



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

SWAZILAND

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 12th session, 2011

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

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 (www.endcorporalpunishment.org) 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 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 as a matter of priority.

Summary

This briefing describes the legality of corporal punishment of children in Swaziland despite the recommendations of the Committee on the Rights of the Child. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including the home and as a sentence of the courts, and urge the Government to enact legislation to achieve this as a matter of priority.

1 Legality of corporal punishment in Swaziland

1.1 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*” (emphasis added). A Children’s Protection and Welfare Bill is under discussion: we have no up to date information on its content but the draft version in February 2010 did not explicitly prohibit corporal punishment in childrearing.

1.2 Corporal punishment is lawful in **schools** under the Education Act (1982), the Education Rules (1977) and the provision for “lawful and moderate chastisement” in article 29 of the Constitution (see above). As at February 2010 the draft version of the Children’s Protection and Welfare Bill did not explicitly prohibit corporal punishment in schools.

1.3 A 2005 nationwide survey of 2,366 children revealed high levels of corporal punishment in the home and at school: 18% reported being hit with the hand in the home during a two week period; 28% were beaten with objects such as sticks, belts, sjamboks and whips. In schools during the two weeks, 28% reported being hit with a hand, and 59% beaten with an object, most often sticks, canes, sjamboks and blackboard dusters. Other punishments included physical labour or physical (and often humiliating) activities causing pain and discomfort.¹

1.4 In the **penal system**, corporal punishment is lawful as a sentence for crime. Whipping may be ordered by the courts for male offenders under article 196(e) of the Criminal Procedure and Evidence Act (1938), and article 306 states that a male offender under 18 may be sentenced to “a moderate correction of whipping not exceeding fifteen cuts with a light cane” in lieu of or in addition to any other punishment. The Courts Act (1950) allows courts to impose any punishment recognised by Swazi law and custom, provided it is not repugnant to natural justice and humanity, but this is not interpreted as prohibiting corporal punishment. It was reported in 2004 that the High Court had placed a moratorium on judicial whipping and that the courts were no longer sentencing persons to corporal punishment.² However, according to Government figures, 388 males under 18 were sentenced to corporal punishment in 2003, 233 in 2004, and 235 in 2005.³ Corporal punishment is also lawful as a disciplinary measure for males in penal institutions – under the Prisons Act (1964), the Constitution (see above) and possibly the Reformatories Act (1921). As at February 2010, the draft Children’s Protection and Welfare Bill included prohibition of corporal punishment as a sentence of the courts, but we do not know if this is retained in the current draft.

1.5 Corporal punishment is lawful in **alternative care settings** under the Constitution (see above) and possibly other legislation. As at February 2010 the draft Children’s Protection and Welfare Bill did not explicitly prohibit corporal punishment in care settings.

¹ Clacherty, G., Donald, D. & Clacherty, A. (2005), *Children’s Experiences of Corporal Punishment in Swaziland*, Pretoria: Save the Children Sweden

² Interview with Magistrate Gama, Manzini Magistrates Court, 14 September 2004, reported in Kassan, D. & Gallinetti J. (2005), *Report on the legal status of corporal punishment and other forms of humiliating and degrading punishment of children in South Africa, Swaziland and Zambia*, Cape Town, Community Law Centre

³ CRC/C/SWZ/Q/1/Add.1, 17 August 2006, *Written replies by the Government of the Kingdom of Swaziland concerning the list of issues (CRC/C/SWZ/Q/1) received by the Committee on the Rights of the Child relating to the consideration of the initial report of the Kingdom of Swaziland (CRC/C/SWZ/1)*

2 Recommendations by human rights treaty monitoring bodies

2.1 Following examination of the state party's initial report in 2006, the **Committee on the Rights of the Child** expressed concern at the legality and practice of corporal punishment and recommended prohibition in all settings, including the home and as a sentence of the courts (CRC/C/SWZ/CO/1, Concluding observations on initial report, paras. 36, 37, 67 and 68).

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