

# **Corporal punishment of children in Ireland: Briefing for the Universal Periodic Review, 25<sup>th</sup> session, 2016**

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End All Corporal Punishment  
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**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 Ireland, corporal punishment of children is lawful, despite repeated recommendations to prohibit it by the Committee on the Rights of the Child and other UN and European treaty bodies and recommendations made during the 1<sup>st</sup> cycle UPR of Ireland (only partially accepted by the Government).**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Ireland. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Ireland clearly prohibit corporal punishment in all settings including the home and explicitly repeal the common law defence of “reasonable chastisement”.**

## **1 Review of Ireland in the 1<sup>st</sup> cycle UPR (2011) and progress since**

1.1 Ireland 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 summary of stakeholders' information.<sup>1</sup> The Government partially accepted the recommendations to prohibit all corporal punishment of children, stating: “This matter is under continuous review. A proposal to either prohibit the defence of reasonable chastisement or to further circumscribe the definitions of what constitutes reasonable chastisement would require careful consideration.”<sup>2</sup>

1.2 Since the initial review in 2011, there has been no change in the legality of corporal punishment of children in Ireland. During this time, the Human Rights Committee has recommended to Ireland that corporal punishment be prohibited in all settings<sup>3</sup> and the European Committee of Social Rights has declared the situation in Ireland to be not in conformity with the Revised European Social Charter because corporal punishment is not prohibited in the home, both in the context of its systematic monitoring of states' implementation of the Charter in 2012<sup>4</sup> and in its decision published in 2015 on the collective complaint submitted by the Association for the Protection of

<sup>1</sup> 22 July 2011, A/HRC/WG.6/12/IRL/3, Summary of stakeholders' views, para. 32

<sup>2</sup> 6 March 2012, A/HRC/19/9/Add.1, Report of the working group: Addendum, para. 53

<sup>3</sup> [July 2014], CCPR/C/IRL/CO/4 Advance Unedited Version, Concluding observations on fourth report, para. 14

<sup>4</sup> January 2012, Conclusions 2011

All Children (APPROACH) Ltd.<sup>5</sup> Following publication of the decision in May 2015, Minister for Children James Reilly reported that the “reasonable chastisement” defence would be reviewed.<sup>6</sup>

**1.3 We hope the Working Group will note with concern the legality of corporal punishment of children in Ireland. We hope states will raise the issue during the review in 2016 and make a specific recommendation that Ireland clearly prohibit corporal punishment in all settings including the home and explicitly repeal the common law defence of “reasonable chastisement”.**

## **2 Legality of corporal punishment in Ireland**

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

Corporal punishment of children in Ireland is unlawful in schools and the penal system; it is unlawful in some but not all alternative care settings and forms of day care; it is lawful in the home. Achieving full prohibition requires the enactment of legislation clearly prohibiting corporal punishment in the home and in all alternative care and day care settings, together with explicit repeal of the common law defence of “reasonable chastisement”. A bill to remove the defence is under discussion.

**2.1 *Home (lawful)*:** The common law right to use “reasonable and moderate chastisement” in disciplining children was confirmed in article 37 of the Children Act 1908. The Children Act 2001 repealed article 37, but removal of the common law defence requires an explicit provision in addition to this repeal.

2.2 Following a complaint against Ireland 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 that Ireland was in violation of Article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings.<sup>7</sup> In 2013, a second complaint – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the Committee; the complaint alleged that the existence of the Irish common law of “reasonable chastisement” allows parents and some other adults to assault children with impunity, and that Ireland has taken no effective action to remedy the violation of article 17 in this respect that was found by the Committee in the previous complaint in 2003.<sup>8</sup> The complaint was declared admissible on 2 July 2013; the Committee published its decision in May 2015. The Committee concluded that the law in Ireland does not prohibit all corporal punishment of children in the family and in all forms of care and that the common law defence of “reasonable chastisement” continues to exist; this situation is in violation of article 17 of the Charter.<sup>9</sup> Following publication of the decision in May 2015, Minister

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<sup>5</sup> Collective Complaint No. 93/2013, *Association for the Protection of All Children (Approach) v Ireland*, Decision on the Merits, Adoption 2 December 2014, Notification 26 January 2015, Publication 27 May 2015

<sup>6</sup> <http://www.rte.ie/news/2015/0527/704082-smacking-law/>, accessed 30 May 2015

