Cape Verde Breaches its Duty to Prevent and Combat Corporal Punishment and Sexual Exploitation and Sexual Abuse of Tarrafal, Santiago School Children, and Thus Violates Articles 2, 7 & 24 of the International Covenant on Civil & Political Rights (ICCPR)

Non-Governmental Organization (NGO) Shadow Report to the United Nations Human Rights Committee Addressing List of Issues – Issue # 2 (Availability of Remedies), Issue # 10 (Corporal Punishment), Issue # 19 (Sexual Exploitation), and Issue # 23 (Dissemination of Information about the ICCPR)

submitted by

Delta Cultura Cabo Verde
An NGO Catering to School Children in Tarrafal, Island of Santiago, Cape Verde

and the

International Human Rights Law Society
A Student Organization of Indiana University Robert H. McKinney School of Law

with the endorsement of the

Program in International Human Rights Law of Indiana University Robert H. McKinney School of Law
An Organization Accredited with Special Consultative Status to the United Nations Economic and Social Council

submitted to the

UNITED NATIONS HUMAN RIGHTS COMMITTEE
United Nations Headquarters
New York, United States of America
21 March 2012
Front Cover Photograph & Photographs Above:

1. **Front Cover:** Photo of a “pillory post” in Ribeira Grande (Cidade Velha), Cape Verde. The “pillory post” was at the heart of Cape Verde’s slave trade and represents the tradition of corporal punishment – beatings of slaves tied to the pillory post. This Shadow Report *does not* allege that teachers use pillory posts when they abuse children in Cape Verde schools. Source: [http://www.archipelagocapeverde.com/images/gallery/santiago/pillory-post.jpg](http://www.archipelagocapeverde.com/images/gallery/santiago/pillory-post.jpg)

2. **Above:** Maps of African Continent showing the country of Cape Verde off Africa’s West Coast. Source: [http://www.worldatlas.com/webimage/countrys/africa/cv.htm](http://www.worldatlas.com/webimage/countrys/africa/cv.htm)
Authors and Endorsers of this Shadow Report Submitted to the United Nations Human Rights Committee on Cape Verde’s Non-Compliance with the International Covenant on Civil & Political Rights

*Delta Cultura Cabo Verde (Delta Cultura)* is a non-governmental organisation (NGO) based in the town of Tarrafal on the island of Santiago, Cape Verde. Delta Cultura was founded in 2002 by Swiss-born Florian Wegenstein and his Cape Verdean wife, Marisa, in partnership with Delta Cultura Austria and Delta Cultura Germany. Delta Cultura focuses primarily on providing support and opportunities for socio-economically disadvantaged youth between the ages of 7 and 21. Delta Cultura operates an Education Centre at which it uses the popular sport of soccer (football) to foster social development; football participants must attend mandatory academic homework and tutoring groups. The Centre also offers traditional dancing groups, along with regular educational events, all with the aim of empowering youth to develop skills and talents that will create new perspectives for their future lives. Delta Cultura also provides vocational trainings for older teenagers and adults and operates a woodturning workshop specifically for women in order to increase employment opportunities. Delta Cultura is a well-established and respected part of the Tarrafal community, working with more than 200 children and adolescents.

The *International Human Rights Law Society (IHRLS)* is a student organization at *Indiana University Robert H. McKinney School of Law* located in Indianapolis, Indiana. The IHRLS provides research services for domestic and overseas human rights organizations, hosts speakers focusing on human rights issues, and supports students who travel overseas to participate in a variety of human rights activities. More generally, the IHRLS facilitates student access to the world of international human rights law, spreads awareness, and increases communication amongst likeminded individuals.

The *Program in International Human Rights Law* of the *Indiana University Robert H. McKinney School of Law* was established by Professor George E. Edwards in 1997 to further the teaching and study of international human rights law, to promote human rights scholarship, to assist human rights governmental, inter-governmental & non-governmental organizations, and to facilitate student international human rights law internships worldwide. On 25 July 2011, the *United Nations Economic and Social Council (UN-ECOSOC)* officially granted UN-ECOSOC Special Consultative Status to the Program in International Human Rights Law.

This photo is of the Delta Cultura Center that serves about 200 poor children in Tarrafal, Santiago, Cape Verde, including victims of corporal punishment and teacher sexual exploitation and sexual abuse.
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Executive Summary

The ICCPR Protects Cape Verdean Children

Cape Verde became a party to the ICCPR, through accession, in 1993. As party to the ICCPR, Cape Verde is obligated under Article 2 to comply fully with the ICCPR. Cape Verde has failed to protect Cape Verdean children and has thus breached the ICCPR as follows:

a. Cape Verde failed to protect Cape Verdean children from corporal punishment and failed to provide an effective remedy for child victims (in violation of ICCPR articles 2, 7 and 24); and
b. Cape Verde failed to protect Cape Verdean children from sexual exploitation and sexual abuse by teachers, and failed to provide an effective remedy for child victims, in violation of ICCPR articles 2 and 24.

Cape Verde has violated the following articles of the ICCPR: Articles 2, 7 and 24.

Information Provided in this Shadow Report

This Shadow Report informs the Human Rights Committee, Cape Verde, and other interested stakeholders that Cape Verde has breached its ICCPR obligations to protect children from corporal punishment in schools and to protect children from sexual exploitation and sexual abuse committed against the children by teachers. Furthermore, this Shadow Report suggests recommendations as to how Cape Verde might fulfill its obligation to protect children.

Human Rights Committee Hearings on Cape Verde, March 2012, New York

In March 2012, the Committee is scheduled to hold hearings on Cape Verde’s implementation of the ICCPR. In anticipation of the March hearings, the Committee tendered to Cape Verde a List of issues prepared in the absence of the initial report of Cape Verde due in 1994. At the March hearings the Committee will explore answers to the List of Issues, whether or not the Cape Verde government appears at the hearings.

Human Rights Committee Review of Cape Verde’s Non-Implementation and Breach of the ICCPR

Pursuant to the ICCPR, the steps that Cape Verde is required to follow to comply with the ICCPR and to maintain compliance include the following:

a. Immediately upon acceding to the ICCPR, Cape Verde was obligated to ensure that all of its internal laws, policies, and practices fully complied with the ICCPR, and that Cape Verde fully protected the civil and political rights of all people in Cape Verde. This

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obligation is found in ICCPR, article 2, as well as in Article 26 of the Vienna Convention on the Law of Treaties, *pacta sunt servanda* (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”)

b. Pursuant to ICCPR article 40(1), Cape Verde was required to submit its Initial Report to the Committee within one year to explain how Cape Verde is carrying out its obligations to protect human rights in Cape Verde.³

c. Cape Verde has not submitted its Initial Report to the Committee or otherwise provided a written report on Cape Verde’s implementation or non-implementation of the ICCPR.

d. Periodically, the Committee holds hearings at which a country (like Cape Verde) appears and the Committee engages the country on whether the country has fully implemented and complied with the ICCPR. The government of Cape Verde is scheduled to appear before the Human Rights Committee in March 2012 in New York for a hearing on Cape Verde’s implementation or non-implementation of the ICCPR.

e. In March 2012, the Committee will seek to determine, in the absence of the Initial Report from Cape Verde, whether and to what extent Cape Verde’s laws, policies, and practices violate the ICCPR.

f. On 29 November 2011, the two primary issues raised in this Shadow Report—corporal punishment of children and sexual exploitation and sexual abuse of children—were presented in the *List of Issues* and will be a focal part of the Human Rights Committee’s consideration of whether Cape Verde is in breach of the ICCPR.

g. The Committee’s *List of Issues* topics on Cape Verde most relevant to this Shadow Report are:

- **Issue # 2:** Under the heading “Constitutional and domestic legal framework within which the Covenant is implemented (art. 2)”
  2. Please provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant.⁴

- **Issue # 10:** Under the heading “Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)”
  10. According to the information before the Committee, corporal punishment is still lawful in the home and out-of-home placements. Please comment and provide information on the steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all institutions, including detention centres and schools.⁵

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³ ICCPR, *supra* note 1, art. 40(1). Article 40(1) provides:
   The States Parties to the [ICCPR] undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned” *Id.*

⁴ *List of Issues*, *supra* note 2.

⁵ *Id.*
Issue # 19: Under the heading “Rights of the child (art. 24)”

19. Please provide information on the legislative and practical measures adopted to combat child abuse and to eradicate labour and sexual exploitation of children, including child prostitution.6

Issue # 23: Under the heading “Dissemination of information relating to the Covenant”

23. Please indicate the steps taken to increase awareness and understanding of the Covenant among the general public and State employees, especially law enforcement officials, judges and teachers.7

Purpose of the Shadow Report

This Shadow Report is submitted to demonstrate that the government of Cape Verde has failed to fulfill its obligation under the ICCPR to protect the human rights of Cape Verdean children, and specifically:

a. The Cape Verdean government has failed to protect children who have suffered from and continue to suffer from corporal punishment in their schools; and

b. The Cape Verdean government has failed to protect children who have been and continue to be sexually exploited and sexually abused by teachers in their schools.

Furthermore, this Shadow Report offers recommendations on how Cape Verde might fulfill its ICCPR obligations, and might fulfill its obligations to protect vulnerable children from corporal punishment, sexual exploitation and sexual abuse by their teachers.

6 Id.
7 Id.
Scope and Methodology of this Shadow Report

Cape Verde is an independent nation that is situated on several islands off the coast of West Africa and has a population of approximately 492,000. This Shadow Report focuses on the plight of school children in the city of Tarrafal, on the island of Santiago in Cape Verde. The field research for this Shadow Report was conducted by Delta Cultura, which is a non-governmental organization (NGO) that works with approximately 200 children and adolescents, mostly boys, from especially poor socio-economic backgrounds in Tarrafal.

Delta Cultura works with children who have suffered from human rights violations that are the subject of this Shadow Report. Specifically, Delta Cultura works with children in Tarrafal, Santiago, Cape Verde who fall into the following categories:

a. **Corporal punishment.** Cape Verdean children who have suffered from and continue to be subjected to corporal punishment by teachers in schools despite laws that bear relevance to and may apply to corporal punishment; and

b. **Sexual exploitation and sexual abuse.** Cape Verdean children who have been and continue to be sexually exploited and sexually abused by teachers in their schools, despite legal prohibitions on child sexual exploitation and sexual abuse.

The results of the research prepared by Delta Cultura Cabo Verde are based on two major sources. First, some of the observations and findings described in this report were obtained and formed over the past 10 years, during which Delta Cultura has worked with children and adolescents from the community of Tarrafal, Island of Santiago.

Second, Delta Cultura gathered specific information concerning corporal punishment in late December, when the organization decided to participate in the United Nations Human Rights Committee’s review of Cape Verde, up until February 2012.

Because of the nature of these human rights abuses, the identities of the perpetrators, and the vulnerability of the child victims, great effort has been taken to guard the identities of child victims to protect the children from reprisal, to protect the innocence of the children, and to alleviate privacy concerns. Many reports of the abuse in the schools have come directly from the mouths of victims, and some have come directly from those who have witnessed the abuses. Furthermore, some ICCPR violations are readily apparent in the absence of laws prohibiting abuses and in the apparent non-enforcement of existing laws, with those violations being well known, without the need for further direct testimony from innocent child victims. Affidavits have been signed, sworn to, and one has been attached to this Shadow Report. Where necessary to protect vulnerable youth victims, identifying information in affidavits has been redacted.

