

Corporal punishment of children in Eswatini (formerly Swaziland)

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Child population 569,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”; article 14 of the Children’s Protection and Welfare Act 2012 provides for “justifiable” discipline. These provisions should be repealed and the law should prohibit all corporal punishment, in the home, schools and all other settings where adults have parental authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Provisions authorising corporal punishment should be repealed and prohibition enacted in legislation relating to all education settings (public and private).

Penal institutions – Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all institutions accommodating children in conflict with the law. Provisions authorising corporal punishment in the Prisons Act 1964 and possibly the Reformatories Act 1921 should be repealed.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 29(2) of the Constitution 2005 states that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”. Article 14 of the Children’s Protection and Welfare Act 2012 (in force July 2013) provides for “justifiable” discipline: “(1) A child has a right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child. (2) A child should be disciplined in accordance with his age, physical, psychological, emotional and mental condition and no discipline is justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.” Article 18 of the Act states that parents/guardians have the responsibility to protect children from violence and abuse but does not prohibit all corporal punishment.

As at May 2017, the Sexual Offences and Domestic Violence Bill had been passed and was awaiting accession:¹ we have yet to see the text.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012 (see under “Home”) and possibly other legislation.

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for “lawful and moderate chastisement” in article 29(2) of the Constitution 2005 and for “justifiable” discipline in article 14 of the Children’s Protection and Welfare Act 2012 (see under “Home”).

Schools

Corporal punishment is lawful under the Education Act 1982, the Education Rules 1977 and the provision for “lawful and moderate chastisement” in article 29(2) of the Constitution (see under “Home”). The Children’s Protection and Welfare Act 2012 does not prohibit corporal punishment in schools. In 2012, education legislation was being reviewed: we do not know if prohibition of corporal punishment has been proposed in this context.

In 2014, the Government informed the UN Committee on the Elimination of Discrimination Against Women that the Ministry had issued a policy statement discouraging the use of corporal punishment, that training on positive discipline was being undertaken and that the eventual aim was to abolish corporal punishment completely.² Eswatini’s 2016 report to ACERWC stated that the Education Sector Policy of 2011 protected children against corporal punishment³ – however the policy does not

¹ 20 May 2014, CEDAW/C/SWZ/Q/1-2/Add.1, Reply to list of issues, para. 1.1; 31 May 2017, CCPR/C/SWZ/Q/1/Add.1, Reply to list of issues, para. 24

² 20 May 2014, CEDAW/C/SWZ/Q/12/Add.1, para. 13.4

³ 30 November 2016, Eswatini’s Initial Report on the African Charter on the Rights and Welfare of the Child, para. 106

explicitly prohibit corporal punishment but instead “aims to promote a culture of positive discipline”. This is undermined by the above-quoted legislative provisions which allow corporal punishment in schools.

Penal institutions

Corporal punishment is lawful as a disciplinary measure for males in penal institutions under the Prisons Act 1964, the provisions for “lawful and moderate chastisement” in article 29(2) the Constitution 2005 (see under “Home”) and possibly the Reformatories Act 1921. It is not prohibited in the Children’s Protection and Welfare Act 2012.

Sentence for crime

Corporal punishment is prohibited as a sentence for crime in article 161(2) of the Children’s Protection and Welfare Act 2012: “No sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child.” Article 126(5) states: “Corporal punishment and public humiliation shall not be elements of diversion.”

Universal Periodic Review of Eswatini’s human rights record

Eswatini was examined in the first cycle of the Universal Periodic Review in 2011 (session 12). The following recommendations were made:⁴

“Carry out educational and awareness raising campaigns to ensure the use of alternative disciplinary measures to corporal punishments in accordance with the human dignity of the child (Uruguay);

“Prohibit corporal punishment in all settings (Slovenia);

“Expressly prohibit by law corporal punishments in all areas (Uruguay)”

The Government accepted the recommendation to raise awareness on alternatives to corporal punishment but stated that the recommendations to prohibit all corporal punishment were only “acceptable in so far as adults are concerned”.⁵

Eswatini was examined in the second cycle of the Universal Periodic Review in 2016 (session 25). During the dialogue, Uruguay appreciated the ban on the use of corporal punishment as a penalty for minors, and work towards establishing positive discipline methods at the educational and family levels; Chad welcomed measures aimed at prohibiting corporal punishment and protecting children from violence; and Mexico considered the abolition in the Child Protection and Welfare Act of corporal punishment as a sentence for children highly positive and urged Eswatini to continue efforts to abolish it in all areas.⁶ The following recommendation was made:⁷

