parental authority over children.

2.1 **Home (lawful):** Corporal punishment is lawful in the home. Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”. Article 14 of the Children’s Protection and Welfare Act 2012 (in force July 2013) provides for “justifiable” discipline: “(1) A child has a right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child. (2) A child should be disciplined in accordance with his age, physical, psychological, emotional and mental condition and no discipline is

² 13 July 2016, A/HRC/33/14, Report of the working group, para. 109(58)

³ 21 September 2016, A/HRC/33/14/Add.1, Report of the working group: Addendum, paras. 22, 23, 24

justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.” Article 18 of the Act states that parents/guardians have the responsibility to protect children from violence and abuse but does not prohibit all corporal punishment.

2.2 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012 (see under “Home”) and possibly other legislation.

2.3 **Day care (lawful):** Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012 (see under “Home”).

2.4 **Schools (lawful):** Corporal punishment is lawful under the Education Act 1982, the Education Rules 1977 and the provision for “lawful and moderate chastisement” in article 29(2) of the Constitution (see under “Home”). The Children’s Protection and Welfare Act 2012 does not prohibit corporal punishment in schools. In 2012, education legislation was being reviewed: we do not know if prohibition of corporal punishment has been proposed in this context. Eswatini has stated that the Education Sector Policy of 2011 protected children against corporal punishment⁴ – however the policy does not explicitly prohibit corporal punishment but instead “aims to promote a culture of positive discipline”. This is undermined by the above-quoted legislative provisions which allow corporal punishment in schools.

2.5 **Penal institutions (lawful):** Corporal punishment is lawful as a disciplinary measure for males in penal institutions under the Prisons Act 1964, the provisions for “lawful and moderate chastisement” in article 29(2) the Constitution 2005 (see under “Home”) and possibly the Reformatories Act 1921. It is not prohibited in the Children’s Protection and Welfare Act 2012.

2.6 **Sentence for crime (unlawful):** Corporal punishment is prohibited as a sentence for crime in article 161(2) of the Children’s Protection and Welfare Act 2012: “No sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child.” Article 126(5) states: “Corporal punishment and public humiliation shall not be elements of diversion.”

3) Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Eswatini and recommended it be explicitly prohibited in the juvenile justice system – in its concluding observations on the state party’s initial report in

⁴ 30 November 2016, Eswatini’s Initial Report on the African Charter on the Rights and Welfare of the Child, para. 106; see also [2018], CRC/C/SWZ/2-4, Second-fourth report, para. 84

2006.⁵

3.2 **HRC:** The Human Rights Committee recommended that corporal punishment is explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 2017.⁶

3.3 **CEDAW:** The Committee Against Torture has expressed concern at corporal punishment of children in Eswatini and recommended it be explicitly prohibited in all settings– in its concluding observations on the state party’s initial to second report in 2014.⁷

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⁵ 16 October 2006, CRC/C/SWZ/CO/1, Concluding observations on initial report, paras 36, 37, 67 and 68

⁶ [July 2017], CCPR/C/SWZ/CO/1, Concluding observations on initial report, Advance unedited version, paras. 50 and 51

⁷ 18 July 2014, CEDAW/C/SWZ/CO/1-2 Advance Unedited Version, Concluding observations on initial/second report, paras. 30 and 31