



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

IRELAND

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

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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 (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 Ireland despite the repeated recommendations of the Committee on the Rights of the Child and the findings of the European Committee of Social Rights. We hope the Review will highlight the importance of prohibiting all corporal punishment of children in all settings, including in the home and all forms of alternative care, and urge the Government to enact legislation to achieve this as a matter of priority.

1 Legality of corporal punishment in Ireland

1.1 Corporal punishment is lawful in the **home**. The common law right to use “reasonable and moderate chastisement” in disciplining children was confirmed in article 37 of the Children Act (1908). The Children Act (2001) repealed article 37, but removal of the common law defence requires an explicit provision in addition to this repeal. The Government has stated a long term commitment to prohibition but has given no indication of timing.

1.2 A Government-commissioned telephone survey of 1,353 parents asked them to self-report on the discipline methods they had used in childrearing during the past year. A quarter (25%) reported physically punishing their child, most frequently smacking on the bottom (16%) and on the hand, arm or leg (11%), and more commonly on children aged 2-9. Just under half (48%) said they had shouted or yelled at a child in the past year; 27% said they had threatened to smack or hit the child but had not carried it out.¹

1.3 Corporal punishment is prohibited in **schools**. In 1982, Department Circulars 9/82 and 5/82 stated that it should not be used, and teachers’ immunity from criminal prosecution was removed in article 24 of the Offences Against the Person (Non Fatal) Act (1997), which states: “The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished.”

1.4 In the **penal system**, corporal punishment is unlawful as a sentence for crime under article 12 of the Criminal Law Act (1997). It is prohibited as a disciplinary measure in penal institutions, including industrial and reformatory schools, in article 12 of the Criminal Law Act and article 201 of the Children Act.

1.5 Corporal punishment is prohibited in some, but not all, **alternative care settings**. It is explicitly prohibited in pre-school establishments in Regulation 8 of the Child Care (Pre-School Services) Regulations (1996), but under section 58 of the Child Care Act (1991), childminders caring for children of relatives, children of the same family or not more than three children of different families are exempt from these regulations. Guidance (National Standards) relating to foster care states that corporal punishment should not be used, but there is no prohibition in legislation. Similarly, Health Boards recommend the avoidance of corporal punishment in residential services in favour of “reasonable and humane sanctions”, and the National Standards for Children’s Residential Centres state that young people should not be subjected to humiliating or degrading treatment, but there is no prohibition of corporal punishment in law. The Child Care (Special Care) Regulations (2004) regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit “corporal punishment or any form of physical violence”.

2 Recommendations by human rights treaty monitoring bodies

2.1 The **Committee on the Rights of the Child** has twice recommended explicit prohibition of corporal punishment in the family, together with relevant public education and awareness raising and the promotion of positive, non-violent parenting – in its concluding observations on the state party’s second report in 2006 (CRC/C/IRL/CO/2, paras. 39 and 40) and on the initial report in 1998 (CRC/C/15/Add.85, paras. 16 and 39).

¹ Halpenny, A. M., Nixon, E. & Watson, D. (2010), *Parenting Styles and Discipline: Parents’ Perspectives, Summary Report*, Dublin: The Stationery Office / Office of the Minister for Children and Youth Affairs

2.2 In 2001, the **European Committee of Social Rights** deferred its conclusion on the situation in Ireland pending further information regarding the legality of “reasonable chastisement” of children (Second Addendum to Conclusions XV-2). Following a complaint against Ireland brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded that Ireland was in violation of Article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings (Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005).

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