

SOUTH AFRICA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 13th session, 2012

*From Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

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.

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 as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, 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, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in South Africa, despite recommendations made by human rights treaty bodies and during the review of South Africa by the Human Rights Council in the first cycle of the UPR.

We hope the Human Rights Council will highlight with concern South Africa’s record of ignoring treaty body recommendations and strongly recommend that legislation be introduced as a matter of urgency to prohibit corporal punishment of children in the home. The planned review of the Children’s Act provides one opportunity for law reform.

1 The initial review of South Africa by the Human Rights Council

1.1 South Africa was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). The issue of corporal punishment was raised in advance questions by Finland and Sweden, and the following recommendation was made during the review:

“Recommended to South Africa to commit not only to removing the defence of reasonable chastisement but also to criminalizing corporal punishment with the concomitant pledges towards raising awareness and providing the necessary resource to support parents in adopting positive and alternative forms of discipline (Slovenia)”¹

1.2 The Government did not clearly accept or reject the above recommendation. Rather, statements were made during the review concerning the prohibition of corporal punishment in the penal system.² At a later date, the Government asserted that the issue of corporal punishment was being addressed under domestic violence legislation.³ It was acknowledged that corporal punishment continued to be used in schools, despite prohibition.⁴

1.3 The legality of corporal punishment of children in South Africa has not changed since the review in 2008. While it is prohibited in schools, the penal system and alternative care settings, it continues to be lawful in the home (see below).

2 Legality of corporal punishment in South Africa

2.1 Corporal punishment is lawful in the **home**. Under common law, parents have the power “to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (*R v Janke and Janke* 1913 TPD 382). This power may be delegated to a person acting in the parent’s place, though not in the case of teachers. Provisions against violence and abuse in the Children’s Act (2005), the Constitution (1996) and the Domestic Violence Act (1998) are not interpreted as prohibiting all corporal punishment in childrearing.

2.2 When the Children’s Act was amended in 2007, a clause which would have prohibited corporal punishment in the home was removed from the Amendment Bill before it was passed by Parliament, pending further investigation. As at November 2011, new legislation which would achieve prohibition has not been drafted. The Children’s Act is due to be reviewed in 2013.

2.3 Research has revealed a high prevalence of corporal punishment of children by parents. In 2003, the first national survey of attitudes to childrearing and the use of corporal punishment by caregivers surveyed 952 parents. Over half (57%) reported using corporal punishment, most commonly on 3 year-olds; 33% inflicted severe corporal punishment (beating with a belt or stick), most commonly on 4 year-olds.⁵

¹ 23 May 2008, A/HRC/8/32, Report of the Working Group on the Universal Periodic Review: South Africa, para. 67(1)

² 23 May 2008, A/HRC/8/32, Report of the Working Group on the Universal Periodic Review: South Africa, para. 30

³ 1 September 2008, A/HRC/8/52, Report of the Human Rights Council on its eighth session, para. 567

⁴ 1 September 2008, A/HRC/8/52, Report of the Human Rights Council on its eighth session, para. 568; see also 15 April 2008, National report submitted to the Universal Periodic Review, para. 79

⁵ Dawes, A. et al., 2004, *Partner violence, attitudes to child discipline & the use of corporal punishment: A South African national survey*, Cape Town: Child Youth & Family Development, Human Sciences Research Council. See also Clacherty, G., Donald, D. & Clacherty, A., 2005, *South African Children’s Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden

2.4 Corporal punishment is unlawful in **schools** under the South African Schools Act (1996). Research has documented a decline in its use but it continues to be prevalent. For example, a survey by Statistics SA revealed that the use of corporal punishment in schools declined from 17% of students experiencing corporal punishment in 2009 to 14% in 2010. However, in some areas its use increased: in the Northern Cape from 5.6% to 17.5%, and in the North West from 12.7% to 21.7%.⁶ In the National Schools Violence Study by the Centre for Justice and Crime Prevention published in 2008, which examined the experiences of almost 13,000 learners in primary and secondary schools, 70.1% of primary school learners and 47.5% of secondary school learners reported having been physically beaten, caned or spanked.⁷

2.5 Corporal punishment is prohibited in the **penal system** – as a sentence for crime and as a disciplinary measure in penal institutions – and in **alternative care settings**.

3 Recommendations by human rights treaty monitoring bodies

3.1 In its concluding observations on the state party's initial report in 2000, the **Committee on the Rights of the Child** expressed concern at the lack of prohibition of corporal punishment in the family and at its continued use in schools and care institutions, and recommended prohibition by law of corporal punishment in the family.⁸

3.2 In 2006, the **Committee Against Torture** expressed concern at the continued use of corporal punishment in schools and other public institutions and recommended that the state party “ensure that legislation banning corporal punishment is strictly implemented, in particular in schools and other welfare institutions for children, and establish a monitoring mechanism for such facilities”.⁹

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
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⁶ Reported in *News24*, 5 May 2011

⁷ Burton, P. (2008), *Merchants, Skollies and Stones: Experiences of school violence in South Africa*, Cape Town: Centre for Justice and Crime Prevention

⁸ 23 February 2000, CRC/C/15/Add.122, Concluding observations on initial report, paras. 3, 8 and 28

⁹ 7 December 2006, CAT/C/ZAF/CO/1, Concluding observations on initial report, para. 25