

Corporal punishment of children in Andorra: Briefing for the Universal Periodic Review, 22nd session, 2015

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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 Andorra, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child, the Committee Against Torture, the European Committee of Social Rights and during the 1st cycle UPR in 2010 (accepted by the Government).

We hope the Working Group will note with concern the legality of corporal punishment in Andorra. We hope states will raise the issue during the review in 2015 and make a specific recommendation that legislation is enacted to prohibit all corporal punishment in all settings, including the home.

1 Review of Andorra in the 1st cycle UPR (2010) and progress since then

1.1 Andorra was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). The issue of corporal punishment was raised in an advanced question by Sweden. During the review, the following recommendations were made and were accepted by the Government:¹

“Enact and implement legislation that unambiguously prohibits all corporal punishment in the home (Netherlands);

“Take all necessary measures to fully implement the Convention on the Rights of the Child, including by prohibiting corporal punishment of children in all settings (Sweden);

“Continue to develop measures against domestic violence, maltreatment and abuse, including sexual abuse, and, as recommended by the Committee on the Rights of the Child, explicitly prohibit corporal punishment, not only in schools, but also in the family (Spain)”

1.2 The Government has repeatedly stated that corporal punishment in the home and in other settings is prohibited under the Criminal Code, but it has also acknowledged that there is no explicit prohibition of corporal punishment.² In reporting in 2012 to the Committee on the Rights of the

¹ 4 January 2011, A/HRC/16/8, Report of the working group, paras. 30, 56, 83(2), 83(7) and 83(10)

² 3 January 2011, RAP/RCha/AND/IV(2010), National report to the European Committee of Social Rights, pp. 62-63; 15 September 2011, CRC/C/AND/2, Second state party report to the Committee on the Rights of the Child, para. 396; 4 January 2011, A/HRC/16/8, Report of the working group of the Universal Periodic Review, paras. 49, 50 and 68; 6 April 2011, A/HRC/16/L.41, Report of the Human Rights Council on its sixteenth session, para. 492

Child that corporal punishment is prohibited in the family,³ the Government cited article 114 of the Criminal Code, “Maltreatment in the home”, as amended by Law No. 91/2010. But article 114 as amended by Law 91/2010 does not refer to corporal/physical punishment. Rather, it punishes physical and psychological violence. The rationale for amending the law – the “Exposició de motius” – as outlined in the official bulletin appears to focus on ensuring that all violence is punished and not only habitual or repeated violence; there is no reference to violence inflicted in the guise of punishment or “discipline”.

- 1.3 The near universal acceptance of corporal punishment in childrearing means that it is not readily perceived as “violence” unless it reaches some arbitrary level of severity. It is for this reason that legal prohibition of “physical violence” etc do not amount to prohibition of all forms of corporal punishment, and explicit prohibition of corporal punishment in the home and other care settings is required. **We hope members of the Working Group will urge Andorra to enact legislation which clearly prohibits all corporal punishment of children in all settings, including in the home.**

2 Legality of corporal punishment in Andorra

- 2.1 **Summary:** In Andorra, corporal punishment is considered unlawful in schools and in the penal system, though it is not explicitly prohibited. It is lawful in the home, day care and some forms of alternative care for children.
- 2.2 **Home (lawful):** The Qualified Law on adoption and other forms of protection of abandoned minors states that the purpose of parental authority is to protect the child’s safety, health and morals, and parents have a right and duty to care for, watch over, maintain and educate the child (arts. 27-28). The Criminal Code 2005 (amended 2008) punishes domestic violence and physical ill-treatment, including physical assault which does not cause injury (arts. 114 and 476). As noted above (para. 1.2), despite Government claims that all corporal punishment is prohibited, there is no explicit prohibition in law: article 114 of the Criminal Code as amended by Law No. 91/2010 does not prohibit all forms of corporal punishment without exception.
- 2.3 **Alternative care settings (partially prohibited):** Corporal punishment is explicitly prohibited in the internal regulations of the La Governera children’s centre 2004 (“Règlement relatif au régime interne du centre d’accueil pour enfants La Governera”), but there is no explicit prohibition in other alternative care settings.
- 2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in early childhood care and in day care for older children.
- 2.5 **Schools (unlawful):** Corporal punishment is considered unlawful under the Qualified Law 1993 on Education, the Law Regulating the Andorran Educational System 1994, the Regulations for Private Teaching Centres 1994, the Regulations for Safety in Schools 2000 and the Law Guaranteeing the Rights of the Disabled 2002. It appears, however, that it is not explicitly prohibited.
- 2.6 **Penal institutions (unlawful):** Qualified Act No. 4/2007 on Prisons states that prisoners have “the right to decent and respectful treatment by prison staff, without prejudice to any disciplinary measures and punishments that may be administered as provided for in the prison regulations”. The Act also states that prisoners “may not be subjected to torture, ill-treatment or physical or verbal harassment” and “may not be subjected to degrading treatment, or to an over-rigorous or disproportionate application of the prison regulations” (art. 6). There is no provision in the Act for corporal punishment as a disciplinary measure.

³ 6 August 2012, CRC/C/AND/Q/2/Add.1, Reply to list of issues, para. 37

- 2.7 The Prison Service Act No. 3/2007 states that “the life and physical integrity of prisoners shall be protected and their rights, honour and dignity respected” and that “coercion may only be used to fulfil a legitimate function and with due regard for the principles of proportionality, necessity and the security of those in prison, and in order to prevent escapes or prisoner violence and to avoid prisoners inflicting harm on themselves or others” (art. 7). Article 5 of Qualified Act No. 8/2004 on the Police states that with regard to persons in detention police officers must “protect the life and physical integrity of prisoners or others under their supervision and respect their rights, honour and dignity”. Qualified Act 1999 on Juvenile Justice also applies: we have no details of its provisions.
- 2.8 **Sentence for crime (unlawful)**: There is no provision for judicial corporal punishment in criminal law.

3 Recommendations by human rights treaty monitoring bodies

- 3.1 **CRC**: The Committee on the Rights of the Child has twice expressed concern at corporal punishment of children in Andorra and recommended its prohibition in the family and settings – in its concluding observations on the initial report in 2002⁴ and on the second report in 2004.⁵
- 3.2 **CAT**: In 2013, the Committee Against Torture recommended to Andorra that corporal punishment of children be prohibited in all settings.⁶
- 3.3 **ECSR**: In 2012, the European Committee of Social Rights concluded that the situation in Andorra is not in conformity with article 17 of the European Social Charter because corporal punishment is not explicitly prohibited in the home, schools and institutions.⁷

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.

⁴ 7 February 2002, CRC/C/15/Add.176, Concluding observations on initial report, paras. 39 and 40

⁵ 30 November 2012, CRC/C/AND/CO/2, Concluding observations on second report, paras. 7, 8, 30 and 31

⁶ 20 December 2013, CAT/C/AND/CO/1, Concluding observations on initial report, para. 20

⁷ January 2012, Conclusions 2011