

# Corporal punishment of children in Switzerland: Briefing for the Universal Periodic Review, 28<sup>th</sup> session, 2017

*From the Global Initiative to End All Corporal Punishment of Children, March 2017*



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 Switzerland, 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, and the recommendations made during the 2<sup>nd</sup> cycle UPR of Switzerland in 2012.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in Switzerland. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Switzerland explicitly repeal the “right of correction” and clearly prohibit all corporal punishment of children in all settings, including the home.**

## **1 Review of Switzerland in the 2<sup>nd</sup> cycle UPR (2012) and progress since**

1.1 Switzerland was reviewed in the second cycle of the Universal Periodic Review in 2012 (session 14). The issue of corporal punishment of children was raised in the compilation of UN information<sup>1</sup> and in the summary of stakeholders’ information.<sup>2</sup> The Government accepted a recommendation to conduct public-awareness campaigns on the harmful effects of corporal punishment but rejected one to explicitly prohibit corporal punishment in the home,<sup>3</sup> in contradiction with its international obligations.

1.2 Since the review in 2012, amendments have been passed strengthening children’s protection from assault – but the “right of correction” confirmed by jurisprudence has not yet been explicitly repealed and several motions to do so have been rejected. The motion Galladé is the most recent initiative. It has been waiting to be examined by the National Council since 2015; however the Federal Council has already reported it does not support it.

<sup>1</sup> 9 August 2012, A/HRC/WG.6/14/CHE/2, Compilation of UN information, para. 37

<sup>2</sup> 30 July 2012, A/HRC/WG.6/14/CHE/3, Summary of stakeholders’ views, para. 27

<sup>3</sup> 7 December 2012, A/HRC/22/11, Report of the working group, paras. 122(44) and 123(81); 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Switzerland. We hope states will raise the issue during the review in 2017 and make a specific recommendation that Switzerland immediately repeal the “right of correction” and clearly prohibit all corporal punishment of children in all settings, including the home.**

## 2 Legality of corporal punishment in Switzerland

### *Summary of current law and opportunities for achieving prohibition*

In Switzerland corporal punishment of children is unlawful in day care, schools and the penal system, but it is not fully prohibited in the home and in all forms of alternative care. The Government has claimed that existing law adequately protects children from corporal punishment but in fact jurisprudence confirmed a “right of correction”.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home under the parental “right of correction”. According to the Civil Code 1907 as amended, parents must take care of their child “with his or her best interests in mind” (art. 301) and must “safeguard the child’s physical, mental and moral development” (art. 302). The Code provides for the intervention of the child protection authority where a child’s wellbeing is threatened, including “to remind parents, foster parents or the child of their duties, issue specific instructions regarding care, upbringing or education” (art. 307); when such measures fail, parental authority may be withdrawn (art. 311). In 2014, article 311 of the Civil Code was amended to specify violence as one of the reasons for the withdrawal of parental authority. The Penal Code 1937 punishes the causing of physical injury (arts. 122, 123 and 125) and assault (art. 126) and specifies that repeated assault of a child (or other specified vulnerable person) by a person having care of that child (or other specified vulnerable person), will automatically lead to prosecution (art. 126). But neither of these Codes explicitly prohibits all corporal punishment in childrearing. In reporting to the Committee on the Rights of the Child in 2013, the Government stated that “assault” in the Penal Code “means any act inflicted on a human being that does not cause bodily harm or harm to health but that nonetheless *exceeds what is generally tolerated by society*” and that “slaps, punches, kicks, violent shoves and the throwing of projectiles *should* be classified as assault” (emphasis added).<sup>4</sup> This is not a clear message that all corporal punishment, however light, is prohibited.
- 2.2 The Government has repeatedly asserted, to human rights treaty monitoring bodies as well as during the second UPR of Switzerland in 2012, that existing legislation on bodily injury and assault adequately protects children from all corporal punishment.<sup>5</sup> The Government rejected the recommendation made during the 2012 UPR to explicitly prohibit corporal punishment in the home.<sup>6</sup> While there have been amendments to criminal and civil legislation which strengthen the

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<sup>4</sup> 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 159

<sup>5</sup> For example, see 3 March 2010, CAT/C/CHE/Q/6/Add.1, Reply to list of issues, para. 135; 6 August 2012, A/HRC/WG.6/14/CHE/1, National report to the UPR, para. 28; 28 May 2008, A/HRC/8/41, Report of the working group, paras. 8 and 55; 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 159; 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, paras. 159ff; 29 August 2014, CAT/C/CHE/7, Seventh state party report, para. 140

<sup>6</sup> 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

protection of children from assault, including from corporal punishment, the “right of correction” has not been explicitly repealed and some level of corporal punishment in childrearing remains legally and socially acceptable in Switzerland. Several legislative initiatives to repeal the right of correction and explicitly prohibit corporal punishment have been quashed. Most recently, parliamentary motion Galladé “Abolition of corporal punishment” (motion 15.3639) was tabled for discussion in June 2015.<sup>7</sup> Although in August 2015 the Federal Council had issued a preliminary proposal of rejection, by March 2017 the motion had not yet been discussed by the National Council.<sup>8</sup>

2.3 In the 1970s, article 278 of the Civil Code 1907 which provided for parents’ “right of correction” (“droit de correction”) over their children was removed from the law. The purpose of this law reform was not to prohibit corporal punishment but was because it was considered unnecessary to explicitly provide for this right in the legislation. In its message on the reform of the Civil Code, issued in 1974, the Federal Council confirmed (unofficial translation): “Parental authority includes the right to correct the child to the extent that his/her education requires. However, there is no need to mention this right expressly in the law.”<sup>9</sup>

