

Global Initiative to End All Corporal Punishment of Children

**Ending
legalised
violence
against
children**

GLOBAL REPORT 2006

**A contribution to the UN Secretary General's
Study on Violence against Children**

Contents

4	Messages
6	The UN Secretary-General's Study
9	The human rights imperative
20	Global progress
24	Recommendations
26	Prevalence of corporal punishment
28	Children's views
34	The purpose of law reform
37	Global analysis of legality of corporal punishment

PUBLISHED 2006 BY:

Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org

This publication is partly financed by Sida (Swedish International Development Cooperation Agency). Sida has not taken part in its production and does not assume any responsibility for its content

THE AIMS OF THE GLOBAL INITIATIVE ARE SUPPORTED BY MANY INTERNATIONAL AND NATIONAL ORGANISATIONS, INCLUDING:

Center for Effective Discipline, USA
Child Welfare League of Canada
Comisión Andina de Juristas, Peru
Consortium for Street Children
Defence for Children International
Hong Kong Committee on Children's Rights
Instituto Interamericano del Niño, la Niña y Adolescentes
International Federation of Social Workers (IFSW)
International Federation Terre des Hommes
International Society for the Prevention of Child Abuse and Neglect (ISPCAN)
National Education Association, USA
NGO Group for the Convention on the Rights of the Child
OMCT - World Organisation Against Torture
Plan International
Red por los Derechos de la Infancia en Mexico
Save the Children Romania
Save the Children Spain
Save the Children Sweden
Save the Children UK
Society for the Protection of the Rights of the Child (SPARC), Pakistan
Trinidad and Tobago Coalition for the Rights of the Child

Individual supporters include:

His Holiness the Dalai Lama
Jaap Doek, sixth chair, Committee on the Rights of the Child
Professor Doctor Yakin Ertürk, Special Rapporteur on Violence against Women
Målfrid Grude Flekkøy, Norway's and the world's first Ombudsman for Children
Thomas Hammarberg, Human Rights Commissioner, Council of Europe
Ms Moushira Khattab, member and Vice Chair, Committee on the Rights of the Child
Cindy Kiro, New Zealand Commissioner for Children
Shirley Mabusela, former Chairperson of the South African Human Rights Commission and Commissioner for Child Rights
Professor Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Lisbet Palme, Sweden, former member, Committee on the Rights of the Child
Mrs Mary Robinson, former UN High Commissioner for Human Rights
The Most Reverend Desmond M Tutu, Anglican Archbishop Emeritus of Cape Town

For full list of all organisation and individual supporters, see www.endcorporalpunishment.org

Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This report reviews law and policy in relation to corporal punishment and deliberate humiliation of children throughout the world. It makes recommendations for law reform and other measures which it is hoped will be adopted and pursued urgently, at national, regional and international levels, in the context of follow-up to the UN Secretary-General's Study on Violence against Children.

MESSAGES

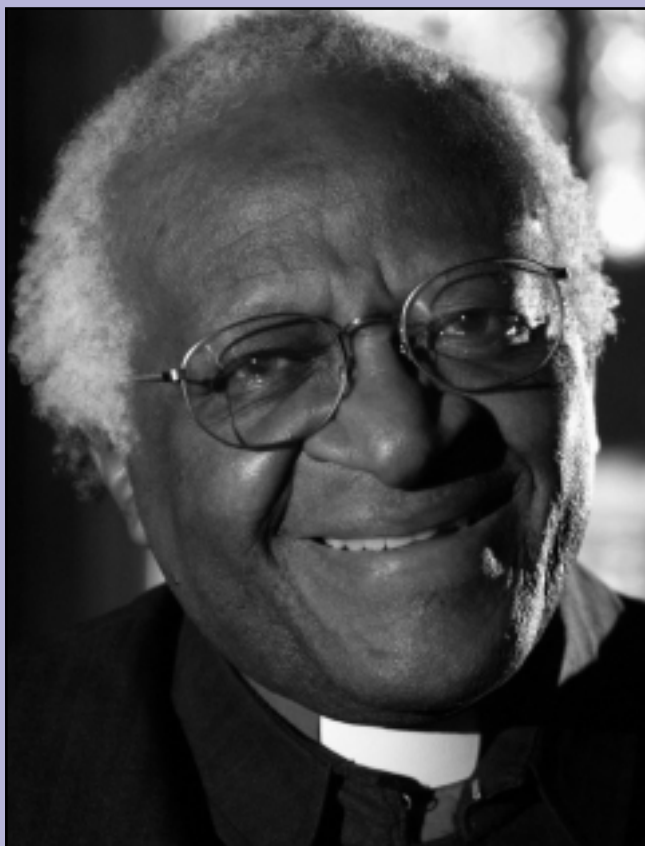
Jaap E. Doek, Chairperson, United Nations Committee on the Rights of the Child

One hundred and ninety two governments have accepted an obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence (article 19 of the United Nations Convention on the Rights of the Child).

The Committee on the Rights of the Child, which monitors implementation of this Convention, has confirmed in its General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)” (June 2006) that this obligation requires States parties “to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children”. The General Comment outlines the legislative and other awareness-raising and educational measures that States must take.

The Report of the Independent Expert for the United Nations Study on Violence against Children sets a target of 2009 for the prohibition of all violence against children, including all corporal punishment. The Committee on the Rights of the Child welcomes this target and hopes States will move quickly to end the legality and social acceptance of this fundamental breach of children’s human rights.

Many citizens and politicians express deep concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously and systematically address the use of violence against children. And nobody should suggest that a little bit of violence is acceptable. That applies equally for adults and children.



Desmond M. Tutu, Archbishop Emeritus

I support the Global Initiative to eliminate all corporal punishment at home, at school, in institutions and community. This worldwide movement has gained prominence through the current UN Secretary General’s Global Study on Violence against Children. Progress towards abolishing corporal punishment is being made, but millions of the world’s children still suffer from humiliating acts of violence and these violations of their rights as human beings can have serious and lifelong effects. Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery, and I look forward to church communities working with other organisations to use the context of the Study to make progress towards ending all forms of violence against children.

If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where home and school are safe places to be and where discipline is taught by example. May God give us grace to love our children as He loves them and may their trust in us lead them to trust in Him.

Professor Paulo Sérgio Pinheiro, Independent Expert leading the UN Secretary General's Study on Violence against Children

The report of the Study, which the UN Secretary-General has now submitted to the General Assembly, sets a target date of 2009 for States to prohibit all forms of violence against children in all settings, including all corporal punishment and all other cruel or degrading forms of punishment.

This is of course an ambitious target, but it is not unrealistic, given the obligations that 192 States have accepted by ratifying the Convention on the Rights of the Child, and other commitments made by States at the UN General Assembly Special Session for Children.

Children involved in the Study throughout the world have told me how much they are hurt – and not just physically – by the routine violent punishments which so many suffer at home, in schools and other places. Stopping all this violence is urgent. Fundamental to the task is the development of clear and consistent legal frameworks that are unequivocal in establishing full protection for children's human dignity and physical integrity.

In June this year, the Committee on the Rights of the Child adopted its General Comment No. 8, which provides detailed guidance on the process of eliminating corporal punishment. Law reform is in itself an educational exercise, but must be linked to widespread public education. During the process of the Study and my travels to different regions, I saw evidence of many programmes and materials aimed at promoting positive, non-violent relationships with children, in their homes, schools and other institutions. Now, governments working with civil society partners need to universalize these.

Children are watching to see whether this global Study will have a real and positive impact on their lives. None of us, as I argue in the report, can look children in the eye, if we continue to approve or condone any form of violence against them.



Prof Pinheiro (top) listens to children in Mali

UN Secretary General's Study:

- *no violence is justifiable*
- *all violence is preventable*

No violence against children is justifiable; all violence against children is preventable: this is the key message of the Report of Independent Expert Paulo Sérgio Pinheiro, appointed by UN Secretary-General Kofi Annan, to lead the first comprehensive global study on violence against children in 2003.

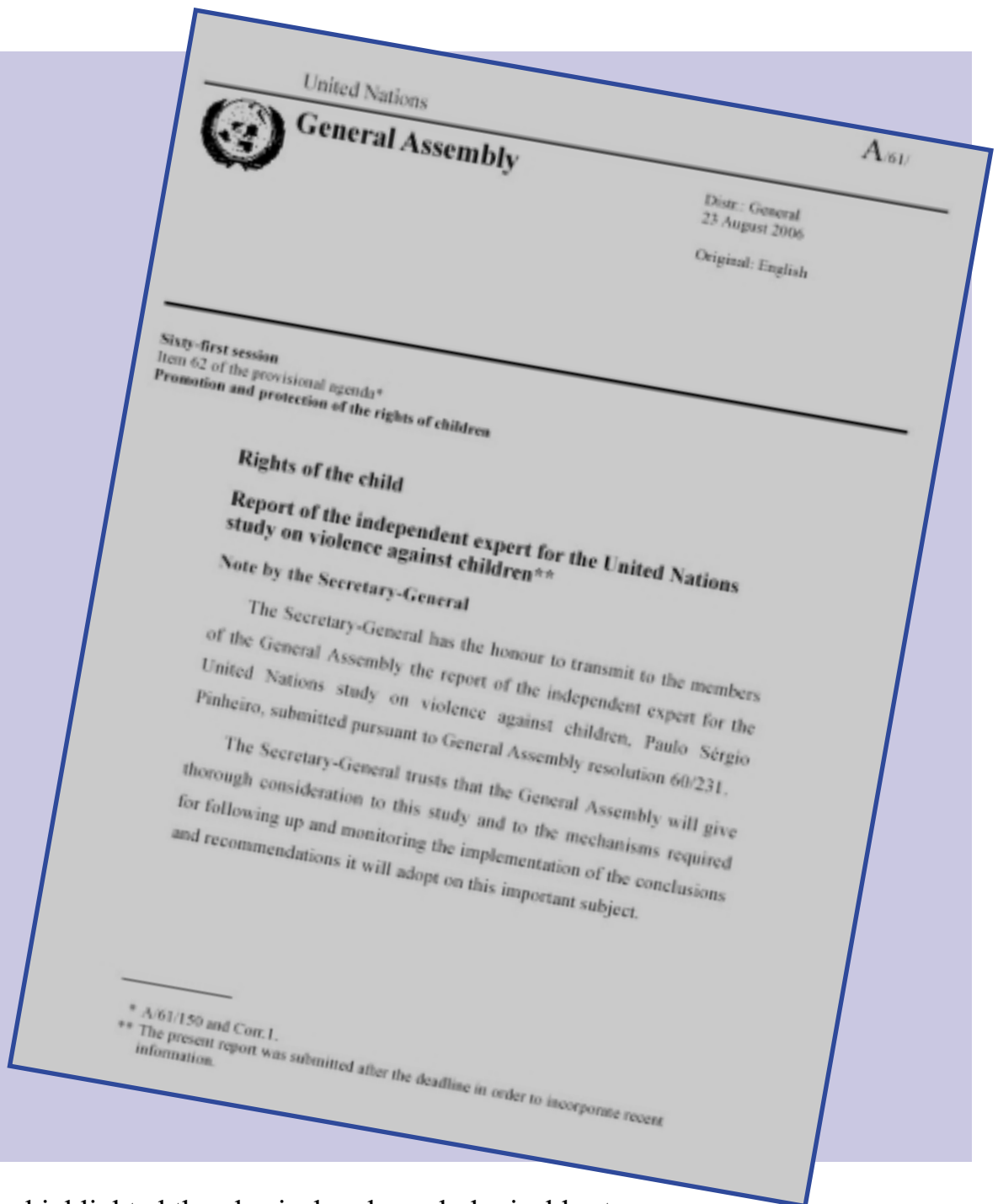
In the introduction to his report, submitted to the UN General Assembly in New York in October 2006, Professor Pinheiro notes that violence against children exists in every country of the world, cutting across culture, class, education, income and ethnic origin: “In every region, in contradiction to human rights obligations and children’s developmental needs, violence against children is socially approved, and is frequently legal and State-authorized.