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9 Florian Wegenstein Affidavit. Attached hereto as Appendix A, in English and Portuguese [hereinafter Florian Wegenstein Aff.].
10 Id.
11 Id.
Furthermore, in the List of Issues tendered to the government of Cape Verde in November 2012, the Human Rights Committee specifically called upon Cape Verde to address claims of corporal punishment of children and sexual exploitation and sexual abuse of children. It falls on the government of Cape Verde to answer these claims on Cape Verde’s implementation of the ICCPR at the March 2012 hearings before the United Nations Human Rights Committee.

It is hoped that Delta Cultura representatives, affiants, representatives of Indiana University Robert H. McKinney School of Law’s International Human Rights Law Society, and other stakeholders will be present at the Human Rights Committee hearings in March 2012 to help shed light on the factual situation in Cape Verde, where children are victims of human rights violations at the hands of teachers who subject children to corporal punishment and who sexually exploit and sexually abuse the school children.
Proposed Recommendations to the
United Nations Human Rights Committee Regarding
Cape Verde’s Obligations Under the
International Covenant on Civil and Political Rights to
Protect the Rights of Children in Cape Verde

We respectfully request that the United Nations Human Rights Committee adopt the following recommendations and urge Cape Verde to comply fully with the ICCPR and to afford fully all rights hereunder to Cape Verdean children.

A. Cape Verde must protect its school children from corporal punishment:

➢ **Recommendation # 1**: The Human Rights Committee recommends that the Cape Verdean government adopt child- and gender-sensitive administrative, legislative, and judicial measures, including executive orders, policies, rules, and regulations, to specifically prevent and combat corporal punishment, as provided by Articles 2, 7 and 24. Victims should have redress. These measures should be based on and promote the best-interest-of-the-child principle.

- **Recommendation # 1.1**: The Human Rights Committee urges the Cape Verdean government to enforce existing laws and policies applicable to the corporal punishment of children in schools and in other institutional settings.

- **Recommendation # 1.2**: The Human Rights Committee urges the Cape Verdean government to publicize laws applicable to corporal punishment so that teachers, students, parents, and other stakeholders will become aware of the laws prohibiting corporal punishment, their purposes, and the consequences of breaking the laws.

➢ **Recommendation # 2**: The Human Rights Committee recommends that the Cape Verdean government institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms, per Articles 2, 7 and 24. These mechanisms should be based on the best-interest-of-the-child-framework, with a gender perspective, and should be coupled with the provision of appropriate child- and gender-sensitivity orientation and training to all personnel and stakeholders. The mechanisms and training should include investigating and prosecuting cases of corporal punishment. Victims should be provided with redress and remedies. These governmental undertakings should include psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of corporal punishment.

- **Recommendation # 2.1**: The Human Rights Committee urges the Cape Verdean government to establish child- and gender-sensitive institutional systems and mechanisms, including mandatory reporting and investigation procedures. One of the goals of these systems and mechanisms should be to encourage reporting of corporal punishment by children, parents, those who work with children, and other stakeholders.

- **Recommendation # 2.2**: The Human Rights Committee recommends that the Cape Verdean government conduct comprehensive child- and gender-sensitivity training among teachers, parents, children, and other stakeholders on how to deal with and handle complaints involving corporal punishment.
Recommendation # 3: The Human Rights Committee recommends that the Cape Verdean government formulate, adopt, and implement child-centered and gender-sensitive steps, actions, policies, and programs, pursuant to Articles 2, 7 and 24. The actions, policies and programs should include social awareness-building and training, pursuant to the best-interest-of-the-child principle, among the following—teachers, educators, administrators, children, parents, police, judges, prosecutors, lawyers, social workers, juvenile facility officers and personnel, civil servants, nongovernmental organization workers, and members of the general public—in order to prevent, combat, and stop corporal punishment. The harmful effect on children of corporal punishment should be exposed. Victims should be entitled to and given redress.

- Recommendation # 3.1: The Human Rights Committee urges the Cape Verdean government to adopt and implement awareness-raising and education programs aimed at helping change public attitudes towards corporal punishment.

- Recommendation # 3.2: The Human Rights Committee urges the Cape Verdean government to provide child- and gender-sensitive training and information on alternative and nonviolent forms of discipline, according to the best-interest-of-the-child framework, to parents, teachers, others who regularly work with children, and other stakeholders.

B. Cape Verde must ensure that its children are not sexually exploited or sexually abused, especially by school teachers.

Recommendation # 4: The Human Rights Committee recommends that the Cape Verdean government amend its civil and penal statutes to specifically prevent and combat sexual exploitation and sexual abuse of school children, as provided by Articles 2 and 24. Victims need to be given redress. The Cape Verdean government should also adopt child- and gender-sensitive administrative, legislative, and judicial measures. The measures should include executive orders, policies, rules, and regulations which integrate the best-interest-of-the-child principle. The measures should also be in conformity with international human rights norms and standards set forth in the ICCPR and the Convention on the Rights of the Child, obliging states parties to accord “special measures of protection” to all persons below the age of 18.

- Recommendation # 4.1: The Human Rights Committee urges the Cape Verdean government to enforce applicable civil and penal laws by investigating, prosecuting and punishing teachers found guilty of sexually exploiting and sexually abusing children.

- Recommendation # 4.2: The Human Rights Committee urges the Cape Verdean government to publicize laws that impose civil and penal liabilities on teachers for sexually exploiting and sexually abusing children, so that teachers, students, parents, and various stakeholders become aware of the law, its purpose, and the consequences of breaking the law.

Recommendation # 5: The Human Rights Committee recommends that the Cape Verdean government institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms, pursuant to Articles 2 and 24. The mechanisms should be
pursuant to the best-interest-of-the-child principle and be coupled with the provision of child- and gender-sensitivity orientation and training among all personnel and various stakeholders. The mechanisms and training should include investigating and prosecuting cases of sexual exploitation and sexual abuse. Victims should be entitled to and given redress. The mechanisms and training should provide for psychosocial and holistic intervention services, including counseling, trauma healing, and medical assistance, for the protection and support of child victims of sexual exploitation and sexual abuse.

- **Recommendation # 5.1:** The Human Rights Committee urges the Cape Verdean government to establish child- and gender-sensitive institutional systems and mechanisms, including mandatory reporting and investigation procedures, to encourage children, parents, child care providers, and other stakeholders to report cases of sexual exploitation and sexual abuse.

- **Recommendation # 5.2:** The Human Rights Committee urges the Cape Verdean government to conduct comprehensive child- and gender-sensitivity orientation and training among teachers, parents, children, and other stakeholders on how to deal with and handle complaints involving sexual exploitation and sexual abuse of children.

- **Recommendation # 6:** The Human Rights Committee urges the Cape Verdean government to formulate, adopt, and implement child-centered and gender-sensitive steps, actions, policies, and programs, as mandated by Articles 2 and 24. The steps, actions, policies and programs should include social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, civil servants, nongovernmental organization workers, and members of the general public. These actions should expose, prevent, and combat sexual exploitation and sexual abuse. Victims need to be provided with remedies and redress. The steps, actions, policies and programs should be pursuant to the best-interest-of-the-child principle.

- **Recommendation # 6.1:** The Human Rights Committee urges the Cape Verdean Government to initiate and undertake sustained awareness–raising and education campaigns to change tolerant attitudes towards teachers sexually exploiting and sexually abusing children and raise awareness about the negative consequences on children of sexual exploitation and sexual abuse.

- **Recommendation # 6.2:** The Human Rights Committee urges the Cape Verdean government to train and educate teachers to prevent and combat the sexual exploitation and sexual abuse of students by teachers, and encourage reporting by victims and other parties.
Cape Verde Breaches its Duty to Prevent and Combat Corporal Punishment, Sexual Exploitation and Sexual Abuse of Tarrafal, Santiago School Children, and Thus Violates Articles 2, 7 & 24 of the International Covenant on Civil & Political Rights (ICCPR)

I. INTRODUCTION

1. The ICCPR12 is Relevant and Binding on Cape Verde.13

   1.1 ICCPR Requirements. The ICCPR is a treaty that sets out fundamental civil and political rights for all people, including children.14 The ICCPR was created with the understanding that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”15 It obligates states to maintain and to promote these fundamental rights for all people.16

   2. ICCPR Provisions that Relate to Both Corporal Punishment and Sexual Exploitation of Children

   2.1 The ICCPR Imposes Obligations on the Cape Verdean Government to Protect the Rights of Cape Verdean Children. Cape Verde is obligated to comply with and fulfill its duty under ICCPR Articles 2 and 24 that both apply to the issues of corporal punishment and sexual abuse of school children of Tarrafal, Island of Santiago, Cape Verde.

   2.2 Article 2, paragraph 1 of the ICCPR requires Cape Verde to guarantee all rights protected under the ICCPR to all individuals in its territory, including children, without distinction of any kind. Article 2(1) provides:

   2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.17

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12 ICCPR, supra note 1.
14 “[T]he Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant.” Human Rights Comm., General Comment No. 17: Rights of the Child, art. 24, 35th Sess. (1989), U.N. Doc. HRI/GEN/1/Rev.1 (July 4, 1989). [hereinafter General Comment No. 17].
15 ICCPR, supra note 1, pmbl.
16 See id.
17 Id. at art. 2(1).
2.3 ICCPR Articles 2(2) and 2(3)(a) – (c) provide:

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

2(3) Each State Party to the present Covenant undertakes:

2(3)(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

2(3)(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

2(3)(c) To ensure that the competent authorities shall enforce such remedies when granted.18

2.4 ICCPR Article 24 (1) provides:

24(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.19

2.5 General Comment No. 17, promulgated by the Human Rights Committee to expound on ICCPR article 24(1) provides:20

1. Article 24 of the [ICCPR] recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant.

18 Id. at art. 2.
19 Id. at art. 24(1).
20 General Comment No. 17, supra note 14, ¶¶ 1-5(emphasis added).
2. ... In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults.

3. [E]very possible economic and social measure should be taken . . . to prevent [children] from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the [ICCPR], particularly the right to freedom of opinion and expression.

5. The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field....

6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State.

3. Cape Verde Violates the ICCPR and Must Comply with the ICCPR and Protect its Children. Cape Verde has failed to fulfill its obligations under the ICCPR because it has failed to protect the rights of children in the following areas, discussed infra:

3.1 Cape Verde has failed to protect children from corporal punishment and Cape Verde has failed to provide adequate remedies to children who are physically abused by their school teachers (see infra, paras 4-9).

3.2 Cape Verde has failed to protect children from sexual exploitation and sexual abuse by teachers, and Cape Verde has failed to provide adequate remedies to child victims of sexual exploitation and sexual abuse perpetrated by their school teachers (see infra, paras 10-15).
II. CORPORAL PUNISHMENT

4. Issues

4.1. Cape Verde fails to enact child-sensitive administrative, legislative, and judicial measures to specifically prevent and combat corporal punishment and provide redress to victims, per Cape Verde’s obligation to adopt “special measures of protection” for all children under ICCPR Articles 2, 7, and 24.