2.4 When the Penal Code was amended in 1985 to strengthen children’s protection from abuse, the message of the Federal Council again referred to the right of correction. The Council confirmed that the “right of correction” did not provide a defence in cases when bodily harm had been inflicted on a child (“the education of a child never justifies inflicting bodily harm”).<sup>10</sup> The amendments included new provisions against repeated assault in article 126 of the Penal Code, intended to protect children from the damage caused by repeated assault even when the harmful effects are not immediately visible. The Council reported that it had received many requests to expressly confirm parents’ right of correction, but believed this was “superfluous” because “the right is deduced in particular in article 302 of the Civil Code”.<sup>11</sup> The Council sought to “dispel the doubts expressed by those who fear a pair of slaps already constitutes assault prosecuted ex officio. As we have explained, the term ‘repeated occasions’ requires much more than that”.<sup>12</sup>

2.5 Subsequent case law has confirmed the “right of correction”. For example, a 2003 Federal Court judgment ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment, stating that “the perpetrator, who struck his girlfriend’s children a dozen times in the space of three years and who regularly boxed their ears was committing repeated assault under article 126, paragraph 2, of the Criminal Code and was thereby exceeding what was admissible in accordance with the possible right to inflict corporal punishment”.<sup>13</sup>

2.6 **Alternative care settings (partially lawful):** Corporal punishment is considered unlawful in alternative care settings under Federal Court judgement BGE 117 IV 18 (see below), but there is no explicit prohibition in law. Corporal punishment is possibly lawful as for parents in alternative care provision involving family placements.

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<sup>7</sup> 16 June 2016, CEDAW/C/CHE/Q/4-5/Add.1, Reply to the list of issues on fourth/fifth report, para. 11.2

<sup>8</sup> <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20153639>, in French, accessed 2 March 2017

<sup>9</sup> “Message du Conseil fédéral à l’Assemblée fédérale concernant la modification du code civil Suisse (Filiation) (Du 5 juin 1974)”, *Feuille Fédérale*, 8 July 1974, II, No. 27, p. 78

<sup>10</sup> “Message concernant la modification du code pénal et du code pénal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1042

<sup>11</sup> “Message concernant la modification du code pénal et du code pénal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1045

<sup>12</sup> “Message concernant la modification du code pénal et du code pénal militaire (Infractions contre la vie et l’intégrité corporelle, les mœurs et la famille) du 26 juin 1985”, *Feuille Fédérale*, 10 September 1985, II, p. 1046

<sup>13</sup> 5 June 2003, ATF 129 IV 216ss, quoted in 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 161

- 2.7 **Day care (?unlawful):** Corporal punishment is considered unlawful in early childhood care and in day care for older children under Federal Court judgement BGE 117 IV 18 (see below), though it is not explicitly prohibited.
- 2.8 **Schools (?unlawful):** Corporal punishment is considered unlawful in schools but there is no explicit prohibition. In 1991, the Federal Court ruled that corporal punishment may be permissible in some cantons in certain circumstances if it does not exceed the level generally accepted by society.<sup>14</sup> A ruling in 1993 (BGE 117 IV 18) stated there can be no customary law that would allow teachers or other persons taking care of children to exercise corporal punishment against them. In some of the 26 cantons, corporal punishment is explicitly prohibited in school laws; in others it is prohibited in regulations, and in others there are school rules which state that it should not be used. The Government has acknowledged the fragmented nature of legislation relating to corporal punishment in schools.<sup>15</sup>
- 2.9 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions but there appears to be no explicit prohibition. The Federal Act on Juvenile Criminal Procedure 2011 does not explicitly prohibit corporal punishment.
- 2.10 **Sentence for crime (unlawful):** It is not available as a sentence under the Criminal Code, the Criminal Procedure Code (in force 2011), the Federal Act on the criminal status of minors (in force 2007) or the Constitution.

### 3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC:** In 2002, the Committee on the Rights of the Child recommended prohibition of corporal punishment in all settings in Switzerland.<sup>16</sup> The Committee reiterated its concerns in 2015 and again recommended prohibition in all settings.<sup>17</sup>
- 3.2 **CAT:** In 2010, the Committee Against Torture recommended that Switzerland specifically prohibit corporal punishment in its legislation.<sup>18</sup>
- 3.3 **UPR:** Switzerland was examined at the Universal Periodic Review in 2008. The Government accepted a recommendation to consider prohibiting corporal punishment but stated that domestic law already protected children's "corporal integrity".<sup>19</sup> At the second cycle UPR in 2012, the Government accepted the recommendation concerning awareness raising on the negative effects of corporal punishment but rejected the recommendation to prohibit corporal punishment in the home.<sup>20</sup>

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<sup>14</sup> Cited in 3 June 2002, CRC/C/SR.791, Summary record of 791<sup>st</sup> meeting, para. 66

<sup>15</sup> 30 October 2013, CRC/C/CHE/2-4, Second-fourth state party report, para. 160

<sup>16</sup> 7 June 2002, CRC/C/15/Add.182, Concluding observations on initial report, paras. 32 and 33

<sup>17</sup> 4 February 2015, CRC/C/CHE/CO/2-4 Advance Unedited Version, Concluding observations on second-fourth report, paras. 38 and 39

<sup>18</sup> 25 May 2010, CAT/C/CHE/CO/6, Concluding observations on sixth report, para. 23

<sup>19</sup> 25 August 2008, A/HRC/8/41/Add.1, Report of the working group: Addendum, para. 25

<sup>20</sup> 5 March 2013, A/HRC/22/11/Add.1, Report of the working group: Addendum, para. 123(81)

*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 since 2011 the Committee on the Rights of Persons with Disabilities.*