

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



10 May 2004

**Collective Complaint No. 20/2003
Organisation against Torture (OMCT)
v. Portugal**

Case Document No. 5

**ADDITIONAL INFORMATION FROM THE
WORLD ORGANISATION AGAINST TORTURE (OMCT)
ON THE MERITS**

registered at the Secretariat on 5 May 2004

Collective complaint 20/2003

World Organisation against Torture v Portugal

Response of the World Organisation against Torture to the written observations submitted by the Government of Portugal; please see also separate document including general additional explanations and information on the merits of the complaint.

Summary

1. Article 17 of the Revised Social Charter requires states "... to take all appropriate and necessary measures designed: ... (1(b)) to protect children and young persons against negligence, violence or exploitation..." [our emphasis]
2. The European Committee of Social Rights has emphasised in its case law that "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact".¹ The Government's Observations do not dispute that Article 17 of the Revised Social Charter requires legislative and other action to effectively prohibit all corporal punishment of children. The Observations focus on Portuguese statute and case law, but not on the reality of the situation facing Portuguese children, and the general public's understanding of the law.
3. The Observations refer first to general provisions in the Constitution, to provisions prohibiting assault in the Criminal Code and then to interpretative decisions of the Supreme Court. These do not add up to effective prohibition of all corporal punishment, because none of them, individually or collectively, sends a clear and explicit message to parents, children and the population at large that all corporal punishment and all other forms of degrading treatment and punishment of children are unlawful.
4. We concede, because it does not affect the validity of the complaint, that the legal framework does not condone assaults, including assaults which do not cause physical harm. We already noted in the complaint the positive interpretation of Portuguese law by the Supreme Court (9 February 1994; also referred to in the Government's Observations, page 4). But this isolated decision has not been well-publicised and is not widely known in Portugal. The case involved a blow to the face of a 15 year-old which would be regarded as abusive behaviour rather than "justifiable" correction even in legislations which still explicitly uphold the right of parents to use corporal punishment.
5. Given the widespread and traditional acceptance of corporal punishment in its lighter forms as a legitimate form of discipline of children in Portugal, these non-explicit legal measures and this judgment do not send a clear message to parents,

¹ see, eg, Decision on the Merits, Complaint 1 1998, International Commission of Jurists v Portugal, para. 32

children and others that all corporal punishment is unlawful. In the complaint, we emphasised that there is no explicit prohibition of all corporal punishment by parents, which is not disputed in the Government's Observations. The Observations are aimed at explaining "how the Portuguese legislation does, in fact, prohibit all forms of corporal punishment of children..." (page 1). They succeed only in explaining how the Portuguese legislation may be interpreted as prohibiting all corporal punishment.

6. The Government's Observations do not refer to any activities by the Government aimed at telling parents and children that the current legal framework prohibits all corporal punishment. We are not aware of significant Government-sponsored activities aimed at discouraging all corporal punishment and promoting other non-violent and positive forms of discipline. The annexed letter from the UNICEF National Committee for Portugal supports our view that an explicit prohibition of all corporal punishment in the Civil Code would provide an appropriate basis for awareness-raising and public and parent education. We have been unable to find any substantial research studies into violence against children in the family in Portugal. It was for this reason that an opinion poll was commissioned on our behalf in April 2004 to investigate public/parental attitudes to the use of milder forms of corporal punishment, and public/parental knowledge of the relevant law. This found that overall, eight in ten (83 per cent) of Portuguese adults believe it is acceptable to smack their children. One in seven believe it is always acceptable, in disciplinary situations, for parents to smack their children. A further two thirds believe that there are some circumstances where it is acceptable for parents to smack their children. Just 13 per cent believe it is unacceptable for parents to smack their children under any circumstances (see full report in Annex).
7. The survey also found that less than two in five Portuguese adults believe the law does not allow parents to smack their children. A further 21 per cent "don't know". 42 per cent believe the law allows smacking. Also those aged 16 – 24 are more likely than those aged 55 plus to believe the law allows parents to smack their children (52 per cent vs. 35 per cent; see full report in Annex).
8. We highlight, as we did in the complaint, the findings and recommendations of the Committee on the Rights of the Child in 2001, having examined Portugal's second report and reviewed existing legal provisions:
"Noting its 1995 concluding observations, the Committee is concerned that corporal punishment continues to be practised within the family, there is a lack of legislation prohibiting such punishment, and that insufficient measures have been adopted to prevent corporal punishment in this context.
"The Committee recommends that the State party:
 - a) *adopt legislation prohibiting corporal punishment in the family and in any other contexts not covered by existing legislation*
 - b) *develop mechanisms to end the practice of corporal punishment including, inter-alia, the use of information campaigns targeting parents, teachers and children*
 - c) *promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society*

d) develop mandatory reporting systems for professionals working with children toward the detection of the practice of corporal punishment in the family...

