

**BRIEFING ON BELGIUM FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
SESSION 80 PRE-SESSIONAL WORKING GROUP –
June 2018**



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

*From the Global Initiative to End All Corporal Punishment of Children,
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This briefing describes the legality of corporal punishment of children in Belgium. 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 recommendations to Belgium on the issue, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, the recommendations made by the Committee Against Torture, the Committee on Economic, Social and Cultural Rights, the European Committee of Social Rights, and during the UPR of Belgium in 2011 and 2016, and the new global commitment to ending all violence against children in the context of the 2030 Agenda for Sustainable Development, we hope the Committee will:

- **in its List of Issues for Belgium, raise the issue of corporal punishment of children, in particular asking what steps are being taken to prohibit all corporal punishment of children, however light, in all settings; and,**
- **in its concluding observations on the fifth/sixth report of Belgium, recommend that legislation be immediately enacted to explicitly prohibit corporal punishment of children in all settings, including the home.**

1 The report of Belgium to the Committee on the Rights of the Child

1.1 Belgium’s fifth/sixth state party report does not address the issue of corporal punishment of children, despite having received a clear recommendation at its previous examination to prohibit its use in all settings as a matter of priority.¹ Belgium must be reminded of its international obligation to prohibit all corporal punishment of children and enact legislation as a matter of priority.

2 The legality and practice of corporal punishment of children in Belgium

- 2.1 **Summary:** Corporal punishment in Belgium is unlawful in schools and in the penal system but it is not clearly prohibited by law in the home, in some alternative care and in day care settings.
- 2.2 **Home (lawful):** Corporal punishment is lawful in the home. The Civil Code states that the parent-child relationship should be one of “mutual respect” (art. 371), but this is not interpreted as prohibiting parental corporal punishment. A Constitutional amendment in 2000 (art. 22bis) provides for the protection of the child’s moral, physical and sexual integrity but does not explicitly prohibit all corporal punishment. Provisions against violence and abuse in the Penal Code

¹ 18 June 2010, CRC/C/BEL/CO/3-4, Concluding observations on third/fourth report, paras. 39 and 40

as amended by the Law Concerning the Penal Protection of Minors 2000 are not interpreted as prohibiting all corporal punishment in childrearing.

2.3 Following a complaint against Belgium 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 Belgium was in violation of article 17 of the Charter because there is no explicit prohibition in law of corporal punishment of children by parents and other carers (including non-institutional childcare facilities and arrangements).² In the following years, a number of legislative proposals were introduced to amend the Civil Code to prohibit all corporal punishment³ but these were never discussed in Parliament. In 2011, the Government rejected the recommendation to prohibit corporal punishment by law in all settings made during the Universal Periodic Review of Belgium, stating that while corporal punishment is not a specific offence, a number of provisions in criminal law are applicable to such acts.⁴ In reporting to the Committee Against Torture in 2012, the Government similarly indicated that existing law offers adequate protection to children from corporal punishment but also confirmed that corporal punishment is “not an offence as such”.⁵ The report draws attention to a circular of 21 October 2008 which reminds prosecution services that “depending on the circumstances, corporal punishment of children is liable to be treated as punishable assault and/or degrading treatment”.⁶ Again, in 2013, in response to a question by the Committee on Economic, Social and Cultural Rights about prohibition, the Government asserted that existing legislation adequately protects children from corporal punishment.⁷

2.4 In February 2013, a second collective complaint – submitted by the Association for the Protection of All Children (APPROACH) Ltd – was registered by the European Committee of Social Rights, alleging that there is no explicit prohibition of corporal punishment in the family, alternative care settings and schools throughout all communities in Belgium.⁸ The complaint was declared admissible on 2 July 2013; the Committee published its decision on 29 May 2015. The Committee concluded that the situation in Belgium is in violation of the Charter because there is “no adequate and effective prohibition [of corporal punishment] in law”.⁹

