

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



30 April 2004

**Collective Complaint No. 21/2003
Organisation against Torture (OMCT)
v. Belgium**

Case Document No. 6

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

registered at the Secretariat on 30 April 2004

Collective complaint 21/2003**World Organisation against Torture v Belgium**

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

Summary

1. The Belgian Government's Observations indicate acceptance of the 2001 observation from the European Committee of Social Rights, that Article 17 of the Social Charter requires effective prohibition of all corporal punishment and of any other forms of degrading punishment or treatment of children, in the family and elsewhere.
2. The Government's Observations claim that existing law – provisions in the Constitution and the Civil and Criminal Codes – prohibit all forms of violence, including all corporal punishment and all other forms of degrading punishment or treatment of children. We are not aware of other and more public interpretative statements to this effect by the Government. While this interpretation is welcome, we believe it is unrelated to the reality of life in many or most Belgian families; none of the provisions covered in the Government's Observations refers to corporal punishment as such. Given the widespread and traditional acceptance of milder forms of corporal punishment as a legitimate form of discipline of children in all communities in Belgium, the legislation does not send a clear message to parents, children and others that all corporal punishment is unlawful.
3. 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 focus on the text of the Belgian Constitution and legislation, and not at all on the reality of the situation facing Belgian children, nor on the general public's understanding and interpretation of the law.
4. The Government's Observations provide no evidence that the current legal framework and other measures taken are in practice effective in protecting children from all corporal punishment and any other form of degrading treatment or punishment. We have been unable to find any significant research into levels of violence against children in the family, which is in itself a serious concern. For this reason, a survey was commissioned on

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

our behalf in April 2004 to ascertain the attitudes of a representative sample of the Belgian population to the use of less severe forms of corporal punishment.

5. The survey (see full results in Annex) of a nationally representative sample of 1070 adults (aged 15-plus) found that around three-quarters (77 per cent) of adults in Belgium believe it is acceptable for parents to smack their children. Six in ten believe there are some circumstances where it is acceptable for parents to smack their children. A further one in six (17 per cent) believe it is always acceptable, in disciplinary situations, for parents to smack their children. Just 19 per cent think it is unacceptable for parents to smack their children under any circumstances.
6. The survey found that half of Belgian adults believe that the law in Belgium allows parents to smack their children. 13 per cent “don’t know” and only 37 per cent believe the law does not allow smacking.
7. Various materials published in the media also give an indication of the current state of public opinion on this issue. In response to a proposal that “pedagogical smacking” should be prohibited, there were 268 contributions to a chatroom discussion at www.zappybaby.be. 41 per cent of these stated that such parental conduct should not be prohibited, because “only physical violence should be and we already have laws for that” – indicating that milder forms of corporal punishment are not perceived as “violence” or as prohibited; 18 per cent stated that it should not be prohibited “because it is a good and efficient way to make clear to your kid that something is not accepted”; a further 19 per cent stated that it should not be penalised, “although I don’t think it is an acceptable way to treat a kid”; and a further 16 per cent stated that it should remain the parent’s free choice to educate their kids as they see fit; parental authority would be undermined. Just 1 per cent responded that all physical violence against children should be penalised. And none responded that “it is not a fit educational technique; there are many alternative ways to discipline a child” (we can forward a copy of the results of the survey as published on the Internet if requested).
8. We invited Ankie Vandekerckhove, Kinderrechtencommissaris for the Flemish Community, and Claude Lelièvre, Délégué Général aux Droits de L’enfant in the French Community to comment on a series of questions relevant to the complaint (see their letter annexed):

“In your experience, is corporal punishment in its lighter forms – ‘pedagogical smacking’ – still generally socially acceptable and common in Belgium?”

“To our knowledge and in our view the pedagogical smack is still considered by many adults as a normal prerogative of parental authority. Many people still find it an acceptable way to discipline children or to teach them what is the right thing to do. No figures are available as to the prevalence of smacking but, when asked, many adults will not consider this parental act as problematic or as a form of violence. This may well be one of the reasons that numbers are lacking. While some figures on child abuse are known, this is not the case for smacking since a ‘non-problem’

will not be systematically reported or registered. Even in the wording there is a difference between this kind of smacking and 'corporal punishment', which has a more serious ring to it in people's perception."