(12 October 2001, CRC/C/15/Add.162, paras. 26 and 27)

9. Without an explicit prohibition of corporal punishment and of any other forms of degrading punishment or treatment in the Civil Code, covering parents and all others with care or control of a child, linked to widespread awareness-raising and public education, Portugal is not providing effective protection and remains not in conformity with article 17 of the Revised Social Charter. Legislation applying to all institutions, state and private, which include children and also to foster-care and all forms of day-care should be reviewed to ensure that they explicitly prohibit all corporal punishment and all other forms of degrading punishment or treatment of children. These are “appropriate and necessary” measures in the terms of the article.
- 10. We therefore ask the Committee to uphold the complaint and to emphasise the urgency of providing children as a particularly vulnerable group with effective legal protection and necessary other linked awareness-raising and educational measures.**

Comments on the Government’s interpretation of the law:

The Constitution:

11. The provisions quoted (articles 36 and 69) are written in very general terms, like many other constitutions, and certainly do not amount and would not be understood by parents and others as amounting to a prohibition of all corporal punishment. The reference to protection against “abuse of authority” does not define what would be considered “abuse” and confirms the concept of “authority” rather than, for example, that of “responsibility” within the family and institutions; “authority” is traditionally associated with parental freedom to use violent punishments.

The Criminal Code:

12. In their “conclusion” (page 8), the Government’s Observations state that the Criminal Code has a general provision on “physical punishments”. In fact, the Code is like any other country’s criminal code, prohibiting “assault”. The Code does not address punishment specifically, nor punishment by parents; it addresses assault. The traditional acceptance of corporal punishment as a normal method of discipline, confirmed by the survey commissioned on our behalf (see para. 6 and Annex) has led parents and others not to consider it as assault or violence. So while Portuguese society would know that it is unlawful under the Criminal Code to assault another adult, slapping a child as a disciplinary measure is considered in an entirely different light: fewer than two out of five Portuguese adults believe the law does not allow parents to smack their children. Two of the Supreme Court judgments quoted by the Government (18 December 1991 and 21 January 1999) do not specifically refer to children and so are not directly relevant to the complaint (the Court could have interpreted the law differently if it had been dealing with an assault of a child in the context of “discipline”). But we do again acknowledge the positive interpretation of the law in the Supreme Court judgment of 9 February 1994. While this has been published in the Official Gazette, it has not been widely disseminated.

13. The Government (page 5) suggests that OMCT is proposing the introduction of a provision dealing specifically with corporal punishment in the Criminal Code, and describes this as “dangerous and contra productive”. The complaint does not propose this. We state that “The current state of the Civil and Criminal Codes does not send a clear message to parents and others that all corporal punishment is prohibited...”. We conclude that Portugal is not in compliance with Article 17 because it has not “explicitly and effectively prohibited all corporal punishment of children”. What other member states have done with advantage, having ensured that there is no defence or justification for corporal punishment in the Criminal Code, is to add an explicit prohibition to the family or civil code and use that as the basis for awareness-raising and public and parent education (see general explanations and information attached below).

The Civil Code:

14. The provisions quoted by the Government do not deliver any sort of message to parents concerning forms of discipline or corporal punishment. We accept that since 1977 there has been no rule conferring a right or functional power to discipline children using corporal punishment and that the Civil Law is silent on this matter, although the persisting concept of “parental authority” and the conditional obligation on children to obey their parents provides no discouragement of corporal punishment and other forms of degrading treatment or punishment. The 1977 repeal, while of course welcome, is a “silent” reform that simply removes a provision without replacing it with any explicit message. In view of the traditional approval of parental corporal punishment (demonstrated by the survey commissioned on our behalf), explicit prohibition in the Civil Law is, in terms of article 17, both appropriate and necessary.

