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 Belgium despite the repeated recommendations of the Committee on the Rights of the Child and other human rights treaty monitoring bodies. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including the home, and urge the Government to enact legislation to achieve this as a matter of urgency.
1 Legality of corporal punishment in Belgium

1.1 Corporal punishment is lawful in the home. The Civil Code (amended 1995) states that the parent-child relationship should be one of “mutual respect” (article 371), but this is not interpreted as prohibiting parental corporal punishment. A Constitutional amendment in 2000 (article 22 bis), concerning the protection of the child’s moral, physical and sexual integrity, was not regarded as changing the ways in which parental authority should be exercised. Provisions against violence and abuse in the Penal Code as amended by the Law Concerning the Penal Protection of Minors (2000) are not interpreted as prohibiting all corporal punishment in childrearing.

1.2 Corporal punishment is unlawful in schools under case law relating to provisions against assault in the Criminal Code, but there is no explicit prohibition in legislation.

1.3 Corporal punishment is unlawful in the penal system.

1.4 Regarding alternative care settings, there are decrees in some communities which prohibit corporal punishment in institutions for children and foster-care. In 2004 the Flemish government ratified the Decree to the minor’s statute regarding integral help to youth, which includes the prohibition of inhuman and degrading treatment and punishment (article 27) and of corporal punishment and mental violence (article 28). There is no explicit prohibition of corporal punishment in non-institutional childcare settings.

2 Recommendations by human rights treaty monitoring bodies

2.1 The Committee on the Rights of the Child has three times recommended that Belgium prohibit corporal punishment of children, including in the family, schools and institutions – in its concluding observations on the third/fourth report in 2010 (CRC/C/BEL/CO/3-4, paras. 7, 8, 39 and 40), on the second report in 2002 (CRC/C/15/Add.178, paras. 23 and 24) and on the initial report in 1995 (CRC/C/15/Add.38, para. 15).

2.2 In 2009, the Committee Against Torture recommended prohibition of corporal punishment of children in the family (CAT/C/BEL/CO/2, Concluding observations on second report, para. 24).

2.3 In 2007, the Committee on Economic, Social and Cultural Rights recommended prohibition of corporal punishment of children in the family (E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33).

2.4 The European Committee of Social Rights has twice concluded that the situation in Belgium is not in conformity with the European Social Charter and Revised Charter because corporal punishment in the home is not prohibited (Conclusions XVIII-1, 2007, and Conclusions XVII-2, 2005).