2.5 In responding to recommendations to prohibit corporal punishment made during the Universal Periodic Review of Belgium in 2016, the Government accepted one recommendation to prohibit corporal punishment in all settings including the home but delayed its response to another similar recommendation.¹⁰ Subsequently, in apparent contradiction to earlier remarks on the issue, the Government stated that it could not commit to implementing the recommendation to introduce a law prohibiting corporal punishment in all settings, that the current legal framework already punishes violence towards children, and that a study is under way to determine whether adjustments to the framework are necessary or desirable.¹¹

² Resolution ResChS(2005)10, Collective complaint No. 21/2003 by the World Organisation against Torture (OMCT) against Belgium, adopted by the Council of Ministers on 8 June 2005

³ 20 August 2003 proposal by Sabine de Béthune, 17 February 2007 proposal by Clitilde Nyssens and Christian Brotcorne, 16 January 2007 proposal by Magda Raemaekers and 14 July 2008 proposal by Christian Brotcorne

⁴ 11 July 2011, A/HRC/18/3, Report of the working group, paras. 63 and 103(10)

⁵ 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152

⁶ 19 November 2012, CAT/C/BEL/3, Third state party report, para. 152

⁷ 28 October 2013, E/C.12/BEL/Q/4/Add.1, Reply to list of issues, para. 147

⁸ Collective complaint No. 98/2013, *Association for the Protection of All Children (APPROACH) Ltd v Belgium*

⁹ Collective Complaint No. 98/2013, *Association for the Protection of All Children (Approach) v Belgium*, Decision on the Merits, Adoption 20 January 2015, Notification 28 January 2015, Publication 29 May 2015

¹⁰ 3 February 2016, A/HRC/WG.6/24/L.6, Draft report of the working group, paras. 139 (15) and 140(30)

¹¹ 1 June 2016, A/HRC/32/8/Add.1, Report of the working group: Addendum, paras. 6 and 10

2.6 A Bill was introduced in April 2016 to amend the Civil Code, adding a new article 371/1 (unofficial translation): “Children have a right to care, safety and a good education. They must be treated with due respect to their person and their individuality and cannot be subjected to degrading treatment or any other form of physical or psychological violence.” Although the Bill does not use the term “corporal punishment”, its explanatory memorandum refers to Belgium’s obligation to explicitly prohibit all forms of corporal punishment and in particular to the multiple recommendations received from UN treaty bodies and the European Committee of Social Rights. It also states that this provision would be intended to apply to parents but also all others caring for a child. As at January 2018, the Bill had not yet been discussed in Parliament.¹² Belgium’s 2017 state report to the Committee on the Rights of the Child does not mention the Bill and does not address corporal punishment.¹³

2.7 **Alternative care settings (*partially lawful*)**: Corporal punishment is prohibited in some but not all alternative care settings. In the Flemish Community, corporal punishment is prohibited in institutions in article 28 of the Decree of the Flemish Council (7 May 2004) and articles 11 and 13 of the Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth, but there is no prohibition in relation to non-institutional care. To our knowledge, there is no explicit prohibition of corporal punishment in alternative care settings in the French Community or the German-speaking Community.

2.8 **Day care settings (*lawful*)**: There is no explicit prohibition of corporal punishment in all early childhood care and in day care for older children.

2.9 **Schools (*unlawful*)**: Corporal punishment is considered unlawful in schools under case law relating to provisions against assault in the Criminal Code, but there is no explicit prohibition in legislation.

2.10 **Penal institutions (*unlawful*)**: Corporal punishment is unlawful as a disciplinary measure in penal institutions. The Act concerning the principles of the administration of prison establishments and the legal status of detainees 2005 does not include corporal punishment among its provisions for disciplinary regimes. A federal Bill amending legislation on youth protection and addressing juvenile justice was adopted in 2006 but we have no details of its provisions. The Government reported to the UPR in 2015 that a law of 5 May 2014 had reformed the regime applicable to internees:¹⁴ we have yet to see the full text of this law.

