

## **SWITZERLAND**

### **BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 14<sup>th</sup> session, 2012**

*From Dr Sharon Owen, Research Coordinator, Global Initiative,  
[info@endcorporalpunishment.org](mailto: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 Switzerland, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and during the initial UPR in 2008.**

**We hope the Human Rights Council will note with concern the repeated and unfulfilled treaty body recommendations on corporal punishment and Switzerland’s failure to enact prohibition despite its acceptance of the recommendation on this issue made during the UPR in 2008. We hope states will raise the issue during the review in 2012 and recommend to Switzerland that legislation is enacted to explicitly prohibit corporal punishment of children in the home as a matter of priority.**

## **1 The initial review of Switzerland by the Human Rights Council (2008)**

1.1 Switzerland was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 2). The issue of corporal punishment of children was raised in an advance question by Sweden and was included in the compilation of UN information<sup>1</sup> and the summary of stakeholders' information.<sup>2</sup> The following recommendation was made:

“To consider the explicit prohibition of all practices of corporal punishment of children (Italy).”<sup>3</sup>

1.2 During the review the Government stated that “Switzerland will not adopt further legislation on corporal punishment” but that “further consideration to this will be given”.<sup>4</sup> The Government subsequently accepted the recommendation but indicated that existing law is sufficient, stating that “degrading treatment of children and any corrective methods that harm the child’s physical, psychological or spiritual integrity are prohibited by judgement of the Federal Tribunal” and that “the Criminal Code punishes assault in general and also stipulates that repeated assault against children by their guardians or supervisors is automatically prosecuted”.<sup>5</sup> The mid-term report of Switzerland, dated May 2011, notes that there has been no change in the position since May 2008 and confirms, in fact, that “to this day the Federal Court has not yet explicitly condemned corporal punishment in the family”.<sup>6</sup>

1.3 Prohibiting corporal punishment is a key obligation under the Convention on the Rights of the Child and other international human rights instruments, though it is an obligation frequently ignored or evaded by governments. In 2007 the Committee for Legal Affairs adopted parliamentary initiative 06.419 to prohibit all corporal punishment, but this was defeated and proposed new legislation was rejected by Parliament in December 2008. To our knowledge there have been no further moves towards enacting legislation which would prohibit corporal punishment. Specifically challenging Switzerland on this issue during its second UPR would reflect the seriousness with which the Human Rights Council views violations of the rights of all persons, including children.

## **2 Legality of corporal punishment in Switzerland**

2.1 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. The Penal Code (1937) punishes assault (article 126) and specifies that repeated assault of a child by a person having care of a child will automatically lead to prosecution. 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).

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<sup>1</sup> 7 April 2008, A/HRC/WG.6/2/CHE/2, Compilation of UN information, para. 20

<sup>2</sup> 3 April 2008, A/HRC/WG.6/2/CHE/3, Summary of stakeholders’ information, para. 22

<sup>3</sup> 28 May 2008, A/HRC/8/41, Report of the Working Group on the Universal Periodic Review: Switzerland, para. 57(23)

<sup>4</sup> 28 May 2008, A/HRC/8/41, Report of the Working Group on the Universal Periodic Review: Switzerland, para. 55

<sup>5</sup> 25 August 2008, A/HRC/8/41/Add.1, Report of the Working Group on the Universal Periodic Review: Switzerland, Addendum: Responses to the recommendations within the framework of the universal periodic review, para. 25

<sup>6</sup> Federal Department of Foreign Affairs, 27 May 2011, Implementation of recommendations addressed to Switzerland after the UPR: Interim Report (May 2011), p. 7

2.2 Corporal punishment is unlawful in **schools** under federal law, pursuant to cantonal legislation. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances, but a ruling in 1993 stated 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) and its lawful use is considered impossible under existing legislation.

2.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime. It is not available as a sentence under the Criminal Code, the Federal Act on the criminal status of minors (in force 2007) or the Constitution. It is considered unlawful as a disciplinary measure in penal institutions but there appears to be no explicit prohibition.

2.4 Corporal punishment is considered unlawful in **alternative care settings**, and Federal Court judgment BGE 117 IV 18 applies (see above), but we have not identified an explicit prohibition in law.

2.5 Research in 2004 by Fribourg University commissioned by the Federal Social Insurance Office involved interviews with 1,240 parents with children under 16. It 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 estimated that 13,000 children under the age of 30 months have been slapped, nearly 18,000 have been pulled by the hair and about 1,700 hit with objects.<sup>7</sup>

### **3 Recommendations by human rights treaty monitoring bodies**

3.1 In 2002, the **Committee on the Rights of the Child** recommended that corporal punishment of children be explicitly prohibited in all settings in Switzerland, including in the home, schools and other institutions.<sup>8</sup>

3.2 In 2010, the **Committee Against Torture** stated that Switzerland should prohibit corporal punishment by law and urged the Government to re-launch parliamentary initiative 06.419 to this end.<sup>9</sup>

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*  
[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org); [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)  
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<sup>7</sup> 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); English information from "Small children target of parental beatings", *swissinfo*, 24 January 2005

<sup>8</sup> 7 June 2002, CRC/C/15/Add.182, Concluding observations on initial report, paras. 32 and 33

<sup>9</sup> 25 May 2010, CAT/C/CHE/CO/6, Concluding observations on sixth report, para. 23