“The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children’s uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.”
(Introduction, paras. 1 and 2)

The Report recommends prohibition of all forms of violence against children, in all settings, including all corporal punishment and all other cruel, inhuman or degrading forms of punishment, drawing the attention of states to the Committee on the Rights of the Child’s General Comment No. 8 (see page 10). The Report underlines (para. 116) that prohibition of all violence against children should be completed by 2009.

The Study considers violence against children in the various settings in which it occurs, starting with the home and family: “Violence against children in the family may frequently take place in the context of discipline and takes the form of physical, cruel or humiliating punishment. Harsh treatment and punishment in the family are common in both industrialized and developing countries. Children, as reported in studies and speaking for themselves during the Study’s regional

In 2001, on the recommendation of the Committee on the Rights of the Child, the General Assembly in its resolution 56/138 requested the Secretary-General to conduct an in-depth study on the question of violence against children and to put forward recommendations for consideration by member states for appropriate action. In February 2003, Paulo Sérgio Pinheiro was appointed by the Secretary-General to lead this study. The Secretary General submitted the report to the General Assembly in October 2006.



consultations, highlighted the physical and psychological hurt they suffer as a result of these forms of treatment and proposed positive and effective alternative forms of discipline.

“Physical violence is often accompanied by psychological violence. Insults, name-calling, isolation, rejection, threats, emotional indifference and belittling are all forms of violence that can be detrimental to a child’s psychological development and well-being – especially when it comes from a respected adult such as a parent. It is of critical importance that parents be encouraged to employ exclusively non-violent methods of discipline.” (paras. 41 and 42)

Introducing the detailed recommendations in the Report, Professor Pinheiro notes that UN member states have already made commitments to protect children from all forms of

violence: “However, we must accept – from children’s testimony during the Study process, as well as reflected in research, that these commitments are far from being fulfilled. The core message of the Study is that no violence against children is justifiable; all violence against children is preventable. There should be no more excuses. Member States must act now with urgency to fulfil their human rights obligations and other commitments to ensure protection from all forms of violence. While legal obligations lie with States, all sectors of society, all individuals, share the responsibility of condemning and preventing violence against children and responding to child victims. None of us can look children in the eye, if we continue to approve or condone any form of violence against them.” (para. 91)

During 2005, nine regional consultations were held in connection with the UNSG’s Study in all parts of the world. Recommendations developed at every consultation included calls for the prohibition and elimination of all corporal punishment.

Full report is available at www.violencestudy.org

A book, complementing the report, is also available at www.violencestudy.org

The human rights imperative to prohibit all corporal punishment of children

The Convention on the Rights of the Child

Rights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights and, as such, should have protection under the law equal to that given to adults. The Convention also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19). Article 37 requires states to ensure that children are not subjected to torture or to other cruel, inhuman or degrading treatment or punishment. And article 28(2) requires that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the whole Convention.

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. By 2006, the Committee had recommended explicit prohibition in law of corporal punishment within the family to around 130 states. In June 2006, the Committee adopted a General Comment on “The right to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, *inter alia*)” which confirms the obligations on governments to prohibit all corporal punishment (see following pages).

The obligation to prohibit all corporal punishment is supported by other international human rights treaty bodies, including the Committee Against Torture and the Committee on Economic, Social and Cultural Rights. In December 2005, the UN General Assembly adopted a resolution on the rights of the child which called for the elimination of all school corporal punishment and corporal punishment of children in detention (A/RES/60/231, December 23 2006). Regional human rights treaty bodies also support prohibition, and there are high level court judgements in a growing number of states condemning corporal punishment (see pages 15 to 18).

“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...”

UN Convention on the Rights of the Child, article 19

States' obligation to prohibit all corporal punishment – General Comment by the Committee on the Rights of the Child

In June 2006, the Committee on the Rights of the Child adopted General Comment No.8 (2006) on “The right to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para.2; and 37, *inter alia*)”, which aims “to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take” (para. 2).

The Committee defines corporal punishment in paragraph 11 as:

“... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

The Committee distinguishes between violence and humiliation as forms of punishment which it rejects, and discipline in the form of “necessary guidance and direction”, which is essential for healthy growth of children. The Committee also differentiates between punitive physical actions against children and physical interventions aimed at protecting children from harm.

Human rights standards

The foundations of the human rights obligation to prohibit and eliminate all corporal punishment and all other degrading forms of punishment lie in the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law. The Committee traces this back to the International Bill of Human Rights – “The dignity of each and every individual is the fundamental guiding principle of international human rights law” (para. 16) – and shows how the Convention on the Rights of the Child builds on these principles. Quoting article 19 of the Convention, which requires States to protect children “from all forms of physical or mental violence”, the Committee states (para. 18):

“... There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

The fact that article 19 and article 28 – on school discipline – do not specifically refer to corporal punishment does not in any way undermine the obligation to prohibit and eliminate it (paras. 20 and 21):

“... the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

“Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.”

In response to the view that a certain degree of “reasonable” or “moderate” corporal punishment is in the “best interests” of the child, the Committee states that “interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child’s views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity” (para. 26). And there is no conflict between realising children’s rights and the importance of the family unit, which the Convention fully upholds.

The Committee recognises that some justify the use of corporal punishment through religious teachings but again notes that “practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity” and that “[f]reedom to practice one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others” (para. 29).

Measures and mechanisms required to eliminate corporal punishment and other cruel or degrading forms of punishment

Legal reform is essential in eliminating corporal punishment. All provisions which allow a “reasonable” degree of corporal punishment – whether in statute or in case/common law – should be repealed, as should all legislation which specifically regulates the administration of corporal punishment. But the law must also explicitly prohibit corporal punishment in all settings (para. 35):

“Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever they are and whoever is the perpetrator. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation – e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law – clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment.”

The Committee emphasizes that law reform should be accompanied by awareness-raising, guidance and training, because the primary purpose of such reform is prevention. Prohibition in law does not mean that all cases of corporal punishment of children by parents should lead to prosecution.

Effective prohibition also requires the consistent promotion of positive, non-violent relationships and education to all those involved with children. While the Convention does not prescribe in detail how parenting should be carried out, it does “provide a framework of principles to guide relationships both within the family and between teachers, carers and others and children” (para. 46). For example, children’s developmental needs must be respected, their best interests are fundamental, and their views should be given due weight.

Finally, States parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment, including through the use of interview research involving children and the establishing of independent monitoring bodies, and should report on all measures taken in their periodic State party reports to the Committee.

Full text of the General Comment is at
www.ohchr.org/english/bodies/crc/comments.htm

Regional human rights standards and mechanisms

The **African Charter on the Rights and Welfare of the Child** requires states to “take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter” (article 11); to “take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child” (article 16); and to “ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment” (article 17).

Parents and others responsible for the child have the duty of ensuring that domestic discipline “is administered with humanity and in a manner consistent with the inherent dignity of the child” (article 20). Article 1 of the Charter emphasises: “Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.”

In 2006, the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, which monitors compliance with the Charter, stated: “Although some legislative measures have been taken to ban violence against children in schools, care institutions and penal systems in many African States, not much has been done to end corporal punishment administered to children by their families, in their homes, where violence seems to be culturally accepted. In fact, thousands of homes have become real laboratories of violence against children and the media have reported many cases. That is unacceptable.”

The **African Charter of Human and Peoples’ Rights** asserts in article 3 that everyone is equal before the law and shall have equal protection of the law. Article 4 states: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” And under article 5: “Every individual shall have the right to the respect of the dignity inherent in a

human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” Under article 18(3), states are required to ensure the protection of the rights of the child “as stipulated in international declarations and conventions”.

In 2000, a complaint was submitted to the African Commission on Human and Peoples’ Rights regarding the sentencing of eight students in the Sudan to 25-40 lashes for “public order” offences under the 1991 Sudanese Criminal Law (*Curtis Francis Doebber v Sudan*, 236/2000, 33rd Ordinary Session, Niger, 2003). The Commission’s judgement concluded that the Sudanese legislation permitting flogging violated article 5 of the Charter.

