



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

POLAND

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 1st session, 2007

From Peter Newell, Coordinator, Global Initiative

[*info@endcorporalpunishment.org*](mailto: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 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 also 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, setting a goal of 2009.

This briefing describes the gaps in prohibition in Poland, despite repeated recommendations to introduce prohibition by international and regional human rights mechanisms.

We hope the Review will highlight with concern Poland’s record of ignoring treaty body recommendations and strongly recommend that Poland introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

I: Legality of corporal punishment in Poland

The home

Corporal punishment has not been explicitly and unequivocally prohibited in the **home**. There is some controversy as to what exactly the law says. Article 40 of the Polish Constitution (1997) states: “No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited.” The government has stated that this ban “applies also to the relationships between parents and children” (Government Response to UN Study on Violence Against Children Questionnaire, May 2005).

But the Constitution also upholds the right of parents “to rear their children in accordance with their own convictions” (article 48.1) and “to ensure their children a moral and religious upbringing and teaching in accordance with their convictions” (article 53.5), and the Family and Guardianship Code (1964, amended 2000) states that a child should be obedient to parents (article 95.2). A commentary to article 95.2 of the Family and Guardianship Code suggests that this article permits the use of some corporal punishment by parents.¹ Although the Code does not explicitly prohibit corporal punishment, the Children’s Rights Ombudsman and other institutions are of the opinion that, if properly interpreted, article 95.2 of the Code does not allow any corporal punishment. Both the Constitution and the Code (article 95.3) state that parental authority must be executed in the child’s best interests.

Research indicates that there is a high level of support for, and use of, corporal punishment of children in childrearing. In a government-commissioned survey of over 1,000 people over the age of 15 in 2001, more than half (54%) considered beating children with a belt acceptable, and 77% felt it was acceptable to shout at and threaten children. Just under a half (44%) agreed that children are the property of their parents; 24% agreed with the statement “a child should be afraid of his/her parents, and there is no upbringing without beating”; 30% agreed with “the severe upbringing makes a child stronger and is beneficial for the child”; 27% agreed with “children deserve corporal punishments”.²

Schools and other settings

Corporal punishment is prohibited in **schools** and in the **penal system** (as a sentence for crime and as a disciplinary measure in penal institutions).

Corporal punishment is prohibited in **alternative care settings** under the Constitutional prohibition (see above), but we have been unable to confirm that this covers private institutions.

II: Recommendations by human rights treaty monitoring bodies

In 2002, following examination of the state party’s second report, the **Committee on the Rights of the Child** expressed concern that corporal punishment “is widely practised in the home, in schools and other institutions, such as prisons, and in alternative care contexts” (CRC/C/15/Add.194, para. 34) and recommended that the state party “expressly prohibit corporal punishment in the home, schools and all other institutions” (para. 35). The Committee had made similar recommendations following examination of the initial report in 1995, including prohibiting corporal punishment in the family by law (CRC/C/15/Add.31, para. 30).

In 2005, the **European Committee of Social Rights** concluded that the situation in Poland is not in conformity with article 17 of the European Charter because “corporal punishment in the home is not prohibited” (Conclusions XVII-2). The Committee stated:

“The Committee recalls that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It

¹ Ciepla, H. et al., 2002, *Kodeks rodzinny i opiekuńczy z komentarzem*, Warsaw: Wydawnictwo Prawnicze LexisNexis

² Reported in Government Response to UN Study on Violence Against Children Questionnaire, May 2005

considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law. The Committee notes that since corporal punishment is still socially accepted and there is no legislation prohibiting corporal punishment of children in the home, this situation cannot be considered to be in conformity with the Charter.”

The Committee had drawn a similar conclusion in 2003, stating (Conclusions XVI-2):

“Ministerial Regulations prohibit the corporal punishment of children in public schools. The Committee requests information about the situation in private schools and in institutions; it notes that the corporal punishment of children in the home is not prohibited. Therefore, the situation is not in conformity with the Charter in this respect....”