4.2. Cape Verde fails to institute accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms to specifically investigate and prosecute cases of corporal punishment and provide remedies to victims, including the provision of psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of corporal punishment, pursuant to ICCPR Articles 2, 7, and 24.

4.3. Cape Verde fails to formulate, adopt, and implement child-centered steps, actions, policies, and programs, especially social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, lawyers, social workers, juvenile facility officers and personnel, child institutional care providers, civil servants, nongovernmental organization workers, and members of the general public, to prevent, combat, and stop the practice of corporal punishment, per Cape Verde’s duty to adopt “special measures to protect children”, stated in the Committee’s General Comment No. 17 (Article 24).

5. ICCPR Violations

5.1. ICCPR Articles that Cape Verde violates Related to Corporal Punishment. Cape Verde fails to prevent teachers from subjecting students to corporal punishment. Cape Verde’s failure to protect children from corporal punishment violates the following ICCPR articles:

- Cape Verde violates ICCPR Article 2 and Article 7, the latter as interpreted by the Committee in its General Comment No. 20.\(^{21}\)
- Cape Verde, through acts and omission, violates the right to equality and nondiscrimination of school children on account of their minority age (“other status”) as well as their right to “special protection” under Article 24, as elucidated upon by the Committee in its General Comment No. 17.\(^ {22}\)

\(^{21}\) Human Rights Comm., General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment, art. 7, ¶ 5, 44th Sess. (1992), U.N. Doc. HRI/GEN/1/Rev.1 (Oct. 3, 1992) [hereinafter General Comment No. 20].

\(^{22}\) See General Comment No.17, supra note 14.
5.2. **ICCPR Article 7** provides that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\(^{23}\)

5.3. **ICCPR General Comment 20 (Art. 7)** specifically includes corporal punishment under the prohibitions cited in Article 7 of the ICCPR.

Specifically, *General Comment 20* provides that the:

“prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, *the prohibition must extend to corporal punishment*, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”\(^{24}\)

The Comment further provides that

“[i]n addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons.”\(^{25}\)

5.4. **Article 7** has been further interpreted in several Human Rights Committee *Views*. Albeit in the context of a criminal proceeding, the Committee has found that “irrespective of the nature of the crime that is to be punished or the permissibility of corporal punishment under domestic law, *it is the consistent opinion of the Committee that corporal punishment constitutes cruel, inhuman or degrading treatment contrary to Article 7.*”\(^{26}\)

5.5. The Human Rights Committee has demonstrated concern about corporal punishment in Cape Verde, per its 29 November 2011 *List of Issues*.\(^{27}\)

\(^{23}\) ICCPR, *supra* note 1, art. 7.

\(^{24}\) General Comment No. 20, *supra* note 21, ¶ 5 (emphasis added).

\(^{25}\) *Id.*, ¶ 11.


\(^{27}\) *List of Issues* items relating to the subjection of school children to corporal punishment include:

**Issue # 2:** Under the heading “**Constitutional and domestic legal framework within which the Covenant is implemented (art. 2)**”

2. Please provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant. Please also provide information as to
5.6. Committee on the Rights of the Child. In reviewing Cape Verde’s compliance with the Convention on the Rights of the Child, the Committee on the Rights of the Child raised the issue of corporal punishment with Cape Verden officials during their dialogue in 7 November 2001. According to the Chairperson of the Committee on the Rights of the Child, “a 1998 ethnographic study by the Ministry of Education had concluded that violence was widespread in schools.”28 That Committee on the Rights of the Child concluding observations stated that the

“Committee is concerned that corporal punishment is widely practiced in the home and in schools . . . . The Committee recommends that the State party:

Take steps to end the practice of corporal punishment in schools and in the home.

Conduct, inter-alia, awareness raising and education campaigns to change public attitudes.

Provide training and information on alternative forms of non-violent, discipline, and ensure that these are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28(2)…”29

5.7. Universal periodic review. On the occasion of the universal periodic review of Cape Verde in 2009, the Cape Verde representative “said that it had already adopted certain legal instruments for the protection of the rights of the child and minors in general.”30 This appears to indicate Cape Verde’s intent to let the current system stand.

whether any person has filed with the Supreme Court of Justice an application for amparo, as provided for in article 19, paragraph 1, of the Constitution.

Issue # 10: Under the heading “Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)”

10. According to the information before the Committee, corporal punishment is still lawful in the home and out-of-home placements. Please comment and provide information on the steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all institutions, including detention centres and schools.

List of Issues, supra note 2, issues 2 & 10 (emphasis in the original).

6. Cape Verde fails to enact child-sensitive administrative, legislative, and judicial measures to specifically prevent and combat corporal punishment and provide redress to victims, per Cape Verde’s obligation to adopt “special measures of protection” for all children under ICCPR Articles 2, 7, and 24.


Cape Verde law expressly prohibits corporal punishment of children in schools and institutional settings. As discussed below, the Cape Verdean Civil Code bans corporal punishment,\(^{31}\) as does the Constitution of Cape Verde.\(^{32}\) Also, as discussed below, assault and battery are prohibited in the penal code, with increased penalties for crimes committed by those responsible for the care of children.\(^{33}\)

6.2. English Translations of Original Portuguese Legal Provisions. In the following paragraphs related to corporal punishment, and again in the sections of this Shadow Report related to sexual exploitation and sexual abuse, the authors provide English translations of Cape Verdean laws, including provisions of the constitution, penal and civil code, and laws governing teaching personnel. Some original Portuguese-language legal provisions are reproduced in Appendices B, C, D, E, F & G.

6.3. Cape Verdean Constitutional Provisions Relevant to Corporal Punishment

Constitution article. Article 87. Childhood:

2) The family, society, and the State must guarantee the protection of children against any form of discrimination or oppression, as well as abusive authority from family, public or private institutions to whom they are entrusted, and also against exploitation of child labor.\(^{34}\)

6.4. Cape Verdean Penal Provisions Relevant to Corporal Punishment

Article 133: (Ill-treatment of minors or disabled)

Whoever has in its custody or care or under the responsibility of its education, or even as a subordinate at work, minor or disabled person or particularly vulnerable due to age, illness, physical or psychic disability, and regularly cause harm to body or to health, or inflict physical or...
mental abuse, or cruel treatments, will be punished with imprisonment for 1-5 years.\textsuperscript{35}

6.5. Cape Verdean Civil Provisions Relevant to Corporal Punishment – Articles 119, 128, 130 of the Código Civil De Cabo Verde

\textit{Código Civil De Cabo Verde. Art. 119:} (Rights of minors not to suffer physical or moral abuse)

1. In particular, minors have the following rights:
   i) Not to suffer physical and moral abuse.\textsuperscript{36}

\textit{Código Civil De Cabo Verde. Art. 128:} (Right not to suffer physical or moral abuse)

1. The right not to suffer physical or moral abuse consists of the ability, for minors, to prevent from being physically punished or victims of carelessness, lack of affection or mental cruelty, that might compromise their physical, intellectual, moral and emotional development.

2. For the purposes of the preceding paragraph it is prohibited to use diminishing, humiliating or stigmatizing corporal punishments in schools or in any other institution, neither private nor public.\textsuperscript{37}

\textit{Código Civil De Cabo Verde. Art. 130:} (Right not to suffer any qualifications or humiliating, stigmatizing or discriminatory treatment)

The right not to suffer any qualifications or humiliating, stigmatizing or discriminatory treatment consists of the ability, for minors, to object to the usage of any expression or qualification – regarding themselves - that for its humiliating, stigmatizing or socially discriminatory nature, might harm their wholesome and harmonious development.\textsuperscript{38}

6.6. Cape Verdean Law on Teaching Personnel Relevant to Corporal Punishment\textsuperscript{39}

\textit{Estatuto do Pessoal Docente Decreto De Cabo Verde [Law on Teaching Personnel]}

\textbf{Art. 75, Section 4, Subsection B:}

The following penalties of compulsory retirement or dismissal shall be applicable to the teacher who:

\textsuperscript{35}THE PENAL CODE, supra note 33, art. 133.
\textsuperscript{36}THE CIVIL CODE, supra note 31 art. 119 p. 1 (i) and (1).
\textsuperscript{37}THE CIVIL CODE, supra note 31, art. 128.
\textsuperscript{38}THE CIVIL CODE, supra note 31, art. 130.
\textsuperscript{39}ESTATUTO DO PESSOAL DOCENTE DECRETO DE CABO VERDE [LAW ON TEACHING PERSONNEL]art. 75 (2004) (Cape Verde). original Portuguese version attached hereto in Appendix E. [hereinafter LAW ON TEACHING PERSONNEL].
b) repeatedly and/or seriously strikes or injures a superior, colleague, student, or third party in this or other public service.\textsuperscript{40}

6.7. However, the aforementioned Cape Verden laws (in paragraph 6.5), except for Article 128, which specifically criminalizes corporal punishment, are couched in general terms. The legal provision governing teaching personnel requires that a teacher “repeatedly and/or seriously strikes or injures a … student” before the teacher may be held liable under Art. 75, Section 4, Subsection B, for corporal punishment.

6.8. Thus, the Cape Verden laws need to be supplemented and further strengthened, pursuant to Cape Verde’s obligation to adopt special measures to protect children. Cape Verde needs to adopt child-centered executive and administrative orders, special laws, policies, rules, and regulations, as well as legislative and judicial measures, with the best-interest-of-the-child principle as the central and overarching theme, with a gender perspective. Cape Verde needs to undertake these measures in order to fulfill its obligation under \textit{ICCPR Articles 2, 7, and 24}, and the \textit{Convention on the Rights of the Child}, to accord “special measures of protection” for all persons below the age of 18.

7. \textit{Cape Verde fails to institute accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms to specifically investigate and prosecute cases of corporal punishment and provide remedies to victims, including the provision of psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of corporal punishment, pursuant to ICCPR Articles 2, 7, and 24.}

7.1. \textbf{Children are Subjected to Corporal Punishment at Home and in Schools in Tarrafal, Island of Santiago, Cape Verde.} Corporal punishment is seemingly part of a long-standing culture that begins with corporal punishment in the home.\textsuperscript{41} According to Delta Cultura, parents hit their children. Additionally, Cape Verde teachers beat children in school, with parents encouraging teachers to hit children if the children are out of line.\textsuperscript{42} Such beatings by the teachers are encouraged when the children do not achieve a desirable outcome, when the children play or misbehave during a class, or when the children do not do their homework.

\textsuperscript{40}Id.

\textsuperscript{41}Delta Cultura found that a number of parents in Cape Verde beat their children as punishment for a wide range of misbehavior by the children. \textit{See Delta Cultura Cabo Verde Research, as stated and integrated in this report} [hereinafter Results of Delta Cultura Research].

\textsuperscript{42}Id.
Teachers hit the children to keep order in their classrooms and to compel children to obey.

7.2. Research on Corporal Punishment in Cape Verde. Delta Cultura’s research revealed that in the town of Tarrafal, corporal punishment is seemingly accepted as the “default mode of discipline in most primary schools.” It is most common in primary schools (between primary school years 1 to 6). Delta Cultura also found that, while most children are scared of teachers known to beat their students, students accept child-beating as “normal”.