The **Arab Charter of Human Rights**, adopted in 1994, reflects the international instruments and asserts the importance of human dignity in its Preamble. The Charter defends “everyone’s” right to life, liberty and security of person, which must be protected by law. Article 9 asserts: “All persons are equal before the law and everyone within the territory of the State has a guaranteed right to legal remedy.” Article 13 requires states parties to “protect every person in their territory from being subjected to physical or mental torture or cruel, inhuman or degrading treatment. They shall take effective measures to prevent such acts and shall regard the practice thereof, or participation therein, as a punishable offence.” Article 38 requires state protection for the family, as “the basic unit of society”, and refers to the state’s undertaking to provide “outstanding care and special protection” for the family, mothers, children and the aged. Article 39 asserts young people’s right “to be afforded the most ample opportunities for physical and mental development.”

The **Cairo Declaration on Human Rights in Islam** was adopted by the Organisation of the Islamic Conference in Cairo on August 5 1990, to provide “general guidance” to member states in the field of human rights. Article 1 states: “All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.” Article 2 (d) asserts: “Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari’ah-prescribed reason.” Article 20 states that it is not permitted to subject an individual “to physical or psychological torture or to any form of maltreatment, cruelty

or indignity”. Articles 24 and 25 emphasise that all the rights and freedoms stipulated in the Declaration are subject to the Islamic Shari’ah, which is the only source for explanation or clarification of any of the articles of the Declaration. Reconciling Shari’ah law with international human rights standards is a subject of ongoing debate.

In Europe, the human rights mechanisms of the Council of Europe, which has 46 member states, have been pursuing abolition of corporal punishment for three decades, beginning with a series of judgements of the European Court of Human Rights, which is concerned with states’ obligations under the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, on first judicial and then school corporal punishment, all against the UK. The Court has not yet explicitly condemned all corporal punishment within the family home, but it is increasingly referring to the standards of the Convention on the Rights of the Child in its judgements on issues involving children and it is likely in any future case the Court will find that anything less than equal protection for children is in breach of the European Convention.

The European Committee of Social Rights, which monitors implementation of the **European Social Charter** and the **Revised Social Charter**, has clearly and consistently challenged states to prohibit corporal punishment. In a general observation issued in 2001, the Committee concluded that “article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere” and stated (General Introduction to Conclusions XV-2, vol.1, p.27): “To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not.”

In June 2004, the Parliamentary Assembly of the Council of Europe adopted a detailed recommendation (1666/2004), with overwhelming support, which condemned all corporal punishment of children and called on the Council of Europe’s Committee of Ministers to “launch a co-ordinated and concerted campaign in all the member states for the total abolition of corporal punishment of children” (para. 7).

Compliance with the **American Convention on Human Rights**, ratified by some states in the Caribbean and by all Latin

American states apart from Cuba, and signed but not ratified by the US, is monitored by the Inter-American Commission and Court of Human Rights in San José, Costa Rica. In an advisory opinion on “The legal status and human rights of the child”, requested by the Inter-American Commission on Human Rights in 2002 (Advisory Opinion OC-17/2002, 28 August 2002), the Court emphasised states’ obligations to protect children from all forms of violence, including by “private” individuals, referring to the Convention on the Rights of the Child and the conclusions of the Committee on the Rights of the Child. In October 2005, the Inter-American Commission held a hearing on Ending corporal punishment and in ... 2006 formally requested the Inter-American Court to issue an Advisory Opinion on states’ obligations to eliminate corporal punishment.

The South Asian Association for Regional Cooperation (SAARC) signed in 2002 the **SAARC Convention on Regional Arrangements for the promotion of Child Welfare in South Asia**. States parties recognise the UNCRC as a comprehensive international instrument concerning the rights and well being of the child and shall, therefore, reiterate their commitment to implement it, and to consider it as a “guiding force” for all national laws and bilateral or multi-lateral agreements that are entered into in the field of child welfare (article 3). Under article 4(3), States parties are required to ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence.

Extracts from national high-level court decisions against corporal punishment

Canada

In January 2004, Canada’s Supreme Court rejected by a majority an application by the Canadian Foundation for Youth, Children and the Law that section 43 of the Criminal Code – which states that teachers, parents and those in the place of parents are justified in using force “by way of correction” on a child, provided that it is “reasonable under the circumstances” – should be struck down as unconstitutional. The judgement limited the legality of parental corporal punishment by ruling out corporal punishment of children under two years of age or over 12; degrading, inhuman or harmful conduct; and discipline using objects such as rulers or belts and blows or slaps to the head. It stated that teachers cannot use corporal punishment, although they may use reasonable force to remove a child from a classroom or to secure compliance with instructions.

“The invention of disreputable legal concepts such as ‘reasonable chastisement’ and ‘lawful correction’ arises from the perception of children as the property of their parents. This is the modern equivalent of laws in force a century or two ago allowing masters to beat their slaves or servants, and husbands to beat their wives. Such ‘rights’ are based on the power of the stronger over the weaker and are upheld by means of violence and humiliation.”

Thomas Hammarberg,
Human Rights
Commissioner, Council
of Europe, Issue Paper
2006/1 “Children and
corporal punishment:
The right not to be hit,
also a children’s right”,
June 2006

Two of the dissenting judges stated that section 43 should be struck down altogether. Justice Marie Deschamps argued that section 43 is “a throwback to old notions of children as property”, and that it “compounds children’s vulnerability and disadvantage by withdrawing the protection of the criminal law”. Justice Louise Arbour (now UN High Commissioner for Human Rights) stated:

What is acceptable as punishment to a society will vary with the nature of that society, its degree of stability and its level of maturity. The punishments of lashing with the cat-o-nine tails and keel-hauling were accepted forms of punishment in the 19th century in the British navy. Both of those punishments could, and not infrequently, did result in death to the recipient. By the end of the 19th century, however, it was unthinkable that such penalties would be inflicted. A more sensitive society had made such penalties abhorrent.

That s. 43 is rooted in an era where deploying ‘reasonable’ violence was an accepted technique in the maintenance of hierarchies in the family and in society is of little doubt. Children remain the only group of citizens who are deprived of the protection of the criminal law in relation to the use of force.

India

The High Court of New Delhi in 2000 directed the state to ensure “that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear”. The judges noted that India had ratified the Convention on the Rights of the Child and concluded:

Before parting with the case we would like to observe that fundamental rights of the child will have no meaning if they are not protected by the state... The state must ensure that corporal punishment to students is excluded from schools. The state and the schools are bound to recognise the right of the children not to be exposed to violence of any kind connected with education.

Fiji

In 2002, an appeal court declared corporal punishment in schools and the penal system unconstitutional, quoting international standards. The Fiji Human Rights Commission intervened in the case with written submissions which stated that all corporal punishment is against section 25(1) of the Fiji Constitution and against international human rights law. The judgement declared:

Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students.

Kenya

While not categorically ruling out all corporal punishment, a 2004 judgment by the Kenyan High Court is regarded as a landmark (*Isaac Mwangi Wachira v Republic High Court of Kenya (Nakuru)* Criminal Application No. 185 of 2004 (Unreported)). The case concerned a man convicted of subjecting his 3-year-old daughter to torture under the Children's Act, appealing against the length of his sentence of imprisonment. The High Court rejected the appellant's argument, that the fact that he was a parent disciplining his child was a mitigating factor, and affirmed the provisions of the Children's Act in relation to parental responsibility as distinguished from parental rights (section 23 of the Act), stating: "The society expects the appellant to give protection and love to his children, especially when they are of young and tender age ..." The case concerned the severe and sustained beating and pinching of a young child and the judgment addresses only the level of punishment which would fall outside what many people would call "reasonable", but it is important because it affirms the right of children under the new Act to be protected from torture and cruel, inhuman and degrading treatment and asserts that a parent's behaviour under the guise of discipline can constitute such treatment (traditionally seen to be committed by the state and not private individuals). It also confirms the power of the courts to examine the status of corporal punishment in the home.

Namibia

In 1991 the Namibian Supreme Court declared that corporal punishment breached article 8(2)(b) of the Constitution which states that "[n]o persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment" (*Ex parte Attorney General, Namibia: in Re Corporal Punishment by Organs of State*, 1991(3) SA 76). The leading judge noted that it would not be appropriate "to allow corporal punishment which is unconstitutional to continue to be inflicted until Parliament makes the necessary amendments", and the Court made two orders:

- 1. It is declared that the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with article 8 of the Namibian Constitution.**
- 2. It is further declared that the infliction of corporal punishment in Government schools pursuant to the existing Code formulated by the Ministry of Education, Culture and Sport or any other direction by the said Ministry or any other organ of the Government, is unconstitutional and unlawful and in conflict with article 8 of the Namibian Constitution.**

Nepal

Section 7 of the Child Act (1991, in force 1993) states that “no child shall be subject to torture or cruel treatment” but also that “any act by the mother, father, family member, guardian or teacher to scold the child or give him/her minor beating for the sake of his or her interests shall not be deemed to violate this Section”. Following a writ petition filed by the Centre for Victims of Torture in Nepal on 16 June 2004, the Supreme Court ruled that the restrictive clause in section 7 was unconstitutional and, in accordance with article 88 of the Constitution (1990), declared the portion “or give him/her minor beating” null and void with immediate effect (*Mr Devendra Ale et al v Office of the Prime Minister & Cabinet et al*, Supreme Court decision 6 January 2005). The judgement also issued a directive to the government “to pursue appropriate and effective measures to prevent physical punishment as well as other cruel, inhuman or degrading treatment or punishment or abuse being imposed or inflicted on and likely to be imposed or inflicted on children”.

South Africa


The Constitutional Court declared the whipping of juveniles in the penal system to be unconstitutional in 1995 (*S v Williams and others* 1995 (3) SA 632 (CC)). The leading judge stated:

... it is my view that at this time, so close to the dawn of the 21st century, juvenile whipping is cruel, it is inhuman and it is degrading. It cannot, moreover, be justified in terms of section 33(1) of the Constitution.

In 2000 the same court unanimously rejected an appeal by an association of 196 independent Christian schools to declare the prohibition of corporal punishment in all schools invalid on grounds of religious rights (*Christian Education South Africa v The Minister of Education* 2000 (10) BCLR 1051 (CC)). The Constitutional Court held that the prohibition of corporal punishment was a justifiable limitation of the right to freedom of religion.