"Does the general public, in your view, believe that all corporal punishment, including 'pedagogical smacking', is prohibited?"

"As a result, probably not many people will realise that even slight forms of smacking are, in legal terms, prohibited under criminal law (articles on assault and battery, injuries). It is also true that these cases are not reported to nor prosecuted by courts or other instances: this will only happen in really severe cases of (physical and other forms of) child abuse or neglect."

"Are you aware of public statements by the Government, informing parents that all corporal punishment, including pedagogical smacking, is prohibited?"

"Our offices have no knowledge of any official statement on smacking by the government. It is in general not spoken of or discussed. The few campaigns or statements on this topic were issued by either public agencies or NGO's."

"In your view, is an explicit statement required in Civil Law, that corporal punishment and all other humiliating treatment of children is prohibited, in order to deliver a clear message to parents and the public, and provide a clear basis for public education?"

"Since our criminal law does already provide several articles on physical violence and since we do realise that pedagogical smacking will not easily become a priority in prosecuting policies, we believe that it would be more effective and family-oriented to work on explicit legislation in the field of civil law. This would also have the advantage that a prohibition could be formulated in a more positive way, promoting non-violent child-rearing, based on the child's right to integrity, care and a safe upbringing. An article in the civil code could also serve as an explicit basis for campaigns and other government action, e.g. educational support. It could open the public debate in a non-accusing manner towards parents."

"Have adequate resources been devoted by federal and/or community governments to awareness-raising and public and parent education to move parents on from using corporal punishment and other forms of degrading punishment and treatment, to positive, non-violent forms of child-rearing?"

"To our knowledge no resources have been devoted to this issue, since no specific action has been taken by the federal government. Resources are allocated to physical, emotional and sexual child abuse of a more severe kind (social services, confidential doctor centres, measures in prosecuting, care for victims etc...). The government of the French Community has been investing in a campaign 'Yapaka' (www.cfbw.be/yapaka/index.htm) in which a.o. is stated that no child has ever grown by being hit or smacked."

9. We reiterate the substance of our complaint, that despite some positive constitutional and legislative changes, there is no explicit prohibition of parental corporal punishment or effective protection of children from all corporal punishment in the family. The Government does not appear to have interpreted to the general public the cumulative effect of these changes as implying prohibition of all corporal punishment.
10. On page 13 of its Observations, the Government argues that the law in Belgium has never authorised parental corporal punishment, and so explicit prohibition is not needed: "This is one of the main reasons why it has never seemed appropriate to compare the Belgian system with that of other countries. In other words it is reasonable to expect a country that previously expressly authorised the striking of children as a punishment to make it explicit in legislation that such conduct is no longer allowed." Belgium is one of quite a number of member states where there is no specific justification of parental corporal punishment, but nevertheless a strong traditional belief that it is acceptable and lawful. As the research study commissioned on our behalf reveals, only just over a third believed smacking children to be unlawful.
11. We re-emphasise that when Belgium's second report under the Convention on the Rights of the Child was examined by the Committee on the Rights of the Child in 2002, the Committee, having reviewed the various positive changes in Belgian law, concluded:
- "In the area of child abuse, including sexual abuse, the Committee notes with satisfaction the numerous initiatives taken, such as the law on the criminal protection of minors (28 November 2000), amendments to the Criminal Code and adoption of article 22-bis of the Constitution, concerning the protection of the child's moral, physical and sexual integrity. But it remains concerned that corporal punishment is not expressly prohibited by law..."*
- "The Committee recommends that the State party:*
- take legislative measures to prohibit corporal punishment of children in the family, schools and in institutions;*
 - continue to carry out public education campaigns about the negative consequences of corporal punishment, and promote positive, non-violent forms of discipline;*
 - establish effective procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary..."*
- (7 June 2002, CRC/C/15/Add.178, paras 21 and 22 (a/b/c))
12. Without an explicit prohibition of corporal punishment and of any other 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, Belgium is not providing effective protection and remains not in conformity with article 17 of the Social Charter.
- 13. 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 of taking necessary other awareness-raising and educational measures. These are “appropriate and necessary” measures in the terms of article 17.