2.11 **Sentence for crime (*unlawful*)**: Corporal punishment is not a permitted punishment under the Criminal Code.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC**: The Committee on the Rights of the Child has recommended prohibition of corporal punishment of children in the family and other settings in Belgium on three occasions – following

¹² See

<http://www.dekamer.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?dossierID=1778&legislat=54&inst=K>, accessed 17 January 2018

¹³ [July 2017], CRC/BEL/5-6, Fifth/sixth report

¹⁴ 9 November 2015, A/HRC/WG.6/24/BEL/1, National report to the UPR, para. 13

examination of the state party's initial report in 1995,¹⁵ the second report in 2002¹⁶ and the third/fourth report in 2010.¹⁷

- 3.2 **CAT:** The Committee Against Torture has twice recommended to Belgium that the law be reformed to prohibit corporal punishment of children in the family – in its concluding observations on the second state party report in 2009¹⁸ and on the third report in 2014.¹⁹ In 2014, the Committee also recommended prohibition in non-institutional childcare settings.²⁰
- 3.3 **CESCR:** In 2007, the Committee on Economic, Social and Cultural Rights recommended prohibition of corporal punishment of children in the family in Belgium.²¹ The Committee reiterated its recommendation in 2013.²²
- 3.4 **ESCR:** In its systematic monitoring of implementation of the European Social Charter and Revised Charter, the European Committee of Social Rights has three times found the situation in Belgium to be not in conformity with article 17 of the Revised Charter because all corporal punishment, including in the home, is not prohibited.²³ In addition, following a collective complaint against Belgium brought in 2003 by the World Organisation Against Torture, the Committee concluded that Belgium was in violation of article 17 of the Charter because there is no explicit prohibition in law of corporal punishment of children by parents and other carers (including non-institutional childcare facilities and arrangements).²⁴ A second collective complaint on the issue was submitted in 2013, by the Association for the Protection of All Children (APPROACH) Ltd. The complaint was declared admissible on 2 July 2013; the Committee published its decision on 29 May 2015. The Committee concluded that the situation in Belgium is in violation of the Charter because there is “no adequate and effective prohibition [of corporal punishment] in law”.²⁵
- 3.5 **UPR:** During the Universal Periodic Review of Belgium in 2011, the Government rejected a recommendation to prohibit all corporal punishment.²⁶ Recommendations to prohibit were again made at the UPR in 2016: the Government accepted one of these²⁷ but subsequently stated that it could not commit to implementing the second recommendation to introduce a law prohibiting corporal punishment in all settings.²⁸

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¹⁵ 20 June 1995, CRC/C/15/Add.38, Concluding observations on initial report, para. 15

¹⁶ 13 June 2002, CRC/C/15/Add.178, Concluding observations on second report, paras. 23 and 24

¹⁷ 18 June 2010, CRC/C/BEL/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 39 and 40

¹⁸ 19 January 2009, CAT/C/BEL/CO/2, Concluding observations on second report, para. 24

¹⁹ 3 January 2014, CAT/C/BEL/CO/3, Concluding observations on third report, para. 27

²⁰ *ibid.*

²¹ 3 December 2007, E/C.12/BEL/CO/3, Concluding observations on third report, paras. 19 and 33

²² 23 December 2013, E/C.12/BEL/CO/4 Draft, Concluding observations on fourth report, para. 17

²³ July 2005, Conclusions XVII-2 ; 2007, Conclusions XVIII-1, vol.1 ; January 2012, Conclusions 2011

²⁴ Resolution ResChS(2005)10, Collective complaint No. 21/2003 by the World Organisation against Torture (OMCT) against Belgium, adopted by the Council of Ministers on 8 June 2005

²⁵ Collective Complaint No. 98/2013, *Association for the Protection of All Children (Approach) v Belgium*, Decision on the Merits, Adoption 20 January 2015, Notification 28 January 2015, Publication 29 May 2015

²⁶ 11 July 2011, A/HRC/18/3, Report of the working group, para. 103(10)

²⁷ 3 February 2016, A/HRC/WG.6/24/L.6, Draft report of the working group, paras. 139 (15) and 140(30)

²⁸ 1 June 2016, A/HRC/32/8/Add.1, Report of the working group: Addendum, paras. 6 and 10