Zambia

In 1999 the High Court heard an appeal against a sentence of ten strokes of the cane handed down by the magistrates' court (*John Banda v The People HP A/6/1998*). The court set aside the sentence of corporal punishment against the appellant. It further found that the sections providing for the use of corporal punishment as a sentence were in direct conflict with article 15 of the Zambian Constitution, declared them unconstitutional and ordered that they should be repealed from the Penal Code.



“The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children’s uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.”

Paulo Sérgio Pinheiro, Report of the Independent Expert for the UN Study on violence against children, October 2006 (Introduction, para. 2)

Global progress towards ending all corporal punishment

Ending corporal punishment and deliberate humiliation of children is a global issue. It is also a very personal issue. Most people in almost every state in the world have been hit and humiliated as children. Most parents have hit their own growing children. We do not like to think badly of our parents or of our own parenting. This makes it difficult for many people, including politicians and community leaders, to see the issue as one of equality and human rights and to move on to positive, non-violent relationships with children.

Corporal punishment within the family remains socially accepted and legal in many states in all regions. But no culture or society “owns” corporal punishment. Every society and culture has an immediate obligation to eradicate it, just as they must eradicate violence against women and men within the family. It seems that corporal punishment of children has existed historically to varying degrees in more or less all societies. But in the contexts of colonialism, slavery and certain religious teachings it has been promoted and institutionalised. For example, the English common law defence of “reasonable chastisement” and similar defences of “lawful correction” found originally in French and Portuguese law have become part of the law in many countries worldwide.

As corporal punishment and deliberate humiliation of children – in their families, schools, other institutions and forms of care, in penal systems and in situations of employment – has become more visible over the last decade, it has begun to be recognised as a clear violation of their human rights. The adoption and almost universal ratification of the Convention on the Rights of the Child has underlined children’s status as rights holders, with equal rights to respect for their human dignity and physical integrity.

Law reform and other measures to eliminate corporal punishment are now accelerating, with regional human rights mechanisms, high level courts, human rights institutions and NGOs condemning it. Globally, less than 20 states have

prohibited all corporal punishment, including in the family. This means that just 53 million of the world's 2,187 million children live in countries where the law gives them the same protection as adults from being assaulted. In the context of the UN Secretary General's Study on Violence against Children, more states have committed themselves to full prohibition in the near future. 98 states have prohibited all school corporal punishment by law. In juvenile justice systems, corporal punishment is unlawful as a sentence of the courts in 152 states and is prohibited as a punishment for internal disciplinary offences in penal institutions in 102 states (see summary table, page 39).

So the world is now moving rapidly towards acceptance of children's equal rights to respect for their human dignity and physical integrity and to equal protection under the law. But it demands strong and continuous advocacy to achieve this long overdue reform for children.

... just 53 million of the world's 2,187 million children live in countries where the law gives them the same protection as adults from being assaulted.

Challenging faith-based violence against children

In every state in the world, there are some who assert that their faith approves of, or even requires, corporal punishment of children. But equally there are respected authorities in all the world's major faiths who assert that there is nothing inherent in their faith which justifies the continued legality and social approval of corporal punishment of children.

There is also a growing movement among religious communities to work together to address violence against children based on faith. This movement is grounded in the sacred respect that each religious tradition has for the inherent human dignity of every child and transcends theological differences. The UN Secretary General's Study on Violence against Children, the Global Initiative to End All Corporal Punishment of Children and recent international events have provided opportunities to raise greater awareness amongst religious communities about the impact of violence on children, and to take strong leadership roles in addressing violence against children.

In May 2006 the World Conference of Religions for Peace (WCRP) in partnership with UNICEF convened a consultation of religious leaders and experts in Toledo, Spain. During the consultation representatives from 30 countries pledged support for the UN Study on Violence against Children. During the meeting, religious leaders acknowledged that there had been instances when religious groups had failed to speak out or take action on violence against children, and that this lack of action had increased the vulnerability of children in violent situations. The consultation identified approaches and inter-faith actions which religious groups could use to prevent violence against children including empowerment of children, the active participation of children, and a review of resources to promote the dignity of the child.

The consultation produced a Draft Declaration on religious commitment to address violence against children which contains eight recommendations. These include recommendations for inter-religious cooperation to address violence, and the need to work with governments to ensure the full rights of children consistent with the Convention on the Rights of the Child and to end legalised violence including corporal punishment. The Declaration was formally endorsed in August 2006 at the Eighth World Assembly of WCRP, in Kyoto, Japan.

The World Council of Churches (WCC) decade of non-violence has drawn the attention of Christians to the prevalence of violence against children. For the first time corporal punishment of children was on the agenda of the WCC World Assembly in Brazil 2006 and the Churches' Network for Non-Violence (CNNV) organised an ecumenical workshop on ending corporal punishment.

A Charter for Children and Non-violence will be dedicated and signed by religious leaders and representatives of children's charities during a series of inter-religious services in the United Kingdom during 2006-7. The Charter will provide a starting point for religious communities to work together with other networks to end corporal punishment and other forms of violence against children.

All religious traditions have rich resources within religious texts and teachings to promote positive non-violent approaches to parenting. To take good care of and show compassion towards children is one of the most commendable deeds in Islam. Islam encourages every human being to place the needs of others above his own. Corporal punishment and other forms

of humiliation of children conflict directly with the advice of the Prophet, which is about treating those who are under the age of seven as children (employing tenderness and compassion), treating those from seven to 14 as siblings (with care and concern) and from 14 onwards as close friends (with trust and cooperation). The noble Prophet of Islam emphasised: “Be generous, kind and noble to your children and make their manners good and beautiful.”

Anas (R), the Prophet’s companion said: “I never saw anyone who was more compassionate towards children than the messenger of Allah.” Children are regarded as amanat (trust) from Allah. Islam does not advocate violence against children. The Prophet said: “The strong is not the one who overcomes people by his strength, but the strong is the one who controls himself while in anger.”

Hindu culture is essentially a culture of kindness that teaches ahimsa (non-injury) and preaches against hisma (hurtfulness). A

Hindu ideal has been described as: “Never injure others.” In the Hindu tradition there is no greater good than a child. Hindu parents are to lift their children into the higher nature of love, forgiveness, friendliness and security. Parents are urged to love their children and demonstrate the principle of ahimsa. Children should be allowed to develop without being hurt physically, emotionally or psychologically. Parents who are avowed to ahimsa are able to guide and teach children without hitting them.

There is a saying in Hinduism: “Siva’s followers never govern youth through fear. They are forbidden to hit children, use harsh words, neglect or abuse them. They know you can’t make children better by making them feel worse.”

The basic tenets of Buddhism are completely against imposing pain on others and there is no room for violence in the Dharma (teachings of Buddha). Buddhism is concerned with the welfare of all beings. Sigâlovâda Sutta makes the point that if everyone develops compassion, mutual respect, courtesy (sammânanâya) and loving kindness (mettâ) children will not suffer corporal punishment.

Chesed (kindness), compassion and justice are the classic Jewish values and the nourishing and protecting of human life is of prime importance in Jewish law. Historically, by the end of the talmudic period (500 CE), any doctrines of harsh parental discipline were replaced with an emphasis on kindness and compassion. As a result of these rabbinic teachings traditional Jewish homes were noted for treating their children with love and warmth.

In all regions of the world there are minority groups of Christians who defend corporal punishment of children as their parental duty, using texts from the book of Proverbs to support this form of punishment which is often called “Biblical discipline”. But Christians look to the example of Jesus for the way to live their lives. Jesus was a teacher and Rabbi and an expert in interpreting the scriptures. There is no evidence to suggest that he cited the scriptures to justify hitting children. Jesus always treated the vulnerable and defenceless with love and compassion. All the recorded encounters between Jesus and children were kind, gentle and respectful, and his reported words about those causing children to stumble, and the consequences for doing so (Matthew 18:6), are amongst the strongest in the New Testament. Children were central to the social order Jesus initiated. When he set a little child in the midst of the disciples and said “The kingdom of God belongs to such as these” (Mark 10:14) he demonstrated enormous regard for children.

“We call upon our governments to adopt legislation to prohibit all forms of violence against children, including corporal punishment, and to ensure the full rights of children, consistent with the Convention on the Rights of the Child and other international and regional agreements. We urge them to establish appropriate mechanisms to ensure the effective implementation of these laws and to ensure that religious communities participate formally in these mechanisms. Our religious communities are ready to serve as monitors of implementation, making use of national and international bodies to maintain accountability.”

Extract from 'A Religious Commitment to Confront Violence against Children' developed during the Global Inter-religious Consultation on Violence against Children held in Toledo, Spain 9-11 May. Endorsed at the 8th World Assembly of Religions for Peace Kyoto, Japan 2006

RECOMMENDATIONS

THE GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN PROMOTES THE FOLLOWING RECOMMENDATIONS FOR IMMEDIATE ADOPTION AND ACTION. THE UN SECRETARY-GENERAL'S STUDY HAS SET 2009 AS THE TARGET DATE FOR PROHIBITION OF ALL VIOLENCE AGAINST CHILDREN – INCLUDING ALL CORPORAL PUNISHMENT.

1 Explicitly prohibit all violence against children, including all corporal punishment and other cruel or degrading punishment or treatment, in the family and in all other settings. This is required by the Convention on the Rights of the Child and by other international and regional human rights instruments. Law reform is required to repeal any existing defences that can be used to justify violent punishment and any laws that authorise it in any setting. Explicit prohibition in sectoral laws applying within the family and to schools, the penal system, alternative care settings and situations of employment is required to send a clear message.

This action, taken to date by less than 20 countries worldwide, sends a clear signal that children have an equal right to respect for their human dignity and physical integrity. The extent to which the law is respected and effectively and appropriately enforced may vary between states. But no state will make significant progress towards preventing and eliminating violence against children until it has a clear and well publicised legal framework prohibiting all violence. All states have criminal laws against assault; some have constitutions outlawing inhuman or degrading treatment; most have laws prohibiting “abuse” or cruelty; many have incorporated the Convention on the Rights of the Child and other international instruments into their domestic law. But none of this is adequate to challenge the traditional acceptance of violent and humiliating punishment of children.