7.3. Official Denial. When Delta Cultura asked the local school delegation—the Ministry of Education—about children being beaten in schools, the officials denied that corporal punishment happens in Cape Verdean Schools. The officials stated that corporal punishment in schools does not exist, allegedly because corporal punishment in schools is forbidden by law.

7.4. Children’s Stories. However, when asked, children who come to Delta Cultura’s center speak openly about corporal punishment. Children often tell stories of students having to suffer through corporal punishment. This is sometimes funny to the children, evidence again of the rate at which corporal punishment is accepted and widespread in Tarrafal.

7.5. Modes of Corporal Punishment. Based on Delta Cultura’s findings, teachers hit children with the teachers’ hands, paddles, pieces of wood, plant stalks, belts, shoes or pieces of tubing. Corporal punishment is practiced in primary and middle schools in Tarrafal, particularly in rural areas. Children are typically between 5 and 12 years of age, according to Delta Cultura’s findings. One student disclosed to Delta Cultura that his teacher always keeps a wooden stick on his desk, but puts the stick in his drawer when the director or somebody else comes to visit the classroom.

7.6. Depression, Fear, and Withdrawal By School Children Subjected to Corporal Punishment. As a result of corporal punishment, children suffer from sadness, depression, fear, and withdrawal from interaction with others and participation in

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43 Florian Wegenstein Aff., supra note 9, ¶ 8.
44 Results of Delta Cultura Research, supra note 41.
45 Florian Wegenstein Aff., supra note 9, ¶ 5.
46 Id., at ¶11.
47 Id., at ¶6.
48 Id.
49 Results of Delta Cultura Research, supra note 41.
50 Id.
51 Florian Wegenstein Aff., supra note 9, ¶ 6.
class. In other cases, the children become aggressive and violent because the children have been accustomed to the use of violence, according to Delta Cultura’s observation.

7.7. Causal Connection between Corporal Punishment and Child Victims’ Aggressive Behavior. One study found a linear relationship between the use of physical punishment against adolescents and aggression by the adolescents towards siblings and parents.\(^\text{52}\) Another study linked the experience of corporal punishment in early life to a higher probability of inflicting spousal abuse later in life.\(^\text{53}\)

7.8. Violent Behavior Displayed by Child Victims of Corporal Punishment. A study published in 2010 revealed a direct relationship between aggression and corporal punishment. The study took into account other factors that could have contributed to a child’s aggression. Nonetheless, corporal punishment remained a strong predictor of future violent behavior.\(^\text{54}\) In fact, the study found that children who experienced corporal punishment at age three were more likely to be aggressive by age five.\(^\text{55}\) The connection was pointed out by Delta Cultura, as children are seen turning to violence (throwing stones) to resolve conflicts.\(^\text{56}\)

7.9. The Reality—Continued Corporal Punishment despite Cape Verde Law

Teachers continue to use corporal punishment in schools in Cape Verde.

- Despite Cape Verde laws that expressly ban corporal punishment;
- Despite how corporal punishment harms children, physically, mentally, emotionally, socially, morally, and spiritually;
- Despite the ICCPR ban on corporal punishment; and
- Despite the ban on corporal punishment incorporated into the Convention on the Rights of the Child and other international human rights law instruments that bind Cape Verde.\(^\text{57}\)

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55 Id.

56 See Results of Delta Cultura Research, *supra* note 41.

8. **Cape Verde fails to formulate, adopt, and implement child-centered steps, actions, policies, and programs, especially social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, lawyers, social workers, juvenile facility officers and personnel, child institutional care providers, civil servants, nongovernmental organization workers, and members of the general public, to prevent, combat, and stop the practice of corporal punishment, per Cape Verde’s duty to adopt “special measures to protect children”, per the Committee’s General Comment No. 17 (Article 24).**

8.1. **Lack of Child-oriented and Child-friendly Orientation and Training on Disciplinary Strategies or Class Management among Teachers.** According to Delta Cultura’s findings, teachers in Tarrafal, Island of Santiago, Cape Verde are not given professional training on how to manage a classroom of young children or how to discipline young children without physical violence. Furthermore, Cape Verde lacks psychologists, social workers, and other professionals who can assist with classroom management and instruct on non-violent means of maintaining order in the classroom and disciplining young children.

8.2. **Cape Verde’s Failure to Curb Corporal Punishment.** Cape Verde failed to create and enforce laws, policies, rules, and regulations to combat the corporal punishment of children in school systems. This failure constitutes a violation of *ICCPR Articles 7 and 24*, as interpreted by the Human Rights Committee in *General Comment Numbers 20 and 17*, respectively.

8.3. **Cape Verde’s Failure to Provide Effective and Accessible Remedies for Child Victims of Corporal Punishment Violates ICCPR Article 2(3), in Conjunction with Articles 7 and 24.** As a party to the ICCPR, Cape Verde is obligated to ensure that any “person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” 58 Further, in accordance with *General Comment No. 17 (Article 24)*, Cape Verde is obligated to accord school children with “measures of special protection” against corporal punishment.

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58 ICCPR, *supra* note 1, art. 2, sec. 3(a).
9. Recommendations on Corporal Punishment. Cape Verde must protect its school children from corporal punishment. We respectfully request that the Committee make the following Recommendations to Cape Verde:

- **Recommendation # 1:** The Human Rights Committee recommends that the Cape Verdean government adopt child- and gender-sensitive administrative, legislative, and judicial measures, including executive orders, policies, rules, and regulations, to specifically prevent and combat corporal punishment, as provided by Articles 2, 7 and 24. Victims should have redress. These measures should be based on and promote the best-interest-of-the-child principle.
  - **Recommendation # 1.1:** The Human Rights Committee urges the Cape Verdean government to enforce existing laws and policies applicable to the corporal punishment of children in schools and in other institutional settings.
  - **Recommendation # 1.2:** The Human Rights Committee urges the Cape Verdean government to publicize laws applicable to corporal punishment so that teachers, students, parents, and other stakeholders will become aware of the laws prohibiting corporal punishment, their purposes, and the consequences of breaking the laws.

- **Recommendation # 2:** The Human Rights Committee recommends that the Cape Verdean government institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms, per Articles 2, 7 and 24. These mechanisms should be based on the best-interest-of-the-child-framework, with a gender perspective, and should be coupled with the provision of appropriate child- and gender-sensitivity orientation and training to all personnel and stakeholders. The mechanisms and training should include investigating and prosecuting cases of corporal punishment. Victims should be provided with redress and remedies. These governmental undertakings should include psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of corporal punishment.
  - **Recommendation # 2.1:** The Human Rights Committee urges the Cape Verdean government to establish child- and gender-sensitive institutional systems and mechanisms, including mandatory reporting and investigation procedures. One of the goals of these systems and mechanisms should be to encourage reporting of corporal punishment by children, parents, those who work with children, and other stakeholders.
  - **Recommendation # 2.2:** The Human Rights Committee recommends that the Cape Verdean government conduct comprehensive child- and gender-sensitivity training among teachers, parents, children, and other stakeholders on how to deal with and handle complaints involving corporal punishment.
Recommendation # 3: The Human Rights Committee recommends that the Cape Verdean government formulate, adopt, and implement child-centered and gender-sensitive steps, actions, policies, and programs, pursuant to Articles 2, 7 and 24. The actions, policies and programs should include social awareness-building and training, pursuant to the best-interest-of-the-child principle, among the following—teachers, educators, administrators, children, parents, police, judges, prosecutors, lawyers, social workers, juvenile facility officers and personnel, civil servants, nongovernmental organization workers, and members of the general public—in order to prevent, combat, and stop corporal punishment. The harmful effect on children of corporal punishment should be exposed. Victims should be entitled to and given redress.

- **Recommendation # 3.1:** The Human Rights Committee urges the Cape Verdean government to adopt and implement awareness-raising and education programs aimed at helping change public attitudes towards corporal punishment.

- **Recommendation # 3.2:** The Human Rights Committee urges the Cape Verdean government to provide child- and gender-sensitive training and information on alternative and nonviolent forms of discipline, according to the best-interest-of-the-child framework, to parents, teachers, others who regularly work with children, and other stakeholders.
III. TEACHERS SEXUALLY EXPLOIT AND SEXUALLY ABUSE CHILD STUDENTS

10. Issues

10.1. Cape Verde fails to amend its civil and penal statutes to prevent and combat child sexual exploitation and sexual abuse, provide redress to victims, as well as to institute special, child-sensitive administrative, legislative, and judicial measures that conform with international human rights norms and standards obliging Cape Verde to adopt “special measures of protection” for all children, per ICCPR Articles 2 and 24.

10.2. Cape Verde fails to institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms to specifically investigate and prosecute cases of sexual exploitation and sexual abuse and provide redress to victims, including the provision of psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of sexual exploitation and sexual abuse, pursuant to ICCPR Articles 2 and 24.

10.3. Cape Verde fails to formulate, adopt, and implement child-centered steps, actions, policies, and programs, especially social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, civil servants, nongovernmental organization workers, and members of the general public, to prevent and combat child sexual exploitation and sexual abuse and provide redress to victims, in accordance with Cape Verde’s duty to adopt “special measures to protect children”, per the Committee’s General Comment No. 17 (Article 24).

11. ICCPR Violations

11.1. **Cape Verde violates ICCPR Articles 2 and 24.** Cape Verde fails to prevent teachers from sexually exploiting and sexually abusing their students, fails to hold teachers accountable for these violations, and fails to provide remedies to child victims of these violations. Cape Verde’s failure to protect children from sexual exploitation and sexual abuse violates **ICCPR Articles 2 and 24.**

11.2. Cape Verde also fails to adopt “special measures to protect children” from sexual exploitation and sexual abuse, pursuant to the Committee’s **General Comment No. 17 (Article 24).** The State’s failure, through its act of omission, violates the
right to equality and nondiscrimination of school children on account of their minority age ("other status") as well as their right to “special protection”, under Article 24. Article 24 was elucidated upon by the Committee in its General Comment No. 17, and obliges state parties to adopt special measures of protection for all persons under 18.

11.3. Furthermore, the Convention on the Rights of the Child states that a “child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

11.4. The Convention on the Rights of the Child, which Cape Verde acceded to on 4 June 1992, contains multiple provisions that are relevant to the rights provided for in ICCPR Articles 2 and 24. Specifically, Article 34 of the Convention on the Rights of the Child, provides:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

11.5. Cape Verdean laws fail to conform with international human rights norms and standards pertaining to the adoption of “special measures of protection” for children, as set forth by the Committee, in its General Comment No. 17, elucidating on ICCPR Article 24, as follows:

The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes

59CRC, supra note 57, art. 1.
60Id.
61Id. at art. 34 (emphasis added).
criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

11.6. By virtue of the Committee’s General Comment No. 17, the government of Cape Verde has the duty to adopt “special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant.”

11.7. Further, in conjunction with ICCPR Articles 2 and 24, Article 19 of the Convention on the Rights of the Child likewise provides:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

11.8. The Human Rights Committee has expressed deep concern about the issue of sexual exploitation and sexual abuse of children, and included them in the 29 November 2011 List of Issues.