The Pupil’s Statute:

15. As the Government notes (page 6), “other different legal instruments stipulate the prohibition of the use of any form of corporal punishment against children”. Article 24(3) of this law is not, as suggested by the Government, entirely explicit (“no disciplinary measure may, in any form, harm the pupil’s physical, psychic or moral integrity nor be of a pecuniary nature”), although it is a great deal more explicit than any provisions in the Civil Code referring to parental authority. Aside from the reference to pecuniary measures, the provision focuses on the effect (harm) of the discipline, not the nature of it. It appears there is not, at present, any official guidance interpreting article 24(3) as prohibiting corporal punishment.
16. It is significant that, despite the existence of the general constitutional principles and the Criminal Code, it has been found necessary as a matter of public policy to have further, more explicit provisions on permitted disciplinary measures in legislation applying to schools. Schools are in the “public” sphere, subject to various forms of inspection and to a degree of public and parental scrutiny. The acceptance of the need for explicit limitations on disciplinary measures here serves to underline very clearly the even greater need for explicit legislation in the Civil Code to prohibit all corporal punishment and all other degrading punishment and treatment by parents in the home. In the “private” and unsupervised sphere of the family home, in Portugal

and throughout Europe and most societies worldwide, parents have traditionally believed themselves to have a right to use physical discipline.

The Law on Educational Guardianship:

17. This section of the Government's Observations (page 6) reveals that in the law on educational guardianship, article 188 explicitly states that disciplinary measures in what are termed "educational centres" may not include corporal punishment. Again, this welcome provision serves to underline the absence of any equivalent explicit prohibition of corporal punishment in the Civil Code applying to family relations.

Law applying to other institutions and forms of alternative care

18. We note that the Government's observations do not detail any legislation expressly prohibiting corporal punishment in other state and private institutions, in foster-care, or in the various forms of pre-school day care which may be provided in institutions or in the family home. We have reviewed various laws applying to these sectors. It appears that in the Pupils' Statute, article 3.2 extends the scope of this law, including article 24.3, to cover certain forms of pre-school education. We have also reviewed Law no. 5/97 (10 February) regarding pre-school education; Decree-Law no. 542/79 (31 December; "Kindergarten Statute"); Regulation of the Ministry of Employment and Social Security no. 5/85 (18 January; requirements for granting licences for kindergarten activities); Decree-Law no. 158/84 (17 May; regulating babysitting and family kindergarten activities): these contain no provisions prohibiting corporal punishment or other forms of degrading punishment or treatment.

[The World Organisation Against Torture wishes to acknowledge with thanks the assistance provided by the law firm of Noronha e Associados - Sociedade de Advogados, Av. Eng. Duarte Pacheco, torre 2, piso 6, sala 3, 1070-102 Lisbon, for the extensive research it undertook of Portuguese Law, coordinated by Vera Helena de Moraes Dantas and Ricardo Soares Domingos.]

ANNEX A

Report on Research Study “Attitudes towards smacking children” in Portugal, April 2004

Introduction

This summary report contains the findings of a survey among the general public in Portugal, conducted by Market & Opinion Research International (MORI) for the Association for the Protection of All Children Ltd.

Two questions were placed on an Omnibus survey, and a nationally representative sample of adults (aged 18+) was interviewed. A total of 809 telephone interviews were carried out using CATI (Computer Assisted Telephone Interviews), between 5 and 8 April 2004.

Presentation and Interpretation of the Data

Results are presented as percentages. Where percentages do not add up to 100%, this may be due to rounding of figures or where respondents were able to provide more than one answer to a question.

As a sample of the population rather than the whole population was interviewed, results are subject to sampling tolerances, and not all differences between subgroups may be statistically significant. In the computer tables, sub groups (such as gender, age) are represented with an alphabetical letter. Statistically significant differences between sub groups are displayed by a letter next to the percentage in the corresponding column.

An asterisk () in the table denotes a value of less than 0.5%, but greater than zero.*

Publication of the Data

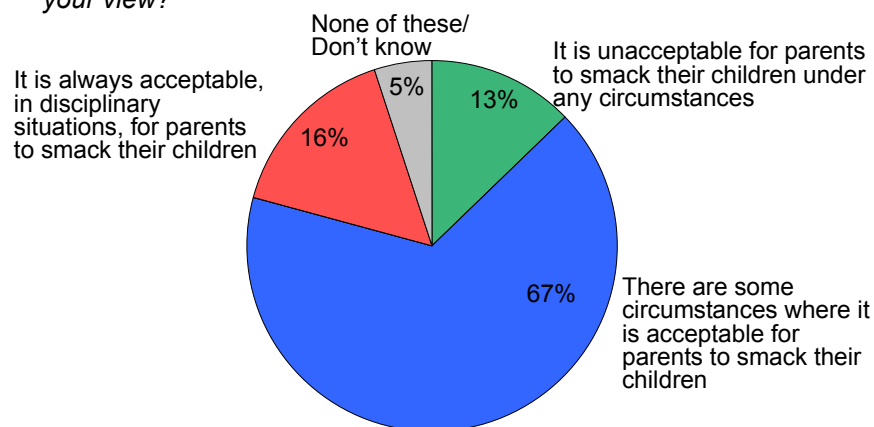
MORI's Standard Terms and Conditions apply to this study, as to all those that we undertake. No press release or publication of the findings from this study shall be made without the prior approval of MORI. Such approval will only be refused on the grounds of inaccuracy or misrepresentation of the research findings.