2 Ensure that awareness-raising of children's right to protection, promotion of non-violent childrearing and education and the principles of non-violent conflict resolution are built into all the points of contact with future parents and parents and into the training of all those working with or for children and families. Encourage political, community and faith leaders and educators to support this awareness-raising and public education.

Promoting non-violence does not have to be a separate and expensive process. All those in contact with future parents and parents can build messages into their programmes and activities, from ante-natal classes, through birth registration, immunisation, health surveillance and treatment, pre-school and school and so on. There is no shortage of models of programmes and materials which can be adapted for all states and cultures.

3

Involve children in the development of effective and appropriate action to eliminate corporal punishment and other cruel or degrading punishment or treatment.

Children's right to express their views freely on all matters concerning them, and to have those views given due weight, is upheld in the Convention on the Rights of the Child.

4

Review the extent of violent victimisation of children, including in the family, through confidential interview studies with children themselves and with parents and other carers.

Making the true extent of violence against children visible is an essential step towards gaining public support and political priority for its elimination. The methodology exists for such studies, involving confidential interviews with parents and with children, with appropriate ethical safeguards. Studies can be quite small scale, but must cover children of all ages and children in institutions and other forms of care as well as children living and/or working on the street and in other situations of child labour.

5

Review safeguards to protect children from all forms of violence in the full range of residential institutions and other forms of alternative care, state and private, and implement any necessary improvements.

Studies in states in all continents suggest that children in institutions and alternative care have suffered physical, mental and sexual violence on a huge scale and remain at risk unless a range of safeguards is implemented. These include effective training and vetting of all staff, regular, confidential reviews of all children's placement and treatment, independent inspection including interviewing of children and staff in private and protection of whistle-blowers.

Research into the prevalence of corporal punishment and other forms of humiliating and degrading punishment of children

One indicator of the often low priority given to eliminating corporal punishment and other forms of humiliating and degrading punishment of girls and boys is the relatively low number of prevalence studies worldwide. This is a problem that is slowly being addressed and there is an increasing number of research studies investigating the prevalence and/or incidence of corporal punishment and other forms of humiliating and degrading punishment of children in schools and in the home; studies in relation to the penal and care systems are virtually non-existent.

To date the Global Initiative has identified around 250 research studies in over 100 states worldwide which focus to some degree on corporal punishment of children. But there are many states for which it has proved impossible to identify any relevant research. For others, prevalence figures are available for corporal punishment in the home and/or schools but there are very few examples of research in the penal and care systems and relating to children in employment.

(For further information on these and other prevalence research, see the website of the Global Initiative:
www.endcorporalpunishment.org)

The prevalence figures for corporal punishment in the home and in schools revealed by this body of research are wide ranging both between and within states, from below 10% to almost 100%, though the majority are towards the upper end of the range and very few give a figure below 40%. For methodological and other reasons they are for the most part not directly comparable, but they nevertheless bring to light the huge numbers of children suffering everyday violence at the hands of parents and teachers in the name of “discipline”.

The research findings likewise vary in the analysis of the frequency and/or severity of corporal punishment in relation to age, gender and other factors, and no straightforward correlations are evident. Where age is analysed, it is usually the case that young children are more vulnerable to corporal punishment than older children, both at home and at school, and often boys are more likely to be physically punished than girls. In studies which have involved adults (e.g. parents, teachers) and children, it is common to see a marked discrepancy between figures derived from adults' reports of their use of corporal punishment when compared with children's reports of being punished. What is indisputable is the fact that corporal punishment and other forms of humiliating and degrading punishment are part of far too many children's "normal" lives at home and school.

Research undertaken following prohibition of corporal punishment or following public education campaigns on the negative effects of corporal punishment and/or promoting non-violent discipline has produced positive results. For example, government research in Germany carried out in 2001 into the reception and initial impact of the prohibition of corporal punishment in childrearing in 2000 found a substantial decrease in corporal punishment at all levels of severity (German Federal Government (2003), *Violence in upbringing: An assessment after the introduction of the right to a non-violent upbringing*, Federal Ministry of Justice & Federal Ministry for Family Affairs, Senior Citizens, Women and Youth). Similar findings have resulted from research in Sweden, the first state to prohibit corporal punishment of children in the home (in 1979) (Statistics Sweden (1996), *Demography, the family and children, spanking and other forms of physical punishment: a study of adults' and middle school students' opinions, experience, and knowledge*, Stockholm: Statistics Sweden; Janson, S. (2000), *Children and abuse – corporal punishment and other forms of child abuse in Sweden at the end of the second millennium: A scientific report prepared for the Committee on Child Abuse and Related Issues*, Ministry of Health and Social Affairs, Sweden). Studies in Ethiopia found a sharp decline in the use of corporal punishment by teachers following its prohibition and associated professional education in schools from 1995 (Radda Barnen (2002), *Spare the Rod – Raise a Healthy Child*, Addis Ababa).

Research into what children say about corporal punishment

Involving children themselves in research on corporal punishment and other forms of humiliating punishment, with appropriate safeguards and standards of confidentiality, is vital to obtaining a true picture of the extent, nature and effects of such punishment. Retrospective studies based on adults' memories of their childhood experiences do not tell us what is happening in children's lives today, and adults' accounts of their own use of corporal punishment on their children are likely to be unreliable. The number of in-depth studies into children's experiences is increasing and such research has been undertaken in all regions (see www.endcorporalpunishment.org for summaries). These studies not only reveal a picture of the prevalence of corporal punishment (as discussed in the previous section) but illustrate what it is like for children to live with such violence in their everyday lives, its limited effectiveness as a "disciplinary" method, and the positive alternatives that children say are more likely to be successful in changing their behaviour.

Examples of what children say about corporal punishment from Fiji, Pakistan, Sudan and UK

Fiji

In 2006, Save the Children Fiji published the results of research involving 536 children aged 10-17 years in schools in the Western, Northern and Central Divisions, and 101 adults (teachers in the schools and members of four community settlements in the Central Division) (Save the Children Fiji, 2006). The research team led 51 sessions with the children, boys and girls separately, and two age groups – 10-13 years and 14-17 years. Methods used included drawing and writing tasks. Adults gave their views in an attitude survey and a sentence completion task. Most punishments experienced by children were direct assaults, more frequently for younger children, including being beaten, hit, slapped or lashed, smacked, whacked, given a hiding, spanked, punched, "donged" (on the head) and pinched. Nine out of ten boys aged 10-13 and almost eight out of ten aged 14-17 reported the use of physical punishments; 71% of girls in both

age groups reported this. More punishment was administered by immediate family members than by teachers; for all girls and younger boys, most punishments were experienced in the home; for older boys the majority of punishment happened at school. Reasons for the punishment included disobedience, unsatisfactory academic performance and misbehaviour.

The most common effect of physical punishment on children was emotional distress, upset and hurt. The children reported having low self-worth and suicidal thoughts, and feeling sad, bad, ashamed, upset, hurt inside, useless and embarrassed:

I felt ashamed and sad in front of my cousins and other family, girl, 10-13 age group

I feel sad because no one will love me more than my parents, girl, 10-13 age group

I felt I wanted to cry but couldn't; I know everybody will be laughing at me, boy, 10-13 age group

I felt ashamed because he hit me in front of the class, boy, 10-13 age group

I felt really upsetting and disheartened and it really hurt my feelings, girl, 14-17 age group

I thought that dad didn't love me or trust me ... I thought I wasn't wanted in the family, girl, 14-17 age group

This pain stays with you, you don't forget, doesn't matter if you forgive that person – it stays with you, boy, 14-17 age group

I feel unhappy all the time at school, boy, 14-17 age group

Save the Children Fiji (2006), *The Physical and Emotional Punishment of Children in Fiji: A research report*, Suva, Save the Children Fiji

Pakistan

In Pakistan, a participatory study by Save the Children, UNICEF and Government of the North West Frontier Province in three districts of NWFP involved 155 consultations with a total of 3,582 children aged 6-14 years from government and religious schools, 86 consultations with 1,231 parents, and 86 consultations with 486 teachers (Save the Children/UNICEF/Government of NWFP, 2005). Not one child reported never having received corporal punishment. Cumulatively, the children identified 28 types of punishment

“In conceptualising violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children.”

Committee on the Rights of the Child, recommendations from General Discussion Day on violence against children, 2001

used in homes and 43 in schools. The most common punishments at home were hitting with an object (shoe, brick, iron rod, knife, etc), smacking, kicking, punching, hair-pulling and ear-twisting. The most common in schools were smacking, hitting with an object, hair-pulling, ear-twisting, and awkward and humiliating physical positions. Corporal punishment at home and in schools was more frequent the younger the child. Children said:

I have received [corporal punishment] from the day I started school. Now I am used to it, grade 7 student, government school, Peshawar

We remain disturbed for several days when a teacher uses abusive language against us. We think of taking revenge, but are helpless. Many students drop out of school due to the use of abusive language and physical punishment by teachers, grade 4-6 student, government school

Sometimes I wish I were a teacher and the teacher my student. I would give her a taste of [corporal] punishment, grade 2-3 student, private school

At times we want to kill or send to jail the person who is beating us, grade 5 student

I wish I hadn't been born, grade 5 student

Save the Children/UNICEF/Government of NWFP (2005), *Disciplining the Child: Practices and Impacts*, Save the Children/UNICEF/Schools and Literacy Dept, Government of NWFP

Sudan

Qualitative research by Save the Children Sweden in Sudan looked at children's experiences of physical punishment in schools and at home through a variety of methods, including focus group discussions, role play, and drawing and writing activities with schoolchildren in Khartoum, interviews with their teachers or mentors, and observation (Save the Children Sweden, 2005). Participants included children with disabilities. In school, corporal punishment was used against children for many reasons, including late arrival, failure to recite Koranic verses, truancy, having a dirty or torn uniform, rudeness, fighting, disruptive behaviour in the classroom, failure to pay school fees and poor academic performance. Whole class punishments were also reported.