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62 General Comment 17, supra note 14
63 CRC, supra note 57 (emphasis added).
64 List of Issues items related to teachers sexually exploiting and sexually abusing children include:

Issue # 2: Under the heading “Constitutional and domestic legal framework within which the Covenant is implemented (art. 2)”
11.9. Committee on the Rights of the Child’s Concluding Observations on Cape Verde. In November 2001, the Committee on the Rights of the Child requested that “specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the [government of Cape Verde].” The Committee on the Rights of the Child recommended to the government of Cape Verde to “effectively investigate cases of . . . violence in schools through a child-sensitive judicial procedure, and apply sanctions to perpetrators with due regard given to guaranteeing the right privacy of the child.” The Committee further recommended that the government of Cape Verde give special attention to the sexual exploitation of adolescents.

12. Cape Verde fails to amend its civil and penal statutes to prevent and combat child sexual exploitation and sexual abuse, provide redress to victims, as well as to institute special, child-sensitive administrative, legislative, and judicial measures that are in conformity with international human rights norms and standards obliging Cape Verde to adopt “special measures of protection” for all children, per ICCPR Articles 2 and 24.


“Sexual abuse occurs when a child is used for sexual purposes. In order to determine whether behaviour is abusive, it is important to consider certain criteria and the circumstances in which the act occurs. Sexual abuse is carried out by a person whom the child trusts, and could be a parent, brother, a member of the extended family, a

2. Please provide information on the availability of remedies for individuals claiming a violation of the rights contained in the Constitution and the Covenant.

Issue # 19: Under the heading “Rights of the child (art. 24)”

19. Please provide information on the legislative and practical measures adopted to combat child abuse and to eradicate labour and sexual exploitation of children, including child prostitution.

List of Issues, supra note 2, issues 2 & 19.

66Id. at 40(b).
67Id. at 52(b).
teacher, a stranger or any other person in a position of power, authority or control over the child."^69

12.2. Cape Verdean Law Prohibits Teachers from Sexually Exploiting and Sexually Abusing Children. Cape Verdean law prohibits teachers from sexually exploiting and sexually abusing students, provides for administrative and criminal sanctions for teacher abusers, and provides for criminal penalties for those—including teachers—who engage in sex with minors. ^70 What follows are the authors’ English translations of several Cape Verdean law provisions relating to sexual exploitation and sexual abuse of school children.

**Article 144 (Sexual abuse of children) of the 2004 Código Penal De Cabo Verde** provides:

[A]nyone who has sexual relations with a child under fourteen (14) will be subject to two to eight (2-8) years imprisonment. ^71

**Article 145 (Sexual abuse of minors between 14 and 16 years) of the 2004 Código Penal De Cabo Verde** provides:

[A]nyone older than 16 who engages in sexual relations with someone more than 14 but less than 16 years old by using superiority attained from any relationship or position will be punished with six (6) months to four (4) years in prison. ^72

**Article 75, Section 4, Subsections C and D of the Estatuto do Pessoal Docente Decreto De Cabo Verde** provides:

The following penalties of compulsory retirement or dismissal shall be applicable to the teacher who:

\[
\begin{align*}
\text{c) } & \text{sexually harasses students or other minors;} \\
\text{d) } & \text{maintains sexual relations with minors.} \\
\end{align*}
\]

^73

12.3. Sexual Exploitation and Sexual Abuse of Students by Their Teachers Continues in Tarrafal, Island of Santiago, Despite Cape Verde law. Despite

^69I d. (emphasis added).
^70THE PENAL CODE, supra note 33 art. 144, original Portuguese version attached hereto in Appendix F; LAW ON TEACHING PERSONNEL supranote 39, art. 75, original Portuguese version attached hereto in Appendix G.
^71THE PENAL CODE, supra note 33, art. 144 original Portuguese version attached hereto in Appendix F.
^72id. art. 145.
^73LAW ON TEACHING PERSONNEL supra note 39, art. 75, original Portuguese version attached hereto in Appendix G.
the statute and related articles of the Cape Verdean Penal Code, sexual exploitation of students by teachers continues to be a problem in Cape Verde.74

12.4. **Cape Verde fails to adopt Special Measures of Protection for All Children under the Age of 18 against Sexual Exploitation and Sexual Abuse.**

Examined further through the lens of international human rights law, the ages of children (14 to 16) set forth in the provisions of Cape Verdean civil and penal codes, imposing liabilities and prohibiting the sexual abuse and sexual exploitation of children are low. This standard falls short of Cape Verde’s international human rights law obligations, particularly its duty to adopt “special measures of protection” for children, who are below 18. For example, the Cape Verdean Penal Code penalizes carnal knowledge with a child below 14 years of age (Article 144), as well as with children between 14 and 16 years of age (Article 145), thereby excluding those who are 17 and below 18 from the ambit of its penal provisions. As the Committee declares in *General Comment No. 17*, “the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.”

12.5. The government of Cape Verde fails to conform its domestic laws to international human rights norms and standards. Cape Verde fails to fulfill its obligation to adopt “special measures of protection” for all persons under 18 years of age, as specified by *ICCPR Articles 2 and 24*, in relation to *General Comment No. 17*, and *Article 34 of the Convention on the Rights of the Child*.

13. **Cape Verde fails to institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms to specifically investigate and prosecute cases of sexual exploitation and sexual abuse and provide redress to victims, including the provision of psychosocial and holistic intervention services, especially counseling, trauma healing, and medical assistance, for the protection and in support of child victims of sexual exploitation and sexual abuse, pursuant to *ICCPR Articles 2 and 24*.**

13.1. **Taking Advantage of their Position of Power, Authority, or Control, Teachers Sexually Exploit and Sexually Abuse their Students in Tarrafal, Island of Santiago, Cape Verde.** Delta Cultura found that teachers sexually exploit and sexually abuse students in Cape Verde secondary schools,

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particularly students between 14 to 18 years of age. Teachers also subject students below the age of 14 to sexual exploitation and sexual abuse. Educational institutions and Cape Verde society generally tolerate sexual relationships between teachers and their students. Teachers who sexually exploit or sexually abuse their child students are rarely punished by the government or their educational institution. These incidents of sexual exploitation and sexual abuse are overlooked or completely ignored.

13.2. Cape Verdean Psychologists’ Perspective—The Cape Verdean Institute for Children and Adolescents (ICCA). Delta Cultura works with the Cape Verdean Institute for Children and Adolescents (ICCA). Psychologists from this organization visit Delta Cultura’s Education Center regularly and talk about issues that plague the youth in Cape Verde, including issues such as drug abuse, violence, and HIV/AIDS. The psychologists who visit recognize that teachers frequently sexually exploit and sexually abuse school children, and that such sexual exploitation and sexual abuse causes severe harm to the students. Unfortunately, the psychologists are not in a position to offer long-term psychological assistance to these sexually exploited and sexually abused children. The psychologists do not have an office located in the same town as the Delta Cultura Education Center, i.e. in Tarrafal. Instead, psychologists travel from another town, Assomada, approximately twenty two kilometers away.

13.3. News Report Regarding Allegations that a Tarrafal School Teacher Molested Children at School. The A Semana published two stories that stated that on 11 May 2011 a teacher at Lucilia Freitas Elementary School in Tarrafal De São Nicolau, was arrested on charges of sexually assaulting seven first-grade students inside a classroom. The article stated that when the teacher was confronted by the principal and parents of the school children, the teacher confessed to the crime. It was stated that soon after the teacher was arrested, a former student, now 16 years old, averred that she was also molested by the

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75 Declaration of “Affiant A” and “Declaration of Affiant B” are statements of Cape Verde girls who allege that their teachers sexually exploited and sexually abused them. Their names are redacted from the Declarations, which are in original form on file with the authors. For further testimony and information about sexual exploitation and sexual abuse of children in Cape Verde, see Florian Wegenstein Aff., supra note 9, ¶¶ 9 & 10; see also Elementary school teacher arrested for molesting students in classroom, A SEMANA (May 12, 2011), available at http://www.asemana.publ.cv/spip.php?article64177&var_recherche=mol [Reproduced in Appendix H] [hereinafter A Semana, Elementary School Teacher Arrested for Molesting Students, Appendix H]; Elementary school teacher charged with molesting students held in preventative detention, A SEMANA (May 13, 2011), available at http://www.asemana.publ.cv/spip.php?article64221&var_recherche=teac. [Reproduced in Appendix I] [hereinafter A Semana, Elementary School Teacher Charged, Appendix I].

76A Semana, Elementary School Teacher Arrested for Molesting Students, Appendix H, supra note 75; A Semana, Elementary School Teacher Charged With Molesting, Appendix I, supra note 75.

77See Florian Wegenstein Aff., supra note 9, ¶¶ 9 & 10.

78Id.

79A Semana, Elementary School Teacher Arrested for Molesting Students, Appendix H, supra note 75; A Semana, Elementary School Teacher Charged With Molesting, Appendix I, supra note 75.

80A Semana, Elementary School Teacher Arrested for Molesting Students, Appendix H, supra note 75.
teacher when she was in first grade. It was reported that authorities suspected that an undetermined number of students may have been molested by the teacher, who had been working with young children for around 15 years. The ICCA is said to have immediately sent a psychologist and the São Vicente delegate of the institution to São Nicolau to orient families and children in dealing with the situation.

13.4. UNICEF Report and Findings Concerning Sexual Exploitation and Sexual Abuse in West and Central Africa. In 2008, UNICEF reported on sexual abuse and sexual exploitation of children in West and Central Africa (hereinafter UNICEF Report). The UNICEF Report, which covered Cape Verde, indicates that “since the Rabat Arab-African Forum (2004), the 24 countries that comprise West and Central Africa have carried out over a hundred studies and analyses concerning sexual abuse and exploitation of children[,]” and these studies and analyses revealed that “[s]exual abuse, exploitation and violence in schools remain a concern.”

13.5. Hurdles to Assessing Scale of Sexual Exploitation and Sexual Abuse. According to the UNICEF Report, the actual scale of all forms of sexual abuse and exploitation of children is difficult to determine because of several factors, such as:

- “Low rate of reporting because victims fear reprisals, stigmatization and social exclusion;
- Persistent cultural resistance concerning sexuality and sexual violence;
- Cases are settled informally;
- No centralized system for collecting and processing data;
- No centralized system for monitoring and evaluating the situation of children and the impact of interventions;
- Weak judicial mechanisms and support services for victims that can guarantee protection and provide care; [and]
- Impunity for certain offenders.”