Summary of Findings

- Overall, eight in ten (83%) Portuguese adults believe it is acceptable to smack their children. One in six believe it is always acceptable, in disciplinary situations, for parents to smack their children. A further two-thirds believe that there are some circumstances where it is acceptable for parents to smack their children.
- Just over one in ten are against the idea, believing that it is unacceptable for parents to smack their children under any circumstances.

Attitudes towards Smacking Children

Q We would like to ask you some questions about parents' rights to smack their children. Which, if any of the following statements comes closest to your view?



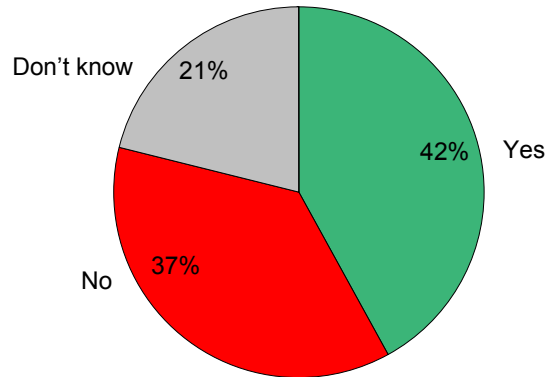
Base: All respondents (809)

Source: MORI

- Portuguese ABC1s are more likely than C2Ds to believe there are some circumstances where it is acceptable for parents to smack their children (72% vs. 62%).
- Those aged 65 and over are more likely than younger age groups to believe it is unacceptable, under any circumstances, for parents to smack their children (20% among those ages 65+ vs. 12% among those aged 18-44).
- Beliefs are fairly divided as to whether the law in Portugal allows parents to smack their children or not. Two in five believe the law allows parents to smack their children, while slightly fewer believe this is not the case. One in five say they are unsure.

National Laws on Smacking Children

Q Do you think that the law in Portugal allows parents to smack their children or not?



Base: All respondents (809)

Source: MORI

- Those from higher social classes are more likely than those from the lower social classes to believe the law does allow parents to smack their children (50% vs. 40%). Those aged 16-24 are also more likely than those aged 55+ to believe the law allows parents to smack their children (52% vs. 35%).

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Janette Henderson

Annabel Cooney

Sampling Tolerances

When only a sample of a population has been interviewed, we cannot be certain that the figures obtained are exactly those we would have found had everybody been interviewed (the 'true' values). However, for any percentage given, we can estimate 'confidence levels' within which the true values are likely to fall. For example, on a question where 30% of the people in a sample of 1,000 respond with a particular answer, the chances are 95 in 100 that this result would not vary by more than three percentage points from complete coverage of the entire population using the same procedures. However, the 'actual' result (95 times out of 100) is statistically more likely to be closer to the result obtained from the survey than to be anywhere between 27% and 33%. The following table shows that sampling tolerances vary with the size of the sample and the percentages involved.

Approximate sampling tolerances applicable to percentages at or near these levels

	10% 90% ±	or	30% 70% ±	or	50% ±
809	2		3		3

Source: MORI

Tolerances are also involved in the comparison of results from different parts of the sample and study. In other words, a difference must be of at least a certain size to be considered statistically significant. The following is a guide to these sampling tolerances.

Differences required for these percentages	10% 90%	or	30% 70%	or	50%
Children in household (230 vs. 579)	5		7		8
Male vs. female (375 vs. 434)	4		6		7

Source: MORI

These are the questions used in this survey in Portuguese:

Vamos agora fazer algumas perguntas sobre os direitos que os pais têm na educação dos seus filhos

1) Das seguintes frases que lhe vou referir qual delas melhor reflecte o seu ponto de vista:

- É inaceitável os pais darem uma bofetada ou uma palmada nos seus filhos seja qual for a circunstância ou a situação
- Nalgumas circunstâncias ou situações é aceitável que os pais dêem uma bofetada ou uma palmada aos seus filhos
- É sempre aceitável que em situações de indisciplina dos seus filhos os pais lhes dêem uma bofetada ou uma palmada
- Nenhuma Destas
- Ns/Sem opinião

2) A lei portuguesa permite que os pais dêem uma bofetada/uma palmada aos seus filhos , ou não ?