If we laugh, teachers consider this as impolite and accordingly they beat us. They also have many other reasons for which they

think we are criminal. When we tease each other by throwing a ball or snatching something from a friend they immediately think we are thieves and have bad intentions, schoolchildren, Sahafa

Teachers usually ask the school team in the last few hours of a competition to come to play a football match with another school. Or they might call an exam at the time we are preparing ourselves for a planned match. They usually like to choose the very worst time and when we don't comply with their wishes we will all be beaten and they call us stupid students whose "minds are in our shoes", schoolchildren, Omburman

A teacher yells at me and she calls me an animal. She loudly shouts and say ya hayawan [animal] and then she immediately starts to beat me, disabled child, 12 years

Injuries such as bruising and swelling resulting from corporal punishment were seen as "normal", and many children reported themselves or others sustaining more serious injuries. Children considered that the most important way to avoid corporal punishment was for teachers to have a greater understanding of their home circumstances which were often incompatible with school demands. They said that rather than corporal punishment they would prefer teachers to value what they do and to involve them in decision-making.

Children also reported experiencing high levels of corporal punishment in the home, and 89% of interviewed parents believed corporal punishment to be the best technique for achieving desirable behaviour in their children. Reasons for corporal punishment included disobedience, persistent demands for money, toys, food, etc, making loud noises, financial pressure, and demands from school.

We face a double punishment every time we have a problem either at school or at home. It's as if teachers and parents are working interchangeably to punish us. When there's a problem at home and we fail to do our homework, teachers beat us at school. We fail to do our homework because of the problem at home, schoolchild, Omburman

Children's feelings on being punished included pain, fear and embarrassment. Their most preferred alternative to corporal punishment in the home was to be listened to.

It is very painful when they beat us and we fail to hide our tears or to stand the pain. We usually suppress the pain until a cry slips out. The pain is unbearable and the setting where we

receive the punishment is usually in front of the entire class and we have to be brave or we're called cowards. At home, the same punishment is given where there is nothing to hide and in a setting where nobody will talk badly about you and instead you might find support from the rest of the family, schoolchildren, Khartoum

Save the Children Sweden (2005), *Ending Physical and Psychological Punishment against Children: Sudan, Ethiopia*: Save the Children Sweden

UK – Northern Ireland

Save the Children in Northern Ireland carried out research into children's views on smacking during the period of a consultation on law reform concerning corporal punishment (Horgan, 2002). The children's responses were reported to the Office of Law Reform and to politicians. 189 boys and girls aged 4-11 were asked what they thought about smacking. 121 children wrote their answers to four questions posted out to after-school clubs; 68 children discussed the issue in their after-school club.

Two out of three children (especially those under 8 years of age) believed that adults hit children because the child is "bad, bold, cheeky, doing things wrong or doing wrong things". One in four of the children (especially those between 9 and 11 years old) thought that children are hit because of how the adult is feeling, not what the child does. The children said that it hurts physically to be hit by someone bigger and that it hurts inside to be hit by the people they love, their parents. More than four out of five children used one or more of these words: "hurt, sad, sore, upset, unhappy, unloved, heartbroken, awful". Four out of five children felt sad or unloved after being hit:

It's sore, very sore, girl, 4 years

I feel scared and cry, boy, 6 years

It's like hell, boy, 9 years

You feel that your parents don't love you if it's your parents smacking you because why would they smack you?, boy, 10 years

Sad - feel that mummy and daddy don't love me, boy, 7 years

Angry and hurt, hates their parents, girl, 9 years

I think the child would be heartbroken and hurt, girl, 9 years

Children suggested a variety of ways of sorting things out when a child has misbehaved. About one in four felt that talking things through was the best way to teach children right from wrong.

Not get outside to play, be put to bed, boy, 6 years

The mummy has to talk to their child, boy, 10 years

By grounding or stopping them from doing something they enjoy, girl, 10 years

There are other ways to talk to them about it, send them to bed with no dinner, don't let them watch TV but DON'T hit them, boy, 10 years

They could sit them down and tell them it's wrong, girl, 11 years

Most of the children believed it is wrong for an adult to hit a child, the two main reasons being that it hurts the child physically and emotionally and that it sets a bad example.

They are big, the child is small, it is not fair, boy, 6 years

Some day they might hurt me too much, boy, 7 years

It doesn't resolve your problem, boy, 9 years

You are showing violence to a child and showing a bad example to younger children, girl, 10 years

They could hurt them and make them think that hitting is right, girl, 11 years

Horgan, G. (2002), *It's a hit, not a "smack": A booklet about what children think about being hit or smacked by adults*, Belfast: Save the Children

“In bringing to light the many issues of children facing violence, we realize that our plight is part of a larger worldwide struggle for the realization of human rights. Our cry is not to be treated specially but, rather, humanely in accordance with the core values of human dignity that are the cornerstones of the Universal Declaration of Human Rights. As global citizens we demand to be acknowledged as first- and not second-class human beings.”

Declaration of the Children and Youth of the Caribbean, 2005

What is the purpose of law reform against corporal punishment and how will it be implemented?

Children's rights to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Equal protection for children **does** mean that any assault of a child that would be considered a criminal assault if directed at an adult should be considered and dealt with under the criminal law as a crime. All countries have laws which define and prohibit criminal assault and this definition should include all corporal punishment as a form of assault.

But this principle of equal protection for both adults and children in cases of assault **does not** necessarily mean that cases involving corporal punishment should result in prosecution of parents. This is very seldom in the interests of children, because of children's dependent status, and should only be used as an intervention of last resort.

In every case in which corporal punishment in the family comes to light, the aim must be first to seek to help parents and children through voluntary positive interventions – offers of advice, discussions with other parents and so on – which aim to stop violent and humiliating treatment of children.

In extreme cases of serious and continuing abuse, separating children from their parents may be the only way to protect them. And in those cases, according to the Convention on the Rights of the Child (article 9), there must be a court hearing, focusing on the best interests of the child and with the parents and child represented. In exceptional cases, where it is believed the child is at risk of severe violence, it may be necessary immediately to remove the child or the perpetrator to protect the child. But such measures should be temporary and only continued following a court hearing.

Equal protection under the law

Efforts to reform the law to prohibit all corporal punishment as a form of assault often meet with strong opposition. One of the fears expressed is that it will lead to thousands of parents being prosecuted and put in prison, or children will be taken away and put in institutions; it will turn children against their parents, and so on. But in the growing number of states in which the law has been changed, this has not been the experience. The first aim of these reforms, linked to awareness-raising and public education, is to raise awareness of the right of the child to equal protection. Changing the law and linking this to awareness-raising is likely to change attitudes and reduce violence against children. Adults' sensitivity to violence against children is likely to increase and this may lead to more reporting of such violence.

Controlling prosecution policy in relation to parental corporal punishment

In most countries, there is a code or advice to decide when prosecution for a crime should go ahead. This usually requires certain tests to be satisfied. For example:

- that there is sufficient evidence to make conviction likely;
- that the prosecution is in the public interest.

The prosecution of parents and other close family carers should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. It is important that guidelines are developed and implemented which set out conditions for prosecution in these cases. In addition, detailed guidance is required for all those involved in child protection, including for example social workers, health workers, teachers and police. This should focus on the need for interventions to emphasise the dangers and illegality of hitting children and to seek to provide appropriate support for positive, non-violent parenting.

In advocating law reform, it can be emphasised that minor assaults on adults by adults, while clearly unlawful, very seldom get to court (in many states, the *de minimis* principle is recognised: that the law does not concern itself with trivial matters).

Some opponents of law reform will then respond: "But what is the point of a law if it is unenforceable?" The first answer is that the real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is

Promoting positive discipline

Law reform to prohibit all corporal punishment and other forms of humiliating punishment of children is required to fulfil children's rights. Law reform sends a strong educational signal, that it is no more legal or acceptable to hit or humiliate a child than anyone else.

But law reform needs to be accompanied by comprehensive and sustained awareness-raising and public education – on the law, on children's right to protection and promoting positive, non-violent forms of childrearing and education.

In states in all regions of the world there are developed programmes and materials to promote positive non-violent relationships with children for parents, teachers and other carers. In some states, the government has taken the lead with public education. In others, non-governmental organisations, human rights institutions and private sector publishers and the media have taken initiatives (for links to a variety of programmes and materials, see www.endcorporalpunishment.org).

always a sign of the failure of the law effectively to deter and prevent a child being assaulted.

The law will be as enforceable as the law on assault between adults, if the necessary evidence exists – but there will need to be consideration to determine whether prosecution is in the best interests of the victim child as well as in the public interest. In the few cases in which prosecution is considered necessary to protect a child, and in the child’s best interests, it will be easier to pursue if parents can no longer defend assault before the courts as “reasonable punishment”.

In order to deter parents from using corporal punishment in the privacy of their homes, the law needs to send a very clear message. That is the real purpose of explicit law reform. Having clear law that prohibits all corporal punishment enables all those working with and for families and children to promote this clear message.