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81 A Semana, Elementary School Teacher Charged With Molesting, Appendix I, supra note 75.
82 A Semana, Elementary School Teacher Arrested for Molesting Students, Appendix H, supra note 75; A Semana, Elementary School Teacher Charged With Molesting, Appendix I, supra note 75.
83 A Semana, Elementary School Teacher Charged With Molesting, Appendix I, supra note 75.
84 See generally, UNICEF Report, supra note 68.
85 See id. at 11.
86 Id. at 4.
87 Id. at 5.
13.6. **Reported Cases of Sexual Abuse.** According to the UNICEF Report, Cape Verde reported only one case of sexual abuse in the first semester of 2005 as compared to two the previous year.\(^88\)

13.7. **Lack of Accessible and Effective Mechanisms to Curb Sexual Exploitation and Sexual Abuse.** “In Cape Verde, cases of sexual abuse at schools are dealt with by the Central Education Inspection Services.”\(^89\) Cape Verde indicated the “existence of a system of sanctions against heads of schools for failing to report cases of sexual exploitation and sexual abuse involving students,” the disciplinary measures are defined generally by “codes covering the status of public sector employees.”\(^90\) The UNICEF Report indicated that “[t]he effectiveness of these codes is debatable, however, since it would appear that, as in Guinea, the sanctions are rarely applied.”\(^91\)

14. **Cape Verde fails to formulate, adopt, and implement child-centered steps, actions, policies, and programs, especially social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, civil servants, nongovernmental organization workers, and members of the general public, to prevent and combat child sexual exploitation and sexual abuse and provide redress to victims, in accordance with Cape Verde’s duty to adopt “special measures to protect children”, per the Committee’s General Comment No. 17 (Article 24).**

14.1. It appears that the government of Cape Verde rarely assists school children who are harmed by teachers molesting them. Private assistance is also scarce. Thus, the children suffer gravely.\(^92\)

14.2. According to the UNICEF Report, countries that developed National Action Plans (NAP), in 2004 to fight against sexual abuse and sexual exploitation of children, including Cape Verde, have “only carried out part of the actions planned, or have not covered the whole territory, or could not respect the schedule.”\(^93\)

14.3. The **United States Department of State’s 2010 Country Report on Human Rights Practices for Cape Verde** indicated that “child abuse and sexual violence against children were serious problems, and that the media regularly reported on

\(^{88}\) Id. at 18.

\(^{89}\) Id. at 19.

\(^{90}\) Id.

\(^{91}\) Id.

\(^{92}\) See id. See also Results of Delta Cultura Research, supra note 41.

\(^{93}\) UNICEF Report, supra note 68 at 36.
those issues."94 It further indicated that “[g]overnment efforts to address these
problems were inadequate.”95

14.4. Cape Verde’s failure to enforce laws, polices, rules, and regulations to
combat teachers’ sexual exploitation and sexual abuse of children violates
ICCPR Article 2 and Article 24(1), as interpreted by the Committee in
General Comment No. 17.

14.5. The Cape Verde legal system fails to protect children in that Cape Verde has
insufficient laws, Cape Verde fails to enforce existing laws, and Cape Verde fails
to provide sexually exploited and sexually abused children with remedies. Cape
Verde’s failure to provide effective and accessible remedies for children is in
violation of ICCPR Article 2(3), in conjunction with Article 24. As a party to
the ICCPR, Cape Verde is obligated to ensure that any “person whose rights or
freedoms as herein recognized are violated shall have an effective remedy.”96

95 Id.
96 ICCPR, supra note 1, art. 2, sec. 3(a).
15. Recommendations on Sexual Exploitation & Sexual Abuse of Children: *Cape Verde must protect its school children from sexual exploitation and sexual abuse by teachers. We respectfully request that the Committee make the following recommendations to Cape Verde:*

- **Recommendation # 4:** The Human Rights Committee recommends that the Cape Verdean government amend its civil and penal statutes to specifically prevent and combat sexual exploitation and sexual abuse of school children, as provided by Articles 2 and 24. Victims need to be given redress. The Cape Verdean government should also adopt child- and gender-sensitive administrative, legislative, and judicial measures. The measures should include executive orders, policies, rules, and regulations which integrate the best-interest-of-the-child principle. The measures should also be in conformity with international human rights norms and standards set forth in the ICCPR and the Convention on the Rights of the Child, obliging states parties to accord “special measures of protection” to all persons below the age of 18.
  
  - **Recommendation # 4.1:** The Human Rights Committee urges the Cape Verdean government to enforce applicable civil and penal laws by investigating, prosecuting and punishing teachers found guilty of sexually exploiting and sexually abusing children.
  
  - **Recommendation # 4.2:** The Human Rights Committee urges the Cape Verdean government to publicize laws that impose civil and penal liabilities on teachers for sexually exploiting and sexually abusing children, so that teachers, students, parents, and various stakeholders become aware of the law, its purpose, and the consequences of breaking the law.

- **Recommendation # 5:** The Human Rights Committee recommends that the Cape Verdean government institute and put in place accessible and effective administrative, investigative, prosecutorial, and judicial mechanisms, pursuant to Articles 2 and 24. The mechanisms should be pursuant to the best-interest-of-the-child principle and be coupled with the provision of child- and gender-sensitivity orientation and training among all personnel and various stakeholders. The mechanisms and training should include investigating and prosecuting cases of sexual exploitation and sexual abuse. Victims should be entitled to and given redress. The mechanisms and training should provide for psychosocial and holistic intervention services, including counseling, trauma healing, and medical assistance, for the protection and support of child victims of sexual exploitation and sexual abuse.
  
  - **Recommendation # 5.1:** The Human Rights Committee urges the Cape Verdean government to establish child- and gender-sensitive institutional systems and mechanisms, including mandatory reporting and investigation procedures, to encourage children, parents, child care providers, and other stakeholders to report cases of sexual exploitation and sexual abuse.
**Recommendation # 5.2:** The Human Rights Committee urges the Cape Verdean government to conduct comprehensive child- and gender-sensitivity orientation and training among teachers, parents, children, and other stakeholders on how to deal with and handle complaints involving sexual exploitation and sexual abuse of children.

**Recommendation # 6:** The Human Rights Committee urges the Cape Verdean government to formulate, adopt, and implement child-centered and gender-sensitive steps, actions, policies, and programs, as mandated by Articles 2 and 24. The steps, actions, policies and programs should include social awareness-building campaigns and training among teachers, educators, administrators, children, parents, police, judges, prosecutors, civil servants, nongovernmental organization workers, and members of the general public. These actions should expose, prevent, and combat sexual exploitation and sexual abuse. Victims need to be provided with remedies and redress. The steps, actions, policies and programs should be pursuant to the best-interest-of-the-child principle.

**Recommendation # 6.1:** The Human Rights Committee urges the Cape Verdean Government to initiate and undertake sustained awareness-raising and education campaigns to change tolerant attitudes towards teachers sexually exploiting and sexually abusing children and raise awareness about the negative consequences on children of sexual exploitation and sexual abuse.

**Recommendation # 6.2:** The Human Rights Committee urges the Cape Verdean government to train and educate teachers to prevent and combat the sexual exploitation and sexual abuse of students by teachers, and encourage reporting by victims and other parties.
IV. CONCLUSION

Children in Cape Verde are entitled to the full recognition of their rights under the International Covenant on Civil and Political Rights. To a certain extent, the Cape Verdean Constitution, Civil Code and Penal Code contain provisions that would be expected to protect children. Unfortunately, while some laws exist to protect children from corporal punishment and sexual exploitation and sexual abuse, these laws are not adequate in depth and breadth, and these laws are not consistently and rigorously enforced.

The Cape Verdean government perpetuates a system in which children’s rights are not adequately protected, and in which Cape Verde children continue to be beaten, sexually exploited and sexually abused.

Teachers and parents inflict corporal punishment on children. Teachers are encouraged by parents to use corporal punishment when disciplining their children. Children are negatively affected, and, for example, may become socially withdrawn or turn violent themselves.

Teachers who sexually exploit and sexually abuse their students take advantage of their position of power, authority, and control over the children, for the teachers’ own sexual pleasure. This also negatively affects the children’s education and causes children psychological and other harms.

The Cape Verdean government must ensure that all Cape Verdeans, especially children, enjoy all the internationally recognized human rights protected under the ICCPR.

We respectfully request that the Human Rights Committee conclude that the Cape Verdean Government is in violation of its obligations under Articles 2, 7 and 24 of the ICCPR. We urge the Human Rights Committee to call on the Cape Verdean government to adopt special measures of protection in order to ensure that Cape Verdean children enjoy their civil and political rights.

Per the Committee’s List of Issue No. 23, we respectfully urge the Human Rights Committee to recommend to the Cape Verdean government that the text of the ICCPR and the Committee’s Concluding Observations on Cape Verde, on the occasion of the Committee’s 104th session, be disseminated by the Cape Verdean government nationally, regionally, and locally, as a preliminary step towards having the Cape Verdean government and various stakeholders comply with the Committee’s recommendations contained in the concluding observations, specifically those relating to corporal punishment, sexual exploitation and sexual abuse of Cape Verde school children.
V. APPENDICES

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DECLARAÇÃO AJURAMENTADO

Eu, Florian Carl Wegenstein, detentor do bilhete de identidade com o número 342044, filho de Willy Otto Wegenstein e Elisabeth Maria Ottillie Wegenstein, nascido a 22 de Outubro de 1965, com nacionalidade cabo verdiana e suíça, residente no Tarrafal, Cabo Verde, venho, em conformidade com a lei, declarar que:


2. Eu e a minha mulher fundamos a organização de desenvolvimento juvenil Delta Cultura Cabo Verde, que começou a sua actividade em 2022. Inicialmente a minha mulher iniciou um grupo dança-canto-percussão tradicional (Batuco) para raparigas, enquanto eu comecei com a escola de futebol. A organização expandiu em 2005 quando construímos um Centro de Educação, que alojasse os diversos workshops, formações e programas educativos para os jovens com necessidades. Eu sou o gestor de projectos deste centro.

3. A minha experiência de trabalho directo com crianças e adolescentes do Tarrafal, durante os últimos 10 anos, bem como a experiência de ser pai de duas meninas que frequentam as escolas locais, deixou-me com fortes reservas no que concerne aos castigos corporais nas escolas primárias de Cabo Verde e às relações existentes entre alunos e professores.

4. Crianças, adolescentes e professores falam abertamente sobre o castigo corporal e exploração sexual e abuso por parte de professores, indicando que para eles estes são crimes triviais. Quando as crianças falam sobre o castigo corporal na escola eles fazem isso com um sorriso em seu rosto, mas o medo por trás desse sorriso é facilmente perceptível.

5. Quando minha filha mais velha começou a sua 3ª ano na escola (3 anos), ela tinha um novo professor que era conhecido por seus métodos de ensino rigorosos e também para o seu espancamento de estudantes. Até então a minha filha gostava de ir para a escola e nunca tive problemas lá. De repente, ela não queria ir mais e frequentemente fingia que estava doente, para evitar aulas. Depois de alguns meses ela perdeu o medo e encontrou sua curiosidade mais uma vez.

6. No decorrer de nossa pesquisa, fui para a Delegação Escolar local (Ministério da Educação) para perguntar um dos funcionários sobre a punição corporal e exploração sexual e abuso de alunos por parte de professores. A resposta simples, mas ingênua era de que isso não acontece nas escolas cabo-verdianas, porque é proibido por lei e sempre que a delegação visita as salas de aula nenhum professor bate os alunos. Ajeitado a essa história é algo que um menino da nossa escola de futebol me disse recentemente: seu professor sempre tem um pau de madeira em sua mesa, mas quando o diretor ou alguém vem visitar ele coloca o pau na sua gaveta.
7. Eu conversei com 5 raparigas que se ter relações sexuais com os seus professores, enquanto elas ainda estavam na escola. Todos elas me disseram que achar normal, enquanto que acontece fora do prédio da escola e eles não podem ver nada de errado com isso. É por isso que eles não estavam dispostos a contribuir com uma declaração juramentado.