- Sim
- Não
- Não Sabe

ANNEX B

See letter from UNICEF National Committee for UNICEF, in separate attachment

Collective complaint 20/2003

World Organisation against Torture v Portugal

Additional general explanations and information on the merits of the complaint

1. This and other similar complaints (numbers 17-21/2003) submitted by the World Organisation Against Torture concern the human rights of children – who are particularly vulnerable people – to effective protection from all corporal punishment and from any other forms of degrading punishment or treatment of children, within the family and all other settings.
2. In all European countries, there has been a common tradition of corporal punishment being regarded as an acceptable and lawful form of discipline, punishment or control of children. If one goes back centuries, this applied also to “discipline” of wives by their husbands and of servants and apprentices by their masters. Corporal punishment is not simply a particular category of violence against children; its significance is that unlike any other form of inter-personal violence, it still remains in a majority of member-states to varying degrees lawful, or perceived as lawful, common and socially approved.
3. Hitting people breaches their rights to respect for their human dignity and physical integrity. Children are smaller, more fragile people. They are equal holders of human rights. But the acceptance that violent and humiliating forms of discipline breach fundamental human rights - including, where corporal punishment remains explicitly lawful, the right to equal protection under the law - has been relatively recent. It is not easy for children, unenfranchised and generally disempowered, to use legal systems and human rights mechanisms to challenge breaches of their rights, in particular when the perpetrators are their parents.
4. All member states have ratified the UN Convention on the Rights of the Child, requiring them to protect children from “all forms of physical or mental violence” while in the care of parents and others (Article 19). Many states have constitutions asserting these rights. All states have laws prohibiting assault and also varying laws prohibiting cruelty or abuse or maltreatment of children. But these and other relevant developments in international and national law have not in themselves been sufficient to challenge the traditional acceptance of corporal punishment and any other forms of degrading punishment and treatment of children. There has been progressive prohibition of corporal punishment in penal systems, in schools and in other institutions (although enforcement in institutions remains inconsistent). But in the absence of explicit law reform linked to comprehensive awareness-raising, corporal punishment in the family context tends not to be regarded by a majority of parents and the public as prohibited “violence” or as a breach of fundamental rights.
5. This is the overall context in which the European Committee of Social Rights (ECSR) is pursuing respect for children’s rights under the European Social

Charter and the Revised Social Charter. As the Committee has emphasised, “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact”.² Thus if the protection from all corporal punishment and any other forms of degrading punishment or treatment is to be realised for children, the legislation must not only be clear and explicit, but also disseminated and understood by the population, including children.

6. The ECSR, in its 2001 observation, has highlighted:³
- That it “attaches great importance to the protection of children against any form of violence, ill-treatment or abuse, whether physical or mental”;
 - That: “Like the European Court of Human Rights it emphasises the fact that children are particularly vulnerable and considers that one of the main objectives of Article 17 is to provide adequate protection for children in this respect”.
 - That the Committee “does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence”.
 - That the Committee “does not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved”.
 - That “it is evident that additional measures [our emphasis] to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not”.

The observation concludes: “For these reasons, the Committee considers that Article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.”

7. The Committee, in the context of examining reports on conformity with Article 17, has consistently asked states “whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere”.
8. For example, in its conclusions on Spain’s most recent report under article 17, the Committee stated: “...The Committee notes from the Concluding Observations of the Committee on the Rights of the Child in respect of Spain’s first report under the Convention on the Rights of the Child, that Article 154 of the Spanish Civil Code provides that parents ‘may administer punishment to their children

² Complaint NO. 1/1998 : International Commission of Jurists against Portugal, Decision on the merits, para. 32.