Comments on the Government’s interpretation of the law:

The Constitution:

14. The amendment to the Constitution introduced in March 2000 states that: “Every child has the right to respect for his moral, physical, psychological and sexual integrity. The legislation, decrees or regulations, mentioned in art. 134, guarantee the protection of that right” (*unofficial translation*). This addition was not promoted as prohibiting all corporal punishment of children and during parliamentary debates an attempt to add protection against every form of violence was rejected. The second sentence indicates that other legislative provisions are needed to make the right effective.

15. This addition to the Constitution came about as a result of a recommendation from the Commission established to inquire into aspects of the Dutroux affair. In this context, the likely “signal” received by the public was about the right of the child to protection from extreme violence and sexual abuse and exploitation, rather than from forms of corporal punishment that are socially acceptable to an overwhelming proportion of the Belgian public. The provision certainly does not send a clear message that all corporal punishment is prohibited.

The Criminal Code:

16. We accept in the complaint that the Criminal Code prohibits any form of violence “including slapping and causing injury” and that recent changes have increased penalties for violence towards children and recognised a relationship of authority between the perpetrator and the child as an aggravating factor. We accept that there is no defence in the criminal code for parents who assault their children in the course of discipline. But we reiterate that the Criminal Code is only used to prosecute severe cases of abuse and certainly does not send a clear message that all corporal punishment is prohibited. The Government refers to no judgments implying such an interpretation of the Criminal Code.

The Civil Code:

17. The Observations suggest that the Civil Code “implicitly” prohibits corporal punishment. The change introduced in the Code in 1995, requiring that the parent-child relationship should be one of “mutual respect” (article 371), is certainly positive, but it does not, even implicitly, prohibit all corporal punishment.

18. A proposal to amend the Civil Code to explicitly prohibit all corporal punishment has been introduced to the Belgian Senate on two occasions by Mrs Sabine de Béthune, in 1999 and 2003. The proposal was to introduce art. 371 bis in the Civil Code: “Every child has the right to care, safety and a good upbringing. He/she has to be treated with respect for his/her personality and integrity and he/she cannot be subjected to any

degrading treatment or other forms of corporal or psychological violence". These proposals to explicitly prohibit corporal punishment in the civil law have not received any support from Government, nor sufficient parliamentary support to make progress. In her proposal, Mrs de Béthune stated: "Children enjoy the same protection against violence as adults, at least in theory. Practice, however, shows that some children are frequently victims of violent acts, committed within the family circle by parents or people who educate them. For them, violence is a daily reality. Moreover, in many cases this violence is legitimised by the parents as being 'for their own good'. We can only conclude that children are the only people within society who are not protected against inter-personal violence."

Corporal punishment outside the family:

19. In relation to the one "youth detention centre" (the Grubbe), there do not appear to be explicit regulations prohibiting corporal punishment and all other forms of degrading punishment or treatment. There is an agreement between the federal and community parliaments on the detention centre, article 30 of which states that the "rules of the house" for the centre must be drawn up and must among other things clarify rules on sanctions and discipline. The internal regulations of the detention centre state that the committee of directors must make a list of sanctions and monitor the quality of the disciplinary policy within the centre. Sanctions cannot violate the juvenile's fundamental rights.

20. In the Flemish Community, regulations setting out conditions for recognition and funding of residential youth care institutions do explicitly prohibit corporal punishment and psychological violence, as well as withholding of food. This is welcome, but underlines the importance of explicitly prohibiting corporal punishment and any other form of degrading punishment or treatment of children in all institutions and forms of alternative care used by children. We note that the Committee on the Rights of the Child in 2002 recommended legislative measures to prohibit corporal punishment of children "in the family, schools and in institutions" (see para. 11).

Awareness-raising and education campaigns

21. The Observations (page 13) indicate that responsibility for child protection is devolved to the communities, with the exception of the federal government's responsibility for the relevant penal law. While the arrangements for internal governance of Belgium are beyond the scope of the complaint, we must emphasise that it is the federal Government which is responsible for fulfilling its obligations under the Social Charter (and also under the Convention on the Rights of the Child - CRC). If measures taken by one or more of the communities to fulfil the child protection requirements of Article 17 and of the CRC are inadequate, the Federal Government must be in a position to remedy the inadequacies.