8. Baseado em minha própria observação e experiências pessoal em lidar com os pais durante as reuniões da escola, o castigo físico é o modo padrão de disciplina na maioria das escolas primárias. Eu tinha especificamente para indicar aos professores das minhas filhas para não bater-los durante as aulas, mas os pais cabo-verdianos muito raramente fazem a mesma exigência.

9. Na verdade, eu observei pessoalmente que muitas vezes o contrário é verdadeiro: duas vezes por ano todas as aulas da escola chama os pais para uma reunião com os professores. Os professores falam sobre o que está acontecendo na escola e os pais podem levantar-se com perguntas. A última reunião da aula de minha filha mais nova aconteceu em Novembro de 2011 e eu participei. Como sempre (eu atendi 4 destas reuniões nos últimos anos), havia duas mães que dizem ao professor que ele deve bater os filhos delas se eles não escutam ou se eles não trazem o trabalho de casa. A reação dos professores é sempre positivo e aceitando deste. Tenho assistido várias reuniões de pais e professores, e em cada um deles pelo menos um pai ou mãe disse à professora para bater o seu filho se ele/ela não estar a ouvir ou estudar bem.

10. O governo cabo-verdiano já produziu programas de televisão educativos contra a violência doméstica, mas nenhum acerca dos castigos físicos na escola ou dos abusos sexuais de professores para alunos.

11. Tenho tido dificuldades consideráveis em encontrar alunos ou outros membros da comunidade que falem abertamente destas práticas ou que escreva uma declaração relatando-as, uma vez que o abuso físico e sexual de alunos por parte dos professores é considerado normal, na generalidade dos casos, apesar de ser proibido por lei. Em ambos os casos as pessoas respondiam “porque é que não deveriam fazer?”

12. Na minha opinião, tanto enquanto país de duas crianças inseridas no sistema educativo cabo-verdiano, como enquanto trabalhador experiente junto da juventude tarrafalense, a grande maioria dos professores locais estão muito mal formados e muitos deles não tem qualquer formação pedagógica. Diria que isto se estende à grande maioria das áreas suburbanas de Cabo Verde.
Portanto, venho assim atestar a verdade do exposto, através da minha assinatura desta declaração, no dia 15 de Fevereiro de 2012, em Tarrafal, Cabo Verde.

FLORIAN CARL WEGENSTEIN
Juramentado

SUBSCRITO e jurou diante de mim, Notário Público para e no Tarrafal, Cabo Verde, juramentado Florian Carl Wegenstein, afirmando que tudo o acima mencionado são verdadeiras e baseado em seu conhecimento pessoal.

ANTES DE ME

RECONHECIMENTO


CONTA Nº 762012
Emols 450$00

Delegação dos Registos e Notariado do Tarrafal aos 15-02-2012

O AJUDANTE,

/Hermínia Varela/
Under penalty of perjury, I declare that I am fluent in both English and Portuguese. To the best of my ability, this document is properly translated.

________________________
Florian Carl Wegenstein
Project manager
Delta Cultura Cabo Verde – Education Center
Vila do Tarrafal
Ilha Santiago
Rep. of Cape Verde
00238 – 999 22 52

February 15, 2012
TARRAFAL )
CAPE VERDE )S.S.

SWORN STATEMENT

I, MR. FLORIAN CARL WEGENSTEIN, holder of the identity card 342044, son of Willy Otto Wegenstein and Elisabeth Maria Ottilie Wegenstein, born on 22nd of October 1965, a citizen of Cape Verde and Switzerland, with residence in Tarrafal, Cape Verde, after being duly sworn to in accordance with law, hereby depose and state:

1. I have lived in the city of Tarrafal, on the island of Santiago, Cape Verde, since 2002 and have been married to a Cape Verdean woman from this same city since 1999. We have two daughters together, aged 8 and 11.

2. My wife and I are the founders of the youth development organization Delta Cultura Cabo Verde, which we began in 2002. Initially my wife established a traditional dancing-singing-drumming group (‘Batuco’) for girls while I started a soccer school. The organization expanded in 2005 when we constructed an Education Center to accommodate a variety of workshops, trainings and educational programs for disadvantaged local youth. I am the project manager of this centre.

3. My direct experience working with children and adolescents from Tarrafal over the last 10 years, as well as being father to two girls who attend local schools, has left me with strong concerns about corporal punishment in Cape Verdean primary schools and sexual exploitation and abuse by teachers of schoolchildren in the context of a relationship between teacher and schoolchild.

4. Children, adolescents and teachers talk openly about corporal punishment and sexual exploitation and abuse by teachers, indicating that for them these are trivial offences. When
children talk about corporal punishment in school they do so with a smile on their face, but the fear behind this smile is readily apparent.

5. When my older daughter started her 3rd year in school (3 years ago) she got a new teacher who was known for his rigorous teaching methods and also for his beating of students. Up until then my daughter loved to go to school and never had problems there. Suddenly she did not want to go anymore and frequently pretended she was sick to avoid classes. After a few months she lost her fear and found her curiosity once more.

6. In the course of our research I went to the local school delegation (ministry of Education) to ask one of the officials about corporal punishment and sexual exploitation and abuse by teachers of schoolchildren. The simple but naive answer was that it does not happen in Cape Verdean schools because it is forbidden by law and whenever the delegation visits classrooms no teacher beats the students. Fitting this story is something a boy from our football school told me recently: his teacher always has a wooden stick on his desk, but when the director or somebody else comes to visit he puts the stick in his drawer.

7. I talked to 5 girls whom I know had sexual relationships with their teachers while they were still in school. They all told me that they find it normal as long as it happens outside the school building and they can't see anything wrong with it. That is why they were not willing to contribute an affidavit.

8. Based on my own personal observation and experiences in dealing with parents during school meetings, physical punishment is the default mode of discipline in most primary schools. I specifically had to instruct my daughters’ teachers not to strike them during class, but Cape Verdean parents very rarely make the same demand.

9. In fact, I have personally witnessed myself that the contrary is often true: twice a year every school class calls the parents to a meeting with the teachers. The teachers speak about what is going on in school and the parents can come up with questions. The last meeting of my younger daughter’s class happened in November 2011 and I took part. Like always (I have attended 4 of these meetings in the past few years) there were two mothers telling the teacher he should beat their children up if they don’t listen or if they don’t bring their homework. The reaction of the teachers is always positive and accepting of this. I have assisted several parent-teacher meetings, and in every one of them at least one mother or father told the teacher to beat their child if he/she was not listening or learning well.

10. The Cape Verdean government has produced educational TV-programs against domestic violence, but not one against corporal punishment at school or sexual abuse of students by their teachers.

11. I have had considerable difficulty finding students or other community members willing to speak out against these practices or submit a statement recounting them, as teachers beating students or...
having sexual relations with them is generally considered normal and allowable, despite being prohibited by Cape Verdean law. In both cases people questioned have responded ‘why shouldn’t they?’

12. Based on my experiences, both as a parent of two children in the Cape Verdean education system and as an experienced worker who regularly interacts with Tarrafals youth, most of the local teachers are very badly trained and many of them have no pedagogic education at all. I would say this is generally true of suburban areas of Cape Verde.

WHEREFORE, in attesting to the truth of the foregoing, I hereby affix my signature to this Sworn Statement, this 15th day of February, 2012, in Tarrafal, Cape Verde.

FLORIAN CARL WEGENSTEIN
Affiant

SUBSCRIBED and sworn to before me, Notary Public for and in Tarrafal, Cape Verde, Affiant Florian Carl Wegenstein affirming that all the aforementioned are true and based on his own personal knowledge.

BEFORE ME

Recognition

I recognise the above signature of Florian Carl Wegenstein, Identity card number 342044 issued in Tarrafal on 20-05-2009.
Account n°: 976 2012
Delegation of Registration office and Notary of Tarrafal, on the 15-02-2012.
Assistant
Hermínia Varel
(Stamp and Signature)
Appendix B:

Cape Verdean Constitutional Provisions Relevant to Corporal Punishment

Constitution Article 90 (Cape Verde)

2) A família, a sociedade e o Estado deverão garantir a protecção da criança contra qualquer forma de discriminação e de opressão, bem como contra o exercício abusivo da autoridade na família, em instituições públicas ou privadas a que estejam confiadas e, ainda, contra a exploração do trabalho infantil.

Constitution Article 87 (Cape Verde) (Number changed from 90 to 87)\(^1\)

2) The family, society, and the State must guarantee the protection of children against any form of discrimination or oppression, as well as abusive authority from family, public or private institutions to whom they are entrusted, and also against exploitation of child labor.

\(^1\) In the May 2010 version of the Cape Verde Constitution, the original Article 87 on this topic appears to be renumbered as Article 90. See Redford website. (www.unhcr.org/refworld/docid/3ae6b5bd0.html) Compare CONST. art. 90 (Cape Verde) (2010) with CONST. art. 87 (Cape Verde).
Appendix C:

Cape Verdean Penal Provisions Relevant to Corporal Punishment

2004 Códgio Penal De Cabo Verde [Penal Code]

Penal Code Article 128

Artigo 128 (Ofensa simples à integridade)
Article 128 (Simple offense to the integrity)
• This article is listed only to show that Cape Verdean law prohibits assault and battery. Thus, the full text of this article is not provided or translated.

Penal Code Article 129

Artigo 129 (Ofensa qualificada à integridade)
Article 129 (Qualified form of offense to the integrity)
• This article is listed only to show that Cape Verdean law prohibits assault and battery. Thus, the full text of this article is not provided or translated.

Penal Code Article 130

Artigo 130 (Agravação)
Article 130 (Aggravation)
• This article is listed only to show that Cape Verdean law prohibits assault and battery. Thus, the full text of this article is not provided or translated.

Penal Code Article 133:

Artigo 133 (Maus tratos a menor ou incapaz)

Quem tiver à sua guarda ou cuidado, ou sob a responsabilidade de sua educação, ou, ainda, como subordinado no trabalho, menor ou pessoa incapaz ou particularmente vulnerável em razão da idade, doença, deficiência física ou psíquica, e lhe provocar habitualmente ofensas ao corpo ou na saúde, ou lhe infligir maus-tratos físicos ou psíquicos, ou tratamentos cruéis, será punido com pena de prisão de 1 a 5 anos, se pena mais grave não couber em virtude de outra disposição legal.

Article 133 (Ill-treatment of minor or disabled)

Whoever has in its custody or care or under the responsibility of its education, or even as a subordinate at work, minor or disabled person or particularly vulnerable due to age, illness, physical or psychic disability, and regularly cause harm to body or to health, or inflict physical or mental abuse, or cruel treatments, will be punished with imprisonment for 1-5 years, if more severe punishment does not fit under other statutory provision.
Appendix D:

Cape Verdean Civil Provisions Relevant to Corporal Punishment

Código Civil De Cabo Verde [Civil Code]

Article 119

Artigo 119 (Direitos)
1. Em especial, os menores tem, designadamente, os seguintes direitos:
   i) A não sofrer maus tratos morais e corporais

Article 119:
1. In particular, the minors have the following rights:
   i) Not to suffer physical and moral abuse

Article 128:

Artigo 128: (Direito a não sofrer maus-tratos morais ou corporais)
1. O direito a não sofrer maus-tratos morais ou corporais consiste na faculdade conferida aos menores de obstarem a que sejam objecto de sevícias corporais ou vítimas de falta de cuidados, de falta de afeição ou de crueldade mental, que comprometam o seu desenvolvimento físico, intelectual, moral ou afectivo.
2. Para efeitos do disposto no número anterior, é vadado o uso de castigos corporais degradantes, humilhantes ou estigmatizantes nos estabelecimentos de ensino ou em qualquer outra instituição publica e privada.