“Take appropriate measures to prohibit corporal punishment in all settings (Montenegro)”

⁴ 12 December 2011, A/HRC/19/6, Report of the working group, paras. 76(32), 77(31) and 77(38)

⁵ 12 December 2011, A/HRC/19/6, Report of the working group, paras. 76(32), 77(31) and 77(38); 6 March 2012, A/HRC/19/6/Add.1, Report of the working group: Addendum, para. 12

⁶ 13 July 2016, A/HRC/33/14, Report of the working group, paras. 24, 39, 78

⁷ 13 July 2016, A/HRC/33/14, Report of the working group, para. 109(58)

The Government only accepted the recommendation in part but stated that education sector policy (but not law) prohibits corporal punishment, and that “Swaziland is not yet ready to accept prohibiting corporal punishment of children in the home.”⁸

Examination in the third cycle is scheduled for 2021.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 October 2006, CRC/C/SWZ/CO/1, Concluding observations on initial report, paras 36, 37, 67 and 68)

“The Committee is deeply concerned that corporal punishment is legal and traditionally accepted and widely practised in the family, in schools and in other settings. The Committee is further concerned that the new Constitution allows the use of ‘moderate chastisement’ of children.

“The Committee recommends that the State party consider, as a matter of priority, amending the Constitution and explicitly prohibiting by law corporal punishment in all settings, including in the family, schools, the penal system and all alternative care settings. It also recommends that the State party conduct awareness-raising and educational campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, taking into account its general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

“While welcoming the establishment of a Children’s Court in 2005, the Committee is nevertheless concerned at the lack of a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at: ...

e) the use of corporal punishment as a sanction for juveniles.

“The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), and in the light of the Committee’s day of general discussion on the administration of juvenile justice. In particular the Committee recommends that the State party: ...

f) abolish, as a matter of urgency, the use of corporal punishment as a sanction in the juvenile justice system....”

Human Rights Committee

([July 2017], CCPR/C/SWZ/CO/1, Concluding observations on initial report, Advance unedited version, paras. 50 and 51)

“While noting that the Children’s Protection and Welfare Act abolished the use of corporal punishment as a judicial sentence for children, the Committee remains concerned that corporal

⁸ 21 September 2016, A/HRC/33/14/Add.1, Report of the working group: Addendum, paras. 22, 23, 24

punishment is still lawful in the home, alternative care, day care, schools and penal institutions (arts. 7 and 24).

“The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Committee on the Elimination of Discrimination Against Women

(18 July 2014, CEDAW/C/SWZ/CO/1-2 Advance Unedited Version, Concluding observations on initial/second report, paras. 30 and 31)

“While welcoming the introduction of free primary education and the high enrolment rates of girls in school, the Committee is concerned about the indirect costs of primary education. The Committee is also concerned at stereotypical choices of subjects and courses in education by girls who often avoid science courses. The Committee is further concerned about the; ...

d) lack of appropriate measures to criminalise corporal punishment and prevent its use in all settings, particularly in schools.

“The Committee recommends that the State party:

f) prohibit corporal punishment and adopt measures aimed at eliminating its use in all settings, particularly in schools, and promote the use of non-violent forms of disciplining.”

Prevalence/attitudinal research in the last ten years

Research conducted in 2015 as part of UNICEF’s Multiple Indicator Cluster Surveys (MICS) programme, found on average 88% of 1-14 year-old children experienced some form of violent discipline (psychological aggression and/or physical punishment) in the month prior to the survey. On average 80% of children experienced psychological aggression, 58% physical punishment and 10% severe physical punishment (hit or slapped on the face, head or ears, or hit repeatedly). Only 8% of children experienced only non-violent forms of discipline.

(Central Statistical Office (2015), *Swaziland Multiple Indicator Cluster Survey 2014, Key Findings*, Mbabane, Swaziland: Central Statistical Office)

According to statistics collected in 2010 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 88.9% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey; 82.1% of mothers and caregivers thought physical punishment was necessary in childrearing. Two thirds (66%) of children experienced physical punishment; 11.7% experienced severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement), and 82.1% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Central Statistical Office & UNICEF (2011), *Swaziland Multiple Indicator Cluster Survey 2010: Final Report*, Mbabane: Central Statistical Office & UNICEF)