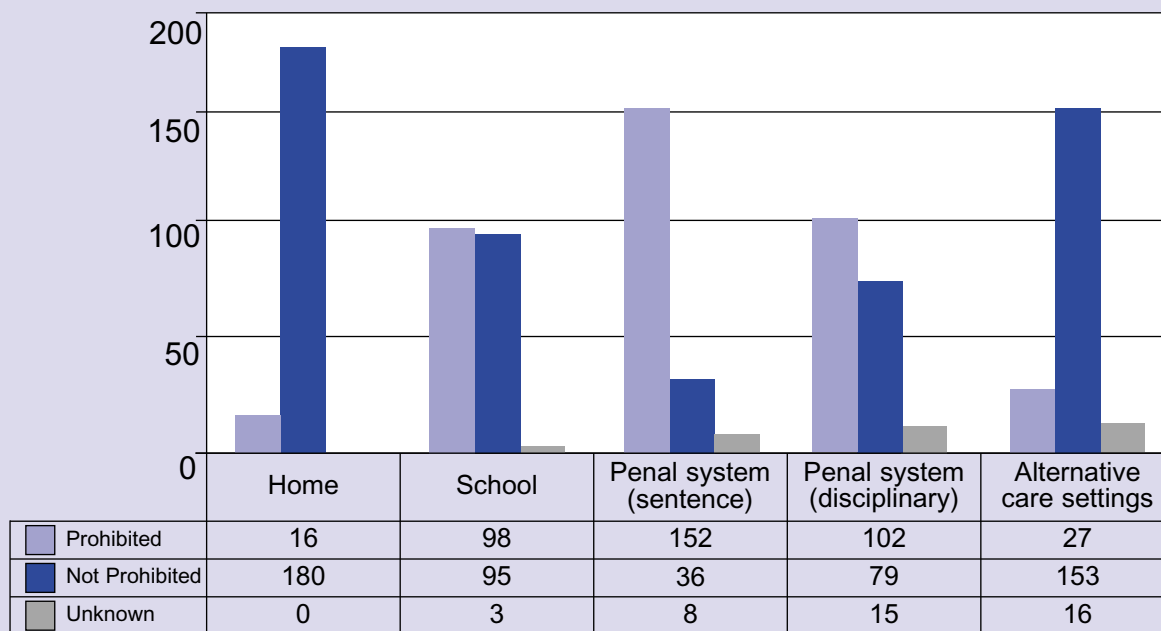
Enforcing prohibition of corporal punishment outside the family

Corporal punishment in schools, other institutions and forms of care and places of employment must be prohibited explicitly in legislation. Prohibition through administrative circular or guidance is not adequate. Implementation and enforcement of prohibition requires proper administrative measures including awareness-raising of the law among adults and children; building knowledge of the prohibition into training, both initial and in-service, for teachers and other school personnel; rigorous inspection by trained inspectors independent of the institution (including interviews in private with children and adults); and access to advice, advocacy and independent complaints procedures for children and parents and ultimately access to the courts.

Respecting the law will or should become a contractual condition, so that teachers and others who continue to use corporal punishment risk losing their jobs. This in itself will act as a strong deterrent. In cases in which teachers and others, after warning, continue to use corporal punishment, prosecution is a legitimate and necessary response.

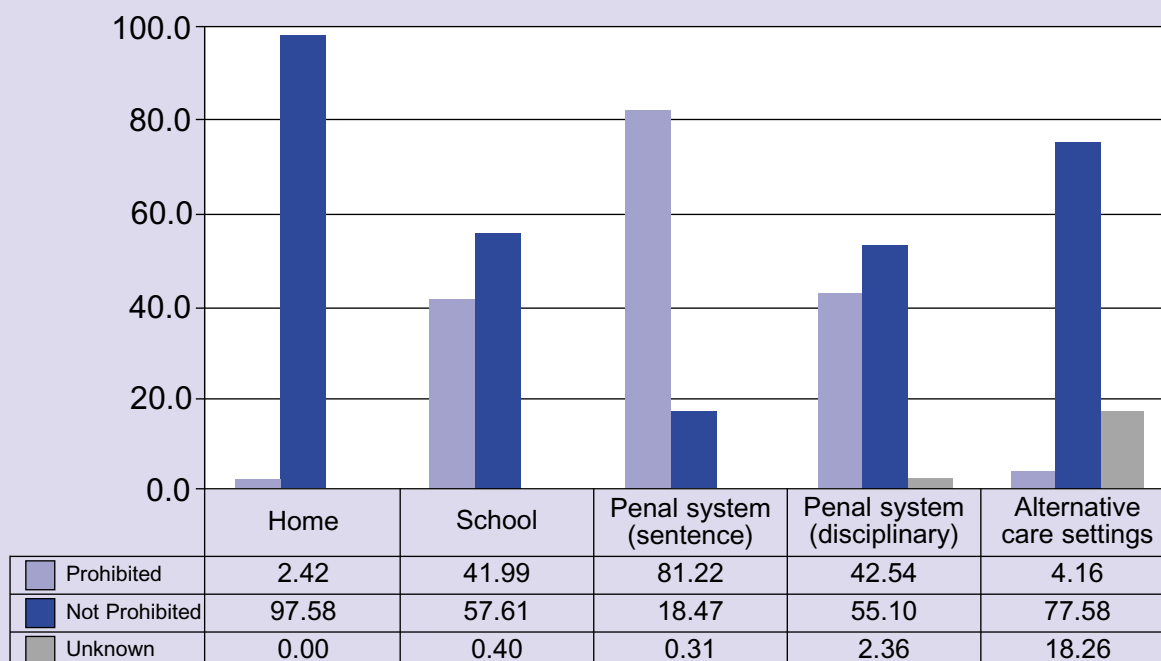
Legality of corporal punishment of children across the world

Number of states legally prohibiting corporal punishment



The total number of states included in the analysis is 196, comprising all those that have ratified the UN Convention on the Rights of the Child except for Vatican City (which has no child population), plus Palestine, Somalia, Taiwan, USA and Western Sahara. Information as at June 2006.

Percentage of global child population legally protected from corporal punishment



Child population figures (2004) from UNICEF (www.unicef.org, accessed March 2006) (except Cyprus, 2002 UNICEF figures; Western Sahara, from <http://esa.un.org/unpp/p2k0data.asp>, *World Population Prospects*, medium variant for 2005, accessed May 2006; Taiwan, 2005 figures from Children Bureau, Ministry of Interior). Information as at June 2006.

PLEASE NOTE: The following information has been compiled from many sources, including reports to and by the United Nations human rights treaty bodies. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions, and many individuals who have helped to provide and check information. Please let us know if you believe any of the information to be incorrect: info@endcorporalpunishment.org

The total number of countries included in the table is 196, comprising all those that have ratified the UN Convention on the Rights of the Child except for Vatican City (which has no child population), plus Palestine, Somalia, Taiwan, USA and Western Sahara. Entries in *italic* indicate that the information is unconfirmed.

LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN

June 2006	Prohibited in the home	Prohibited in schools	Prohibited in the penal system As a sentence for crime	Prohibited in the penal system As a disciplinary measure in penal institutions	Prohibited in alternative care
Afghanistan	NO ¹	NO ²	YES	NO ³	NO ¹
Albania	NO	YES	YES	YES	NO
Algeria	NO	YES	YES	NO	NO
Andorra	NO	YES ⁴	YES	YES	NO
Angola	NO	YES	YES	???	NO
Antigua & Barbuda	NO	NO	NO	NO	NO
Argentina	NO ⁵	NO ⁵	YES	NO ⁵	NO ⁵
Armenia	NO ⁶	YES	YES	YES	NO
Australia	NO ⁷	SOME ⁸	YES	SOME ⁹	SOME ¹⁰
Austria	YES	YES	YES	YES	YES
Azerbaijan	NO	YES	YES	YES	NO
Bahamas	NO	NO	NO	NO	NO
Bahrain	NO	YES	YES	???	???
Bangladesh	NO	NO ¹¹	NO	NO	NO
Barbados	NO	NO	NO	NO	SOME ¹²
Belarus	NO ¹³	YES	YES	YES	SOME ¹⁴
Belgium	NO ¹⁵	YES	YES	YES	SOME ¹⁶
Belize	NO	NO	YES	SOME ¹⁷	SOME ¹⁸
Benin	NO	NO ¹⁹	YES	YES	NO
Bhutan	NO	NO	???	NO	NO
Bolivia	NO	NO ²⁰	YES ²¹	NO	NO
Bosnia & Herzegovina	NO	YES ²²	YES	YES	NO
Botswana	NO	NO	NO	NO	NO

Brazil	NO ²³	NO ²³	YES	NO ²³	NO ²³
Brunei Darussalam	NO	NO ²⁴	NO	NO	NO
Bulgaria	YES	YES	YES	YES	YES
Burkina Faso	NO	YES	YES	YES	SOME ²⁵
Burundi	NO	NO	YES	NO	NO
Cambodia	NO	SOME ²⁶	YES	YES	NO ²⁷
Cameroon	NO	YES	YES	YES	NO
Canada	NO ²⁸	YES ²⁹	YES	YES	SOME ³⁰
Cape Verde	NO	NO ³¹	YES	YES	YES
Central African Republic	NO	NO	???	???	???
Chad	NO	NO	YES	NO	NO
Chile	NO	NO	YES	NO	NO
China	NO	YES	YES	YES	???
Colombia	NO ³²	NO ³³	YES ³⁴	NO ³²	NO ³²
Comoros	NO	NO	YES	NO	NO
Congo, Republic	NO	NO	YES	NO	NO
Cook Islands	NO	NO	???	???	NO
Costa Rica	NO ³⁵	NO ³⁵	YES	YES	NO ³⁵
Cote d'Ivoire	NO	???	YES	YES	NO
Croatia	YES	YES	YES	YES	YES
Cuba	NO	NO	YES	NO	NO
Cyprus	YES	YES	YES	YES	YES
Czech Republic	NO	NO	YES	YES ³⁶	NO
Denmark	YES	YES	YES	YES	YES
Djibouti	NO	YES	???	NO	???
Dominica	NO	NO	NO	NO	NO
Dominican Republic	NO	YES	YES	NO	???
DPR Korea	NO	NO ³⁷	YES	YES	???
DR Congo	NO	YES	YES	SOME ³⁸	NO
Ecuador	NO	YES	YES ³⁹	NO	SOME ⁴⁰
Egypt	NO	YES	YES	YES ⁴¹	NO