³ European Committee of Social Rights, Introduction to Conclusions XV- 2, Volume 1, 2001

reasonably and in moderation'. The Committee notes that this would permit the corporal punishment of children, which is in breach of Article 17 of the Charter and it refers to its general observations on Article 17 in the General introduction. The Committee wishes to know whether this provision of the Civil Code has been amended, and further whether legislation prohibits the corporal punishment of children in schools, institutions and elsewhere. Meanwhile, it defers its conclusion."⁴

9. Some states retain in their law special justifications or defences for parents and some other carers who assault their children as a form of "discipline" or punishment, for example the provision in Spanish law referred to above, the "reasonable chastisement" defence which exists in English common law and is confirmed in statute, and the concept of "justifiable assault" of children, recently introduced into Scottish law by the Criminal Justice (Scotland) Act 2003.
10. In some states, defences have been repealed. But the act of repeal is generally a "silent" reform, sending no clear message to parents and others that the law has changed and corporal punishment is now prohibited. In other member states it appears there has never been a defence. Where there is no explicit defence, the criminal law on assault applies, on paper, equally to disciplinary or punitive assaults of children. But that does not overcome the traditional belief in a right to use corporal punishment.
11. It has been the practice of most member states to prohibit school corporal punishment explicitly. Schools are generally "public" institutions and invariably subject to various forms of inspection and varying degrees of public and parent scrutiny. In the "privacy" of the family home, there is no such supervision and it is for this reason that it is all the more important that parental corporal punishment should be prohibited explicitly and the law well disseminated, in order to send a clear message to parents and children, and to enable all those working with families to deliver a clear message that all violence against children is a breach of human rights and unlawful.
12. The prime purpose of the law in this context is to act as an educational tool and to provide effective deterrence. Given children's special and dependent status, prosecution of parents for assaulting their children is unlikely to be in children's best interests except in the most extreme cases where it appears to be the only effective way of protecting the child. Human rights demands that children have equal protection under the law on assault, but guidelines on intervention and prosecution can focus on the best interests of the child and promote wherever possible sensitive and supportive interventions. Law reform, linked to widespread awareness-raising of the law and of children's rights to protection and promotion of positive, non-violent or degrading forms of discipline, can achieve rapid changes in attitudes and practice. This is likely over time to reduce rather than increase the need for prosecution and formal interventions in families.

International human rights standards

⁴ European Committee of Social Rights, Conclusions XV-2, Vol. 2, page 537

13. The European Committee of Social Rights, in advocating the prohibition and elimination of all corporal punishment and any other form of degrading punishment or treatment of children, has developed a clear and consistent human rights standard for compliance with Article 17, parallel to that of other human rights bodies.
14. The ECSR refers in its 2001 observation to the European Convention on Human Rights and the jurisprudence of the European Court (in particular, the judgment *A v UK*, 23 September 1998). A particular significance of this unanimous judgment of the Court is its assertion of state responsibility for ensuring adequate protection and effective deterrence from ill-treatment, for children and other vulnerable people, including ill-treatment administered by private individuals. All member states have accepted the Convention and are thus bound by its provisions, including Articles 3 and 8 and the non-discrimination principle of Article 14; some member states have incorporated its provisions into their domestic law.
15. The European Commission on Human Rights and the European Court have rejected applications alleging that prohibition of all corporal punishment can breach family rights or rights to religious freedom.⁵
16. The ECSR also refers in its observation (and in various conclusions) to the jurisprudence of the Committee on the Rights of the Child. This Committee has consistently interpreted the UN Convention on the Rights of the Child as requiring prohibition of all corporal punishment, however light. All member states have ratified the UN Convention, including - without reservation - article 19 and its obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from “all forms of physical or mental violence... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. The fact that globally 192 states are parties to the UN Convention creates a significant presumption that its relevant provisions are customary law. The Committee on the Rights of the Child is the only body charged with responsibility for interpreting the provisions in the Convention.
17. The acceptance of international and regional human rights standards, common to all member states, does not in itself amount to effective prohibition of corporal punishment of children, as the European Committee of Social Rights has recognised. The Committee on the Rights of the Child has come to the same conclusion in its examination of reports from states. The Committee has recommended prohibition of all corporal punishment in the family to each of the countries subject to collective complaints (17/2003 to 21/2003), and to many other member states. It has emphasised its interpretation of the Convention in concluding observations to more than 130 states in all continents, in the conclusions of two General Discussion days on violence against children (2000 and 2001) and in its General Comment No. 1 on “The aims of Education”.⁶

⁵ European Commission on Human Rights, *Seven Individuals v Sweden*, admissibility decision, 13 May 1982; European Court of Human Rights, *Philip Williamson and Others v UK*, admissibility decision, 7 September 2000

⁶ Committee on the Rights of the Child documents available at <http://www.unhchr.ch/html/menu2/6/crc/>

