**BRIEFING FROM GLOBAL INITIATIVE**

**TO END ALL CORPORAL PUNISHMENT OF CHILDREN**

**BRIEFING FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD**

**PRE-SESSIONAL WORKING GROUP – June 2011**

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**ITALY (third/fourth report – CRC/C/ITA/3-4)**

**Corporal punishment in the home**

In 1996, a Supreme Court judgment outlawed all violence in childrearing (Judge Ippolito, Supreme Court of Cassation, 18 March 1996). Article 571 of the Criminal Code (1975) states: “Whoever misuses means of correction or discipline to harm a person subject to his authority, or entrusted to him for purposes of education, instruction, treatment, supervision or custody … shall be punished.” According to the 1996 ruling, corporal punishment is no longer a legitimate method of discipline, and so is not defensible under the right to correction (“jus corrigenda”). But despite a number of Bills proposed over the years, the judgment has not been confirmed through law reform.

Following a complaint against Italy brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded by 11 votes to 2 that there was no violation of Article 17 of the Revised Charter because the prohibition of all forms of corporal punishment of children has a legislative basis, i.e. it is based on written legislation combined with its interpretation by the courts. But since this decision, the Committee has confirmed that compliance with article 17 of the Charter requires explicit prohibition in domestic law and in 2007 the Committee again queried the situation in Italy (see below).

In 2008, three members of parliament signed the Council of Europe’s petition against all corporal punishment of children. But during the Universal Periodic Review of Italy in 2010, the Government stated that since corporal punishment is unlawful by virtue of the Supreme Court judgment, there is no need to prohibit it through law reform.[[1]](#footnote-1)

Research has repeatedly revealed a widespread use of corporal punishment, even alongside disapproval of it. For example, in a 2009 study involving nearly 2,000 respondents, 63% of parents of 3-5 year olds, 55% of parents of 6-10 year olds and 40% of parents of 11-16 year olds said they had slapped their children. Children themselves reported a higher prevalence, with 58% of 11-16 year olds saying their parents had slapped them, 3% saying it happened almost every day. This behaviour was despite around two thirds of all parents believing that hitting a child is not acceptable.[[2]](#footnote-2)

**Corporal punishment outside the home**

Corporal punishment has been unlawful in **schools** since 1928, but we have yet to identify prohibiting legislation. In secondary schools, the Decree of the President of the Republic of 29 May 1998 states that no student shall be subject to disciplinary sanctions without having been first invited to explain their reasons but to our knowledge it does not explicitly prohibit corporal punishment.

Corporal punishment is unlawful in the **penal system**, as a sentence for crime and as a disciplinary measure in penal institutions. It is unlawful in **alternative care settings** under the 1996 Supreme Court ruling (see above), but there appears to be no explicit proibition in legislation.

**In 1995, following examination of the state party’s initial report, the Committee on the Rights of the Child recommended that “a ban on corporal punishment within the family be reflected in the national legislation” (CRC/C/15/Add.41, para. 20). On the second report in 2003, the Committee made recommendations concerning school discipline (CRC/C/15/Add.198, para. 44) but did not address corporal punishment in the home.**

**The European Committee of Social Rights has repeatedly raised the issue of corporal punishment in its consideration of the situation in Italy. In 2001 and in 2003, the Committee deferred its conclusions pending receipt of additional information (*Conclusions XV-2, vol. 1*, 2001; *Conclusions 2003, vol. 1*). As noted above, following the collective complaint brought against Italy in 2003 by the World Organisation Against Torture, the Committee concluded that there was no violation of the Revised European Social Charter because corporal punishment was prohibited through a combination of legislation and case law. However, the Committee subsequently confirmed that compliance requires clear and explicit prohibition[[3]](#footnote-3) in law and again queried the situation in Italy (*Conclusions XVIII-1, vol. 2*, 2007).**

**In light of the Committee on the Rights of the Child’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will highlight the need for explicit prohibition of corporal punishment in legislation passed by Parliament and draw attention to the inadequacy of relying on case law with its potential for subsequent rulings to interpret legislation in a way less favourable to children’s rights.**

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 31 May 2010, A/HRC/14/4/Add.1, *Report of the Working Group on the Universal Periodic Review: Italy, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* [↑](#footnote-ref-1)
2. Save the Children Italia ONLUS and Ipsos (2009), *Vissuto della punizione corporale e reazioni all'ipotesi di un'educazione senza violenza* [↑](#footnote-ref-2)
3. This confirmation was prompted by the situation in Portugal. A collective complaint against Portugal had led the Committee, as for Italy, to conclude that existing legislation and case law in combination meant that corporal punishment, including by parents, was prohibited. However, immediately following the decision, the Portugal Supreme Court issued a judgment in a case which interpreted the legislation differently, stating that a certain degree of corporal punishment in childrearing was acceptable and even necessary. This prompted a second collective complaint to the European Committee of Social Rights and eventually led to law reform in Portugal, where corporal punishment is now clearly prohibited in legislation which cannot be misinterpreted. [↑](#footnote-ref-3)