



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

SWITZERLAND

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 2nd session, 2008

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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 Switzerland, despite recommendation by the Committee on the Rights of the Child.

We hope the Review will highlight with concern Switzerland’s inadequate response to treaty body recommendations and strongly recommend that Switzerland 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 Switzerland

The home

Corporal punishment is lawful in the **home**. Articles 301-303 of the Civil Code (1907) oblige parents to direct their child's education, to determine the care and education to be given children "for their good". Under Swiss case law, this has included a "right of correction" ("droit de correction"), although explicit confirmation of parents' punishment rights was deleted from the Civil Code in 1978. A 2003 Federal Court judgment ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment (5 June 2003, ATF 129 IV 216ss).

Research in 2004 by Fribourg University commissioned by the Federal Social Insurance Office involved interviews with 1,240 parents with children under the age of 16 years and found that the use of corporal punishment by parents is in decline but smaller children are more often subjected to beatings than older ones. Based on the findings, the study estimates that 13,000 children under the age of 30 months have been slapped, nearly 18,000 have been pulled by the hair and around 1,700 hit with objects.¹

Schools and other settings

Corporal punishment is unlawful in **schools**. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances, but a ruling in 1993 stated that there can be no customary law that would allow teachers or other persons taking care of children to exercise corporal punishment against them (BGE 117 IV 18).

Corporal punishment is prohibited in the **penal system** and in **alternative care settings**.

II: Recommendations by human rights treaty monitoring bodies

In 2002, the **Committee on the Rights of the Child** expressed concern about the legal position on corporal punishment in schools and the absence of prohibition in the home (CRC/C/15/Add.182, Concluding observations on initial report, para. 32). The Committee recommended that the state party (para. 33):

"... explicitly prohibit all practices of corporal punishment in the family, schools and in institutions and conduct information campaigns targeting, among others, parents, children, law enforcement and judicial officials and teachers, explaining children's rights in this regard and encouraging the use of alternative forms of discipline in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28, paragraph 2."

¹ Schöbi, D. & Perrez, M., 2004, *Bestrafungsverhalten von Erziehungsberechtigten in der Schweiz: Eine vergleichende Analyse des Bestrafungsverhaltens von Erziehungsberechtigten 1990 und 2004*, Universität Fribourg (in German)