22. The Kinderrechtencommissaris in the Flemish Community and the Délégué Général aux Droits de L'enfant are among the agencies listed in

the Observations on page 14. But as noted above (para. 8) they are of the view that explicit law reform is necessary to provide a clear basis for awareness-raising and education.

23. From our inquiries it appears that few of the campaigns referred to here, part from that referred to in footnote 24 on page 14) have in fact focused on parental corporal punishment. Some have focused almost exclusively on family violence between adults and on severe forms of violence – rape, sexual abuse and very serious injuries.
24. While the awareness-raising campaigns referred to in the Government's Observations are of course welcome, they do not add up to a consistent or comprehensive attempt to inform parents that all corporal punishment and any other form of degrading treatment or punishment are prohibited.

ANNEX A
Summary Report of Research Study on Attitudes Towards Smacking
Children in Belgium, April 2004.

Introduction

This summary report contains the findings of a survey among the general public in Belgium, 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 15+) was interviewed. A total of 1,070 telephone interviews were carried out using CATI (Computer Assisted Telephone Interviews), between 6 and 14 April 2004. Data has been weighted.

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

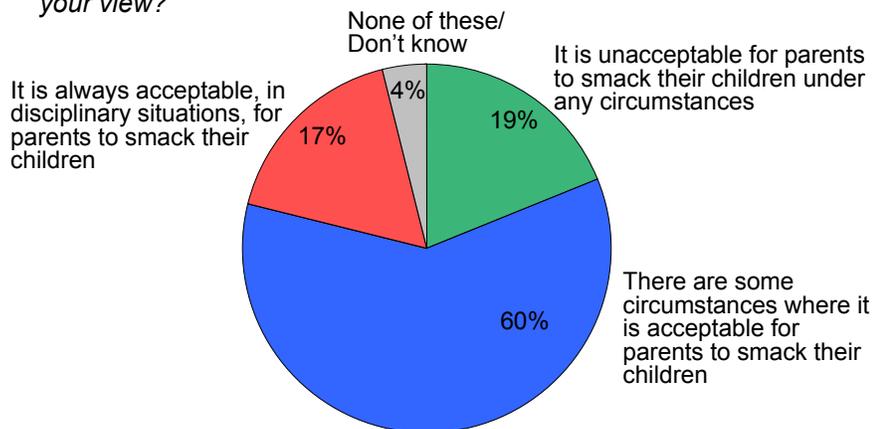
MORI's Standard Terms and Conditions apply to this study, as to all those that we undertake. No press release or publication of the findings from this study shall be made without the prior approval of MORI. Such approval will only be refused on the grounds of inaccuracy or misrepresentation of the research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

Summary of Findings

- Around three-quarters of adults in Belgium (77%) believe it is acceptable for parents to smack their children.
- Six in ten believe there are some circumstances where it is acceptable for parents to smack their children. A further one in six believe it is always acceptable, in disciplinary situations, for parents to smack their children.

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?*



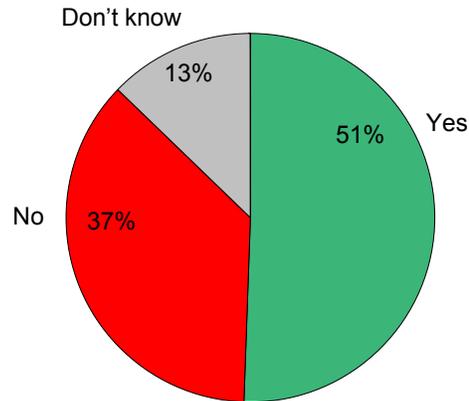
Base: All respondents (1,070)

Source: MORI

- Those from the lower social class are more likely than those from higher classes to believe it is always acceptable, in disciplinary situations, for parents to smack their children (26% vs. 15%).
- Those without children in the household are also more likely than those with children to believe that it is always acceptable for parents to smack their children for disciplinary reasons (20% vs. 15%).
- Instead, those with children in the household are more likely than those without, to believe that there are some circumstances where it is acceptable for parents to smack their children (64% vs. 54%).
- Half of Belgian adults believe that the law in Belgium allows parents to smack their children. Just under two in five believe that this is not the case. A little more than one in ten say they are unsure.

