

Corporal punishment of children in Swaziland: Briefing for the Universal Periodic Review, 25th session, 2016

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

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Swaziland, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women and recommendations made during the 1st cycle UPR of Swaziland (largely rejected by the Government).

We hope the Working Group will note with concern the legality of corporal punishment of children in Swaziland. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Swaziland clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal all legal defences for the use of corporal punishment in childrearing and education.

1 Review of Swaziland in the 1st cycle UPR (2011) and progress since

- 1.1 Swaziland was reviewed in the first cycle of the Universal Periodic Review in 2011 (session 12). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² The Government accepted a recommendation to raise awareness on alternatives to corporal punishment but stated that recommendations to prohibit all corporal punishment were only "acceptable in so far as adults are concerned".³
- 1.2 Swaziland ratified the Convention on the Rights of the Child in 1995. Prohibiting and eliminating all corporal punishment of children in all settings including the home – through law reform and other measures – is a key obligation under the Convention on the Rights of the Child and other human rights instruments, though it is one frequently evaded by Governments. Despite the Government's negative response to the recommendations to prohibit corporal punishment, since the initial review the Children's Protection and Welfare Act 2012 has been enacted and it includes prohibition of corporal punishment as a sentence of the courts. However, corporal punishment remains lawful in all other settings.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Swaziland. We hope states will raise the issue during the review in 2016 and make**

¹ 22 July 2011, A/HRC/WG.6/12/SWZ/3, Summary of stakeholders' information, para. 29

² 25 July 2011, A/HRC/WG.6/12/SWZ/2, Compilation of UN information, para. 28

³ 12 December 2011, A/HRC/19/6, Report of the working group, paras. 76(32), 77(31) and 77(38); 6 March 2012, A/HRC/19/6/Add.1, Report of the working group: Addendum, para. 12

a specific recommendation that Swaziland clearly prohibit all corporal punishment of children in all settings including the home and explicitly repeal all legal defences for the use of corporal punishment in childrearing and education.

2 Legality of corporal punishment in Swaziland

Summary of current law and reforms needed in order to achieve prohibition

Corporal punishment of children in Swaziland is unlawful as a sentence for crime but it is lawful in all other settings – the home, alternative care settings, day care, schools and penal institutions. Achieving prohibition requires the enactment of legislation clearly prohibiting corporal punishment in all of these settings, the repeal of laws authorising corporal punishment in schools and explicit repeal of all legal defences for the use of corporal punishment in childrearing and education.

- 2.1 ***Home (lawful)***: Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”. Article 14 of the Children’s Protection and Welfare Act 2012 (in force 2013) provides for “justifiable” discipline: “(1) A child has a right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child. (2) A child should be disciplined in accordance with his age, physical, psychological, emotional and mental condition and no discipline is justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.” Article 18 of the Act states that parents/guardians have the responsibility to protect children from violence and abuse but it does not prohibit all corporal punishment.
- 2.2 ***Alternative care settings (lawful)***: Corporal punishment is lawful under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012.
- 2.3 ***Day care (lawful)***: Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012.
- 2.4 ***Schools (lawful)***: Corporal punishment is lawful under the Education Act 1982, the Education Rules 1977 and the provision for “lawful and moderate chastisement” in article 29(2) of the Constitution. The Children’s Protection and Welfare Act 2012 does not prohibit corporal punishment in schools. In 2014, the Government informed the UN Committee on the Elimination of Discrimination Against Women that the Ministry had issued a policy statement discouraging the use of corporal punishment, that training on positive discipline was being undertaken and that the eventual aim was to abolish corporal punishment completely.⁴
- 2.5 ***Penal institutions (lawful)***: Corporal punishment is lawful for males under the Prisons Act 1964, the provisions for “lawful and moderate chastisement” in article 29(2) the Constitution 2005 and possibly the Reformatories Act 1921. It is not prohibited in the Children’s Protection and Welfare Act 2012.

⁴ 20 May 2014, CEDAW/C/SWZ/Q/12/Add.1, para. 13.4

2.6 **Sentence for crime (unlawful):** Corporal punishment is prohibited in article 161(2) of the Children’s Protection and Welfare Act 2012: “No sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child.” Article 126(5) states: “Corporal punishment and public humiliation shall not be elements of diversion.”

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** In 2006, in its concluding observations on the state party’s initial report, the Committee on the Rights of the Child recommended to Swaziland that corporal punishment be prohibited in all settings.⁵
- 3.2 **CEDAW:** In 2014, the Committee on the Elimination of Discrimination Against Women expressed concern at corporal punishment of children particularly in schools and recommended it be prohibited.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities.

⁵ 16 October 2006, CRC/C/SWZ/CO/1, Concluding observations on initial report, paras 36, 37, 67 and 68

⁶ 18 July 2014, CEDAW/C/SWZ/CO/1-2 Advance Unedited Version, Concluding observations on initial/second report, paras. 30 and 31