18. The Committee on Economic, Social and Cultural Rights has also condemned corporal punishment and recommended prohibition. In 1999, the CESCR adopted a General Comment on “The Right to Education”, covering informal as well as formal education, in which it states: “In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual...” The Committee refers to the jurisprudence of the Committee on the Rights of the Child.⁷ In 2002, in its concluding observations on the UK’s fourth periodic report under the International Covenant on Economic, Social and Cultural Rights, the Committee advocated prohibition of corporal punishment in the family, stating: “Given the principle of the dignity of the individual that provides the foundation for international human rights law (see paragraph 41 of the Committee’s General Comment No. 13) and in light of article 10(1) and (3) of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child.”⁸
19. The Committee of Ministers of the Council of Europe first condemned corporal punishment of children in the family in a recommendation to member states on violence in the family adopted nearly 20 years ago in 1985. The recommendation notes in its preamble that “the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them”. Violence affects “in particular children on the one side and women on the other, though in differing ways” and “children are entitled to special protection by society against any form of discrimination or oppression and against any abuse of authority in the family and other institutions”. The recommendation proposes that member states should “review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a prohibition does not necessarily entail a criminal penalty”. The explanatory memorandum to the recommendation describes corporal punishment as “an evil which must at least be discouraged as a first step towards outright prohibition. It is the very assumption that corporal punishment of children is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties.” Other relevant recommendations include: “Social measures concerning violence within the family”, Recommendation R (90) 2, and “The medico-social aspects of child abuse”, Recommendation R (93) 2.⁹

⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 11 on “The Right to Education”, 1999, HRI/GEN/1/Rev.5, p.83 ; (all the Committee’s documents are at <http://www.unhcr.ch/html/menu2/6/cescr.htm>)

⁸ Committee on Economic, Social and Cultural Rights, concluding observations on the UK’s Fourth Report under the International Covenant on Economic, Social and Cultural Rights, May 17 2002, E/C.12/1/Add.79, para. 36

⁹ Council of Europe Committee of Ministers : all recommendations are available at http://www.coe.int/t/E/Committee_of_Ministers/Home/Documents/

Law reforms in member states

20. In Sweden, the first country to institute law reforms to protect children from all corporal punishment in the family, research in the early 1950s found that a large majority of Swedish parents were using corporal punishment; 13 per cent of mothers used implements to beat their three to five year-old children.¹⁰ Law reform began in 1957 by removing from the Swedish Criminal Code a provision protecting parents who caused minor injuries through corporal punishment. The provision allowing “reprimands” in the Parenthood and Guardianship Code was removed in 1966. Despite some accompanying public education campaigns, Sweden found that these repeals did not send a clear message to the public or even to the courts (in 1975 a court acquitted a father accused of maltreating his three year-old daughter, on the grounds that it had not been proved that he had exceeded “the right to corporal chastisement that a parent has towards a child in his custody”). So in 1979, following a recommendation from a Children’s Rights Commission established by the Swedish Parliament in 1977, an explicit prohibition on corporal punishment and other humiliating treatment was added to the Parenthood and Guardianship Code.¹¹ By 2002, Government-commissioned research found that just 6 per cent of under 35 year-olds believed in any form of corporal punishment; children reported very low levels of corporal punishment.¹²
21. Since 1979 it appears that at least 10 and possibly 12 member-states of the Council of Europe have explicitly prohibited all corporal punishment, having previously removed defences or justifications in their criminal or civil codes or both. At least another 10 states have either removed an existing defence, or there has never been a defence – but these states have not as yet gone on to explicitly prohibit all corporal punishment.¹³
22. It is clear from Sweden’s well-researched experience that the combination of explicit legal reform, linked to public education, can achieve both rapid and substantial changes in public and parental attitudes and a reduction in violence against children in the family.¹⁴

¹⁰ Stattin, H., Janson, H., Klackenber-Larsson, I., & Magnusson, D., (1995). *Corporal punishment in everyday life: An intergenerational perspective*, J. McCord, ed. pp 315-347, Cambridge University Press, Cambridge

¹¹ Swedish Children’s Rights Commission, first report : *The child’s right : 1 A prohibition against beating* ; Bill was passed by the Riksdag on 14 March 1979, coming into force on July 1.

¹² Staffan Janson, *Children and abuse – corporal punishment and other forms of child abuse in Sweden at the end of the second millennium, A scientific report prepared for the Committee on Child Abuse and Related Issues*, Ministry of Health and Social Affairs, Sweden.