National Laws on Smacking Children

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



Base: All respondents (1,070)

Source: MORI

- Across the regions, it appears that those from the French speaking regions are more likely than those from the Dutch speaking areas to say they are unsure as to whether the law in Belgium allows parents to smack their children.
- Those living in the French speaking regions of Brussels (22%), Brabant Wallon (32%), Hainaut (20%) and Namur (29%) are more likely to say they are unsure about the law than those from the Dutch speaking regions of Antwerp (9%), Brabant Flamand (4%), Flandre Occidentale (8%) Flandre Orientale (5%) and Limbourg (6%).

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% ±
1,000	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 significance at or near these percentages	10% 90%	or	30% 70%	or	50%
Children in household (592 vs. 478)	4		5		6
Male vs. female (515 vs. 555)	4		5		6

Source: MORI

ANNEX B**Letter from Ankie Vandekerckhove, Kinderrechtencommissaris for the Flemish Community, and Claude Lelièvre, Délégué Général aux Droits de L'enfant in the French Community**

Brussels, 15 april 2004

To the World Organisation
against Torture

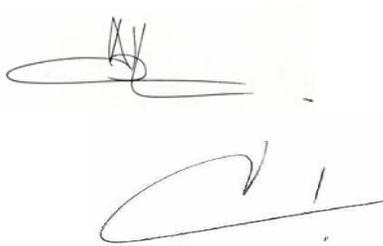
Dear Sir/Madame,

In response to your letter concerning the complaint against Belgium, we hereby submit our response on the issue of corporal punishment and the so-called 'pedagogical smacking' in particular.

- To our knowledge and in our view the pedagogical smack is still considered by many adults as a normal prerogative of parental authority. Many people still find it an acceptable way to discipline children or to teach them what is the right thing to do. No figures are available as to the prevalence of smacking but, when asked, many adults will not consider this parental act as problematic or as a form of violence. This may well be one of the reasons that numbers are lacking. While some figures on child abuse are known, this is not the case for smacking since a 'non-problem' will not be systematically reported or registered. Even in the wording there is a difference between this kind of smacking and 'corporal punishment', which has a more serious ring to it in people's perception.
- As a result, probably not many people will realise that even slight forms of smacking are, in legal terms, prohibited under criminal law (articles

on assault and battery, injuries). It is also true that these cases are not reported to nor prosecuted by courts or other instances: this will only happen in really severe cases of (physical and other forms of) child abuse or neglect.

- Our office has no knowledge of any official statement on smacking by the government. It is in general not spoken of or discussed. The few campaigns or statements on this topic were issued by either public agencies or NGO's.
- Since our criminal law does already provide several articles on physical violence and since we do realise that pedagogical smacking will not easily become a priority in prosecuting policies, we believe that it would be more effective and family-oriented to work on explicit legislation in the field of civil law. This would also have the advantage that a prohibition could be formulated in a more positive way, promoting non-violent child-rearing, based on the child's right to integrity, care and a safe upbringing. An article in the civil code could also serve as an explicit basis for campaigns and other government action, e.g. educational support. It could open the public debate in a non-accusing manner towards parents.
- To our knowledge no resources have been devoted to this issue, since no specific action has been taken by the federal government. Resources are allocated to physical, emotional and sexual child abuse of a more severe kind (social services, confidential doctor centres, measures in prosecuting, care for victims etc...). The government of the French Community has been investing in a campaign 'Yapaka' (www.cfbw.be/yapaka/index.htm) in which a.o. is stated that no child has ever grown by being hit or smacked.



Ankie Vandekerckhove
Kinderrechtencommissaris
de

Claude Lelièvre
Délégué Général aux Droits

L'enfant

Collective complaint 21/2003**World Organisation against Torture v Belgium****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

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

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 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

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

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

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.

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

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
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

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

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.unhchr.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

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

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

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

¹⁰ Stattin, H., Janson, H., Klackenborg-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.

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

Views of human rights institutions for children

23. The European Network of Ombudspersons 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).

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

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.