

**BRIEFING ON MONACO FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, PRESESSIONAL WORKING GROUP – February 2013**

*From Peter Newell, Coordinator, Global Initiative*

[*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

**This briefing describes the legality of corporal punishment of children in Monaco. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendation to Monaco on the issue, 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:**

* **in its List of Issues for Monaco, raise the issue of corporal punishment of children, in particular asking what measures have been taken towards explicitly prohibiting corporal punishment in the home and other settings?**
* **in its concluding observations on Monaco’s second/third report, recommend that legislation is enacted to explicitly prohibit corporal punishment in all settings, including the home, as a matter of urgency, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

**1 Monaco’s report to the Committee on the Rights of the Child**

1.1 The second/third state party report to the Committee on the Rights of the Child states that while there is no specific prohibition of corporal punishment in law, it is nevertheless a criminal offence under Criminal Code provisions such as those on beating a child under 16 and on assault and battery.[[1]](#footnote-1)

**2 The legality of corporal punishment of children in Monaco**

2.1 *Summary:* In Monaco, corporal punishment is unlawful as a sentence for crime. It is considered unlawful in schools and in penal institutions but it is not explicitly prohibited in those settings. It is lawful in the home and in alternative care settings. There is a lack of clarity regarding the applicability of recent law reform to all forms of corporal punishment.

2.2 *Home (lawful):* The Government has repeatedly asserted that the criminal law on assault and battery, strengthened by amendments in 2007, adequately protects children from corporal punishment in all settings, including the home.[[2]](#footnote-2) However, there is no explicit prohibition of corporal punishment in the Penal Code or in its amending laws (Law No. 1.344 of 26 December 2007 increasing the punishment for crimes and offences against children and Law No. 1382 of 20 July 2011 on the prevention and repression of specific violence).

2.3 As amended, articles 236 to 239 of the Penal Code punish violence and assault, including that which does not result in injury. Article 243 punishes “whoever wilfully injures or strikes a minor below the age of sixteen … or which has voluntarily exercised against him any violence or assault”; articles 238-1 and 421 punish violence which does not result in illness or disability, including by individuals aware of the vulnerability or dependence of the victim. However, there is no explicit reference to corporal punishment or to violence and assault inflicted in the name of “discipline” or “correction”. Apart from the above mentioned Government assertions to treaty bodies, we have found no evidence that the law is interpreted as prohibiting all corporal punishment, however light, in childrearing. The legislation itself does not send a clear message that all forms of corporal punishment, including by parents, are prohibited.

2.4 *Schools (unlawful):* Corporal punishment is not among the permitted disciplinary measures listed in the Education Law (2007), but it is not explicitly prohibited.

2.5 *Penal system – sentence for crime (unlawful):* There is no provision for judicial corporal punishment in criminal law.

2.6 *Penal system – disciplinary measure in penal institutions (unlawful):* Corporal punishment is considered unlawful but there is no explicit prohibition in legislation.

2.7 *Alternative care settings (lawful):* There is no explicit prohibition of all corporal punishment.

**3 Recommendations by human rights treaty bodies**

3.1 *CRC:* As long ago as 2001, the Committee on the Rights of the Child recommended that corporal punishment of children in the family be prohibited in Monaco.[[3]](#footnote-3)

3.2 *CAT:* In 2011, the Committee Against Torture recommended that corporal punishment be explicitly prohibited in all areas of life in Monaco.[[4]](#footnote-4)

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

[*www.endcorporalpunishment.org*](http://www.endcorporalpunishment.org)*;* [*info@endcorporalpunishment.org*](mailto:info@endcorporalpunishment.org)

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1. 13 August 2012, CRC/C/MCO/2-3, paras. 203 and 213-217 [↑](#footnote-ref-1)
2. 23 May 2011, Written replies to issues raised by the Committee Against Torture; 27 May 2011, CAT/C/SR.1003, Summary record of examination by the Committee Against Torture, para. 21; CRC/C/MCO/2-3, Second/third report to the Committee on the Rights of the Child, page 34 [↑](#footnote-ref-2)
3. 8 June 2001, CRC/C/15/Add.158, Concluding observations on initial report, paras. 26 and 27 [↑](#footnote-ref-3)
4. 17 June 2011, CAT/C/MCO/4-5, Concluding observations on fourth/fifth report, para. 11 [↑](#footnote-ref-4)