¹³ Summary table in Council of Europe Forum for Children and Families Document CS-Forum (2003) 5 rev; draft prepared for December 2003 meeting of the Forum from information collected by the Council of Europe and the Global Initiative to End All Corporal Punishment of Children.

¹⁴ For a description of the process of reform in Sweden, see *Ending Corporal Punishment: Swedish experience of efforts to prevent all forms of violence against children – and the results*, Ministry of Health and Social Affairs and Ministry of Foreign Affairs, Sweden, 2001; for a review of research into the effects, see Joan E Durrant, *A Generation Without Smacking: The impact of Sweden’s ban on physical punishment*, Save the Children UK, 2000

Views of human rights institutions for children

23. The European Network of Ombudspople for Children issued in 1999 a position statement urging the Council of Europe and other European institutions and non-governmental organisations concerned with children to work collectively and individually towards ending all corporal punishment of children. The statement concludes: “We urge Governments without delay to introduce legislation prohibiting all corporal punishment, and initiate/support education programmes in positive, non-violent forms of discipline. We commit ourselves, as offices committed to improving the lives of all children in Europe, to work actively on this fundamental human rights issue.” (See full text in Annex).

**ANNEX
EUROPEAN NETWORK OF OMBUDSPEOPLE FOR CHILDREN (ENOC)
POSITION STATEMENT ON ENDING CORPORAL PUNISHMENT - 1999**

“The European Network of Ombudsmen for Children (ENOC) urges the governments of all European countries, the European Union, the Council of Europe and other European institutions and non-governmental organisations concerned with children to work collectively and individually towards ending all corporal punishment of children.

“As spokespeople for the children of Europe, we believe that eliminating violent and humiliating forms of discipline is a vital strategy for improving children’s status as people, and reducing child abuse and all other forms of violence in European societies. This is a long overdue reform, with huge potential for improving the quality of lives and family relationships.

“Hitting children is disrespectful and dangerous. Children deserve at least the same protection from violence that we as adults take for granted for ourselves.

“While almost all European countries have eliminated corporal punishment from their schools and other institutions for children, it remains common and legally and socially accepted in the family home in most countries. Many States have laws which explicitly defend the rights of parents and other carers to use ‘reasonable’ or ‘moderate’ corporal punishment. Where the law is silent, corporal punishment tends to be accepted in practice.

“In a growing minority of countries across Europe, all corporal punishment has been prohibited, often as part of a statement of parents’ responsibilities. The purpose of these reforms is not to prosecute more parents, but to send out a clear signal that hitting children is no more acceptable than hitting anyone else.

“The United Nations Convention on the Rights of the Child, ratified by all European states, requires legal, educational and other action to protect children from ‘all forms of physical or mental violence’ while in the care of parents and others. The Committee on the Rights of the Child, the international committee of experts responsible for monitoring implementation, has stated that no level of corporal punishment is compatible with the Convention and has formally recommended prohibition, coupled with education programmes, to eliminate it.

“The Committee of Ministers of the Council of Europe, in a series of recommendations, has condemned corporal punishment and recommended legal reform (see in particular Recommendations R85/4; R90/2 and R93/2).

“We urge Governments without delay to introduce legislation prohibiting all corporal punishment, and initiate/support education programmes in positive, non-violent forms of discipline. We commit ourselves, as offices committed to improving the lives of all children in Europe, to work actively on this fundamental human rights issue.”

ENOC, formed in June 1997, is a new voice for children in Europe. Through the Network, independent offices set up to promote children's rights and interests aim to work together, sharing strategies and collective approaches, and encouraging the fullest possible implementation of the Convention on the Rights of the Child. UNICEF currently provides the Secretariat for the Network.

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Mr. Eric Sottas
Director
World Organisation Against

Torture

Lisbon, 30th March 2004

Dear Mr. Sottas,

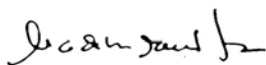
On behalf of the Portuguese Committee for UNICEF I am sending you our views on the issue of corporal punishment in Portugal.

Even though as a National Committee for UNICEF our field experience in Portugal is very limited and always carried out in cooperation with other partner organisations, the information we have makes us believe that it is not clear for the general public that all corporal punishment is prohibited.

We believe that an explicit statement in the civil law would send an important message to parents and the general public and provide a basis for a public education campaign. In our opinion, education campaigns, involving the government and also NGOs, are indispensable to promote a culture of non-violence and give the families means to move away from the use of force.

We would be happy to give our contribution to such a campaign.

With best regards



Madalena Marçal Grilo
Executive Director