

CANADA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 16th session, 2013

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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 Canada, despite the Government’s acceptance of the recommendation made during the UPR in 2009 to prohibit by law all types of violence against children in accordance with the Convention on the Rights of the Child and the repeated recommendations to prohibit corporal punishment made by the Committee on the Rights of the Child.

We hope the Working Group will note with concern the legality of corporal punishment in Canada. We hope states will raise the issue during the review in 2013 and recommend to Canada that legislation is enacted to explicitly prohibit corporal punishment of children in the home and all forms of care as a matter of priority.

1 The initial review of Canada by the Human Rights Council (2009)

1.1 Canada was reviewed in the first cycle of the Universal Periodic Review in 2009 (session 4). The issue of corporal punishment was raised in an advance question by Sweden and was included in the summary of stakeholders' information.¹ No specific recommendation was made concerning corporal punishment but the Government accepted the following recommendation:²

“Implement in national legislation the prohibition and criminalization of all types of violence against women and children, specially indigenous women and children, in accordance with the commitments acquired in the corresponding Conventions (Bolivia)”

1.2 The Committee on the Rights of the Child has consistently interpreted the Convention on the Rights of the Child as requiring explicit prohibition of all corporal punishment of children in all settings, including the home. The Committee first raised the issue specifically with Canada in 1995, following examination of the state party's initial report, recommending that corporal punishment of children in families be prohibited.³ In its concluding observations on the state party's second report in 2003, the Committee acknowledged efforts to discourage the use of corporal punishment but expressed concern that legislation had not been enacted to prohibit it: the Committee recommended that Canada “adopt legislation to remove the existing authorisation of the use of ‘reasonable force’ in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed”.⁴ At the time of drafting this briefing, the Committee is examining Canada's third periodic report – a report in which the Government attempts to justify retaining the legal defence for the use of corporal punishment in childrearing.⁵

1.3 Despite a sustained and widely supported campaign for prohibition of all corporal punishment and numerous bills which would repeal the legal defence for corporal punishment from the Criminal Code (section 43), corporal punishment of children in Canada remains lawful in the home and in some alternative care settings.

2 Legality and practice of corporal punishment in Canada

2.1 With regard to the **home**, section 43 of the Criminal Code (“Protection of Persons in Authority”) states: “Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.” A Supreme Court ruling on 30 January 2004 stated that this section justifies only “minor corrective force of a transitory and trifling nature” and that it rules out corporal punishment of children under the age of two years or over the age of 12 years, as well as degrading, inhuman or harmful conduct, discipline using objects such as rulers or belts and blows or slaps to the head (*Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113).

¹ 24 November 2008, A/HRC/WG.6/4/CAN/3, Summary of stakeholders' information, para. 24

² 5 October 2009, A/HRC/11/17, Report of the Working Group, para. 86(34)

³ 20 June 1995, CRC/C/15/Add.37, Concluding observations on initial report, paras. 14 and 25

⁴ 27 October 2003, CRC/C/15/Add.215, Concluding observations on second report, paras. 4, 5, 32, 33 and 45

⁵ [Received 20 November 2009], Third/fourth state party report to the Committee on the Rights of the Child, para. 63

2.2 In **schools**, the 2004 Supreme Court judgement stated that teachers may not use corporal punishment, although they may use reasonable force to remove a child from a classroom or to secure compliance with instructions. This prohibition is not yet reflected in the laws of all provinces and territories.

2.3 In the **penal system**, corporal punishment is unlawful as a sentence for crime under the Criminal Code: the relevant provisions were repealed in 1972. Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, though prohibition is not explicit in all provinces/territories.

2.4 With regard to **alternative care settings**, corporal punishment is prohibited in child care in all states and territories except New Brunswick. There is no explicit prohibition of corporal punishment in foster care in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon.

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