Article 128: (Right not to suffer moral or physical abuse):
1. The right not to suffer physical or moral abuse consists on the ability, for the minors, to prevent from being physically punished or victims of carelessness, lack of affection or mental cruelty, that might compromise their physical, intellectual, moral and emotional development.
2. For the purposes of the preceding paragraph it is prohibited to use diminishing, humiliating or stigmatizing corporal punishments in schools or in any other institution, neither private nor public.

Article 130:

Artigo 130: (Direito a não sofrer qualificações ou tratamentos humilhantes, estigmatizantes ou discriminatórios):
O direito a não sofrer qualificações ou tratamentos humilhantes, estigmatizantes ou discriminatórios consiste na faculdade conferida aos menores de se oporem a qualquer uso, em relação á sua pessoa, de expressões ou qualificaçcões ou qualquer outra forma que, pelo seu carácter humilhante, estigmatizante ou socialmente discriminatório, prejudiquem o seu desenvolvimento harmonioso e integral.

Article 130: (Right not to suffer any qualifications or humiliating, stigmatizing or discriminatory treatment):
The right not to suffer any qualifications or humiliating, stigmatizing or discriminatory treatment consists of the ability, for minors, to object to the usage of any expression or qualification – regarding themselves - that for its humiliating, stigmatizing or socially discriminatory nature, might harm their wholesome and harmonious development.
Appendix E:

Cape Verdean Law on Teaching Personnel Relevant to Corporal Punishment

Estatuto do Pessoal Docente Decreto De Cabo Verde
[Law on Teaching Personnel]

Article 75, Section 4, Subsection B:

Será aplicável a pena de aposentação compulsiva ou de demissão ao docente que:

b) Agredir ou grave e reiteradamente injuriar o superior hierárquico, o colega, o aluno, ou terceiro nos locais de serviço publico;

Article 75, Section 4, Subsection B:

The following penalties of compulsory retirement or dismissal shall be applicable to the teacher who:

b) repeatedly and/or seriously strikes or injures a superior, colleague, student, or third party in this or other public service;
Appendix F:

Cape Verdean Penal Provisions Relevant to
Sexual Exploitation and Sexual Abuse

2004 Códgio Penal De Cabo Verde [Penal Code]

Artigo 144 (Abuso sexual de crianças)
1 - Quem praticar acto sexual com ou em menor de 14 anos, ou o levar a praticá-lo com outra pessoa, será punido com pena de prisão de 2 a 8 anos.
2 - Se houver penetração sexual, a pena será de prisão de 4 a 10 anos.

Article 144 (Sexual abuse of children)
1 - Whoever commits sexual relations with a child under 14 years old, or lead it to have sex with another person shall be punished with imprisonment for 2-8 years.
2 - If there is sexual penetration, the penalty shall be imprisonment from 4 to 10 years.

Artigo 145 (Abuso sexual de menores entre os 14 e 16 anos)
1 - Quem, sendo maior, praticar acto sexual com ou em menor com mais de 14 anos e menos de 16 anos, prevalecendo-se de sua superioridade, originada por qualquer relação ou situação, ou do facto de a vítima lhe estar confiada para educação ou assistência, será punido com pena de prisão de 6 meses a 4 anos.
2 - Se houver penetração sexual, a pena será de prisão de 1 a 6 anos.

Section 145 (Sexual abuse of minors between 14 and 16 years)
1 - Whoever, being adult, have sexual relations with a minor over 14 years and less than 16 years old, relying on their superiority, attained from any relationship or situation, or based on the fact that the victim is under his supervision to be educated or assisted will be punished with imprisonment of 6 months to 4 years.
2 - If there is sexual penetration, the penalty shall be imprisonment from 1 to 6 years.
Appendix G:

Cape Verdean Law Relevant to
Teaching Personnel As Related to Sexual Exploitation and Sexual Abuse

Estatuto do Pessoal Docente Decreto De Cabo Verde
[Law on Teaching Personnel]

Article 75, Section 4, Subsections C and D:
Será aplicável a pena de aposentação compulsiva ou de demissão ao docente que:

. . .
c) assediar sexualmente alunos, alunas ou menores;
d) manter relações sexuais com menores;

Article 75, Section 4, Subsections C and D:
The following penalties of compulsory retirement or dismissal shall be applicable to the teacher who:

. . .
c) sexually harasses students or other minors;
d) maintains sexual relations with minors;
Appendix H:

Elementary school teacher arrested for molesting students in classroom

A SEMANA

(12 May 2011)

(http://www.asemana.publ.cv/spip.php?article64177&var_recherche=mol)

José António “Djosca” Duarte, a teacher at Lucília Freitas Elementary School on the island of São Nicolau, was arrested on a Public Ministry warrant yesterday, and is expected to be taken before a São Nicolau district court judge today on allegations of having sexually assaulted seven first-grade students inside the classroom at the school. The accusations came from local Church of the Nazarene pastor Carlos Graça, the father of one of the girls who was supposedly Molested by the individual, who has apparently made a written confession of the abuse. Authorities suspect that an undetermined number of students may have been molested by the teacher, who has been working with young children for some 15 years.

The news came as a shock to the small city of Tarrafal de São Nicolau, particularly because the teacher, who has been teaching for more than 15 years, most of them at Lucília Freitas Elementary School, never stirred anyone’s suspicion. “He’s a calm man with no vices, a friendly person,” says a visibly shocked Tarrafal de São Nicolau mayor António Soares. The alleged sexual abuse of the seven students, who range in age from six to seven, has been a major topic of conversation on the streets and in institutions in the municipality.

Tarrafal de São Nicolau Church of the Nazarene pastor Carlos Graça, who tipped off authorities after a conversation with his daughter, is outraged. “At the beginning of the school year, my daughter was happy to go to school. But over time, more precisely since January, her enthusiasm began to cool off, and it didn’t take long for her to create an aversion to school. She didn’t want to go and began crying a lot whenever we would oblige her to go. But I suspected nothing because her teacher seemed like a good person, who inspired trust in people,” reveals Graça.

But the pastor’s insistence in asking his 6-year-old daughter about what went on in school, her lessons and everything else ended up bearing fruit. “We were in church and she commented to her mother that she was going to confess everything that was happening in the classroom. And she revealed that the teacher would touch her body, along with those of six of her classmates, take out his penis and place the children on his lap to do ‘stupid stuff’.”

That same day, April 21, the outraged father sought out the school principal, whom he told of the girl’s confession. Unfortunately, the principal was on her way to the neighboring island of São Vicente, where her son was to undergo medical treatment, but upon her return on April 30, Paulina Ramalho began investigating. Ramalho confirmed to A Semana that a parent had alerted the school to what was going on
in the first grade classroom. "We’d never noticed anything out of the ordinary in the classes given by the teacher in question. I visit all of the classrooms frequently and I talk to the students, but I never noticed anything strange, and the students never told me anything either. I was truly shocked, especially because this classroom is located in front of the administrative services. I think the teacher molested these children in a way that fooled the school and the entire educational community," she says.

Paulina Ramalho then called the student, who repeated the story she had told her father and named her classmates who had also allegedly been molested. The teacher, confronted by the principal and parents, \\nconfessed to the crime. "He confirmed the children’s story and even made a written confession. He confirmed he’d been doing it for some time, but didn’t specify for how long. This made us even more worried, because we think that there are many other children who suffered at the hands of the teacher and never said anything. Indeed, rumors are already circulating here in Tarrafal suggesting this, but we can’t confirm anything," she laments.

Pastor Graça, for his part, has presented even more concrete facts regarding the teacher’s continued abuse. "I was sought out by one of the teacher’s former students who is now 16 years old, who told me that he would kiss and caress her. And he would threaten her so that she wouldn’t turn him in. This took place ten years ago. This time, seven students were molested, but over the course of all of these years, I don’t know how many there were. I don’t know what the results of the medical examinations on these seven girls were, but I know that the case of at least three of them is more serious."

Ramalho says she has submitted a request for the teacher’s temporary suspension to the Ministry of Education. But the teacher himself has acknowledged that he was no longer in a position to enter a classroom or to work with children. Parents, guardians and school employees have all been informed of the case, and the principal promises all possible support for the children in question. "This is hard, because we don’t have any psychologists on São Nicolau, but we’re going to support the families and these children, who have been traumatized," she affirms.

Pastor Carlos Graça is also working to try to calm the families, some of whom want to carry out justice with their own hands. “Fortunately, at this point people have calmed down somewhat. I’m helping my daughter and I’m available to help the other children and their parents and guardians,” says Graça. The municipal chamber, which houses the Cape Verdean Institute of Children and Teenagers (ICCA) in the region, has also announced that the mayor will meet with the local Health Department delegate, the principal and the local Education Ministry delegate to decide what to do and how to support the children and their families.

The São Vicente branch of the ICCA, which also covers São Nicolau, intends to send a psychologist and a social worker to the island next week. "We’ve contacted the Tarrafal de São Nicolau municipal Committee for the Defense of Children’s Rights to decide how we can help them," says Jandir Oliveira of ICCA-São Vicente.

Paulina Ramalho filed a criminal complaint against the teacher with the local National Police squadron. Duarte was arrested and questioned by Public Ministry officials, and is expected to have another hearing in São Nicolau district court this week.
Appendix I:

Elementary school teacher charged with molesting students held in preventative detention

A SEMANA

(13 May 2011)

The teacher at Lucídia Freitas Elementary School on the island of São Nicolau accused of sexually molesting seven six- to seven-year old children inside the classroom is being held in preventative custody. José António “Djosca” Duarte was taken for a hearing yesterday before a local district court judge, who ordered him detained pending trial.

The initial accusation came from Church of the Nazarene pastor Carlos Graça. The teacher was immediately arrested on a Public Ministry warrant and taken before a São Nicolau district court judge for an initial hearing, in which he was ordered held pending trial. Investigations, however, will continue, as Duarte has been teaching for more than 15 years and confessed that he had been molesting his students “for some time.”

The news has shaken the small city of Tarrafal de São Nicolau, where the teacher lived and worked. Paulina Ramalho, the principal of the school where Duarte had been working for several years also expressed her shock with the revelations, and does not rule out the possibility of other students having been abused as well.

As if to confirm Ramalho’s suspicions, soon after the teacher was arrested, a former student, who is now 16 years old, affirmed that she had also been molested by the teacher when she was in first grade. Of the seven students molested in the teacher’s current class, authorities believe three had even more traumatic experiences that will require special attention on the part of specialists.

With this in mind, the Cape Verdean Institute of Children and Teenagers (known by the Portuguese language acronym ICCA) immediately sent a psychologist and the São Vicente delegate of the institution to São Nicolau to orient families and children in dealing with the situation. Pastor Carlos Graça, who is a psychologist, is also supporting the victims and their families, something which, indeed, discouraged them from taking a more violent stance against the teacher.

[http://www.asemana.publ.cv/spip.php?article64221&var_recherche=teac]