<sup>7</sup> Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005

<sup>8</sup> Collective complaint No. 93/2013, *Association for the Protection of All Children (APPROACH) Ltd v Ireland*

<sup>9</sup> Collective Complaint No. 93/2013, *Association for the Protection of All Children (Approach) v Ireland*, Decision on the Merits, Adoption 2 December 2014, Notification 26 January 2015, Publication 27 May 2015

for Children James Reilly reported that the “reasonable chastisement” defence would be reviewed.<sup>10</sup>

2.3 A Children First Bill is under discussion. An amendment to the bill which would explicitly repeal the “reasonable chastisement” defence is under discussion and is expected to be tabled in September 2015.<sup>11</sup>

2.4 **Alternative care settings (partially prohibited)**: Corporal punishment is prohibited in some but not all alternative care settings. The Child Care (Special Care) Regulations 2004 regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit “corporal punishment or any form of physical violence”. Guidance (National Standards) relating to foster care states that corporal punishment should not be used, but there is no prohibition in legislation. Similarly, Health Boards recommend the avoidance of corporal punishment in residential services in favour of “reasonable and humane sanctions”, and the National Standards for Children’s Residential Centres state that young people should not be subjected to humiliating or degrading treatment, but there is no prohibition of corporal punishment in legislation.

2.5 **Day care (partially prohibited)**: Corporal punishment is unlawful in some but not all day care. It is explicitly prohibited in pre-school establishments in Regulation 8 of the Child Care (Pre-School Services) Regulations 1996, but under section 58 of the Child Care Act 1991, childminders caring for children of relatives, children of the same family or not more than three children of different families are exempt from these regulations.

2.6 **Schools (unlawful)**: In 1982, Department Circulars 9/82 and 5/82 stated that corporal punishment should not be used, and teachers’ immunity from criminal prosecution was removed in article 24 of the Offences Against the Person (Non Fatal) Act 1997, which states: “The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished.”

2.7 **Penal institutions (unlawful)**: Corporal punishment is explicitly prohibited in penal institutions in the Criminal Law Act 1997 (art. 12) and the Children Act 2001 (art. 201). There is no provision for corporal punishment in the Prisons Act 2007 and Prison Rules 2007.

2.8 **Sentence for crime (unlawful)**: Corporal punishment is explicitly prohibited as a sentence for crime in the Criminal Law Act 1997 (art. 12).

### 3 Recommendations by human rights treaty bodies

3.1 **CRC**: The Committee on the Rights of the Child has twice recommended to Ireland that all corporal punishment of children be prohibited – in 1998 and 2006.<sup>12</sup>

3.2 **CAT**: In 2011, the Committee Against Torture recommended to Ireland that corporal punishment be prohibited in all settings.<sup>13</sup>

3.3 **HRC**: In 2014, the Human Rights Committee recommended that corporal punishment be prohibited in all settings in Ireland.<sup>14</sup>

3.4 **ECSR**: In 2012, the European Committee of Social Rights concluded that the situation in Ireland is in violation of the Revised European Social Charter because corporal punishment in the home is not explicitly prohibited.<sup>15</sup> In May 2015, the Committee concluded in response to a collective

<sup>10</sup> <http://www.rte.ie/news/2015/0527/704082-smacking-law/>, accessed 30 May 2015

<sup>11</sup> Information provided in communication with Global Initiative, 16 September 2015

<sup>12</sup> 4 February 1998, CRC/C/15/Add.85, Concluding observations on initial report, paras. 16 and 39

<sup>13</sup> 17 June 2011, CAT/IRL/CO/1, Concluding observations on initial report, para. 24

<sup>14</sup> [July 2014], CCPR/C/IRL/CO/4 Advance Unedited Version, Concluding observations on fourth report, para. 14

<sup>15</sup> January 2012, Conclusions 2011

complaint on the issue that the law in Ireland does not prohibit all corporal punishment of children in the family and in all forms of care and that the common law defence of “reasonable chastisement” continues to exist and that this situation is in violation of article 17 of the Charter.<sup>16</sup>

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

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September 2015

*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.*

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<sup>16</sup> Collective Complaint No. 93/2013, *Association for the Protection of All Children (Approach) v Ireland*, Decision on the Merits, Adoption 2 December 2014, Notification 26 January 2015, Publication 27 May 2015