El Salvador	NO	YES	YES	YES	???
Equatorial Guinea	NO	NO	???	???	NO
Eritrea	NO	NO	NO ⁴²	???	NO
Estonia	NO	YES	YES	YES	NO
Ethiopia	NO	YES ⁴³	YES	YES	SOME ⁴⁴
Fiji	NO	YES ⁴⁵	YES ⁴⁵	YES ⁴⁵	NO
Finland	YES	YES	YES	YES	YES
France	NO	NO ⁴⁶	YES	YES ⁴⁷	NO
Gabon	NO	YES	???	???	???
Gambia	NO ⁴⁸	NO ⁴⁹	YES	NO ⁴⁹	NO
Georgia	NO	YES	YES	YES	SOME ⁵⁰
Germany	YES	YES	YES	YES	YES
Ghana	NO	NO	YES	NO	NO
Greece	NO ⁵¹	YES	YES	YES	SOME ⁵²
Grenada	NO	NO	NO	NO	SOME ⁵³
Guatemala	NO	NO	YES	NO	NO
Guinea	NO ⁵⁴	YES	NO	???	NO
Guinea-Bissau	NO	YES	YES	YES	???
Guyana	NO	NO	NO	NO	NO ⁵⁵
Haiti	NO ⁵⁶	YES	YES	YES	YES
Honduras	NO	YES	YES	NO	NO
Hungary	YES	YES	YES	YES	YES
Iceland	YES	YES	YES	YES	YES
India	NO	SOME ⁵⁷	YES	NO	NO
Indonesia	NO	NO	SOME ⁵⁸	NO ⁵⁹	NO
Iran, Islamic Republic	NO	YES	NO	NO	NO
Iraq	NO	YES	YES	???	???
Ireland	NO	YES	YES	YES	SOME ⁶⁰
Israel	YES	YES	YES	YES	YES
Italy	YES	YES	YES	YES	YES
Jamaica	NO	SOME ⁶¹	YES	YES	YES

Japan	NO	YES	YES	YES	SOME
Jordan	NO	YES	YES	YES	YES
Kazakhstan	NO	YES	YES	YES	SOME ⁶²
Kenya	NO	YES	YES	YES ⁶³	SOME ⁶⁴
Kiribati	NO	YES	YES ⁶⁵	NO	NO
Kuwait	NO	YES	YES	NO	???
Kyrgyzstan	NO	YES	YES	YES	SOME ⁶⁶
Lao PDR	NO	NO	YES	YES	NO
Latvia	YES	YES	YES	YES	YES
Lebanon	NO	NO ⁶⁷	YES	YES	SOME
Lesotho	NO	NO ⁶⁸	NO	NO	NO
Liberia	NO	NO	YES	NO	NO
Libyan Arab Jamahiriya	NO	YES	NO	???	???
Liechtenstein	NO ⁶⁹	YES	YES	YES	SOME ⁷⁰
Lithuania	NO ⁷¹	YES ⁷²	YES	YES ⁷²	YES
Luxembourg	NO	YES	YES	YES	NO
Madagascar	NO	NO	YES	???	NO
Malawi	NO	YES	YES ⁷³	YES ⁷³	SOME ⁷⁴
Malaysia	NO	NO	NO	NO	NO
Maldives	NO	YES	NO	NO	SOME ⁷⁵
Mali	NO	YES	YES	YES ⁷⁶	NO
Malta	NO	YES	YES	YES	NO
Marshall Islands	NO	YES	YES	YES	NO
Mauritania	NO	NO ⁷⁷	???	NO	NO
Mauritius	NO	YES	YES	NO	NO
Mexico	NO ⁷⁹	NO ⁸⁰	YES	NO	NO
Micronesia, Federated States	NO	YES	YES	NO	NO
Monaco	NO	NO	YES	YES ⁸¹	NO
Mongolia	NO	NO	YES	NO	NO
Morocco	NO	NO ⁸²	YES	YES	NO
Mozambique	NO	NO ⁸³	YES	NO	NO

Myanmar	NO	NO ⁸³	YES ⁸⁴	NO	NO
Namibia	NO	YES	YES ⁸⁵	YES ⁸⁵	SOME ⁸⁶
Nauru	NO	???	SOME ⁸⁷	NO	???
Nepal	NO ⁸⁸	NO ⁸⁸	SOME ⁸⁹	NO ⁸⁸	NO ⁸⁸
Netherlands	NO ⁹⁰	YES	YES	YES	SOME ⁹¹
New Zealand	NO ⁹²	YES	YES	YES	SOME ⁹³
Nicaragua	NO	NO	YES	YES	NO
Niger	NO	NO	YES	NO	NO
Nigeria	NO	NO	SOME ⁹⁴	NO	NO
Niue	NO	???	YES	???	???
Norway	YES	YES	YES	YES	YES
Oman	NO	YES	???	NO	NO
Pakistan	NO ⁹⁵	SOME ⁹⁶	SOME ⁹⁷	NO ⁹⁷	NO ⁹⁸
Palau	NO	NO	YES	NO	NO
Palestine	NO	NO ⁹⁹	YES ¹⁰⁰	NO	NO
Panama	NO	NO	YES	YES	NO
Papua New Guinea	NO	YES ¹⁰¹	YES	NO ¹⁰²	NO
Paraguay	NO	NO ¹⁰³	YES	YES	NO
Peru	NO ¹⁰⁴	NO ¹⁰⁵	YES	NO ¹⁰⁴	NO ¹⁰⁴
Philippines	NO	YES	YES	YES	SOME ¹⁰⁶
Poland	NO ¹⁰⁷	YES	YES	YES	YES
Portugal	NO ¹⁰⁸	YES	YES	YES	NO
Qatar	NO	NO ¹⁰⁹	NO ¹¹⁰	???	NO
Republic of Korea	NO	NO	YES	YES	NO
Republic of Moldova	NO	YES	YES	YES ¹¹¹	NO
Romania	YES	YES	YES	YES	YES
Russian Federation	NO	YES	YES	YES	NO
Rwanda	NO	NO ¹¹²	YES	YES	NO
St Kitts & Nevis	NO	NO	NO	NO	NO
St Lucia	NO	NO	YES	NO	NO
St Vincent and the Grenadines	NO	NO	NO	NO	NO

Samoa	NO	NO ¹¹³	YES	YES	NO
San Marino	NO	YES	YES	YES	NO
Sao Tome and Principe	NO	YES	SOME ¹¹⁴	???	NO
Saudi Arabia	NO	NO ¹¹⁵	NO	NO	NO
Senegal	NO	YES	YES	SOME ¹¹⁶	NO
Serbia and Montenegro	NO ¹¹⁷	YES	YES	YES	NO
Seychelles	NO	NO ¹¹⁸	YES	YES	YES
Sierra Leone	NO	NO	NO	NO	NO
Singapore	NO	NO	NO	NO	SOME ¹¹⁹
Slovakia	NO ¹²⁰	YES	YES	YES	YES
Slovenia	NO ¹²⁰	YES	YES	YES	SOME ¹²¹
Solomon Islands	NO	NO	YES	NO	NO
Somalia	NO	NO	NO	YES	NO
South Africa	NO ¹²²	YES	YES	YES	YES
Spain	NO ¹²³	YES	YES	YES	NO
Sri Lanka	NO	NO ¹²⁴	YES	SOME ¹²⁵	NO
Sudan	NO	NO	NO	NO	NO
Suriname	NO	NO ¹²⁶	YES	YES	NO ¹²⁷
Swaziland	NO	NO ¹²⁸	NO	NO	NO
Sweden	YES	YES	YES	YES	YES
Switzerland	NO ¹²⁹	YES ¹³⁰	YES	YES	YES
Syrian Arab Republic	NO	NO ¹³¹	YES	???	NO
Taiwan	NO	NO ¹³²	YES	YES	???
Tajikistan	NO	NO	YES	NO	NO
TFYR Macedonia	NO ¹³³	YES	YES	YES	YES
Thailand	NO	YES	YES	YES	NO
Timor-Leste, DR	NO	NO	YES	YES	NO ¹³⁴
Togo	NO	NO ¹³⁵	YES ¹³⁶	YES	NO
Tonga	NO	YES	NO	NO	NO
Trinidad and Tobago	NO	NO ¹³⁷	YES	NO	NO ¹³⁸
Tunisia	NO	NO ¹³⁹	YES	YES	NO

Turkey	NO	YES	YES	YES	NO
Turkmenistan	NO ¹⁴⁰	YES	YES	YES	??? ¹⁴⁰
Tuvalu	NO	NO	YES	NO	NO
Uganda	NO	NO ¹⁴¹	YES ¹⁴²	YES ¹⁴²	NO
UK	NO ¹⁴³	YES	YES	YES	SOME ¹⁴⁴
Ukraine	YES	YES	YES	YES	YES
United Arab Emirates	NO	YES	NO	NO	NO
United Republic Tanzania	NO	NO	NO	NO	NO
Uruguay	NO	NO	YES	NO	NO
USA	NO	SOME ¹⁴⁵	YES	SOME ¹⁴⁶	SOME ¹⁴⁷
Uzbekistan	NO	YES	YES ¹⁴⁸	YES	NO
Vanuatu	NO	YES	YES ¹⁴⁹	YES	NO
Venezuela	NO	YES	YES	YES	NO
Viet Nam	NO	NO	YES	YES	NO
Western Sahara	NO	NO	YES	YES	NO
Yemen	NO	YES	NO	NO	NO
Zambia	NO	YES	YES ¹⁵⁰	YES ¹⁵⁰	NO
Zimbabwe	NO	NO	NO	NO	NO

NOTES ON TABLE

1 But in 2005, Ministry of Justice announced commitment to ending all forms of violence against children

2 But Ministry of Education announced in June 2006 that "the use of any form of violent behaviour and beating and humiliation of children is strictly prohibited"; this is yet to be confirmed in legislation

3 Prohibited by policy and practice in the Children's Rehabilitation Centre and Regulations for the Children's Rehabilitation Centre under discussion (2005)

4 No explicit prohibition, but education law and regulations recognise the dignity of the child

5 2005 Law on Full Protection of the Rights of Children and Young People recognises right to dignity and personal, physical and moral integrity and to protection from torture, abuse, humiliating and intimidating treatment, and cruel or degrading treatment, but there is no explicit prohibition of corporal punishment

6 1996 Rights of the Child Act recognises right to protection from any form of violence, but not interpreted as prohibiting corporal punishment in home

7 In 2003, the Law Reform Institute in Tasmania recommended abolition of the defence of reasonable correction from criminal and civil law; no changes in the law had been made (2005); 2002 law in New South Wales prohibits force to head or neck of child and to any part of the body where likely to cause harm lasting more than a short period

8 Prohibited in state schools and independent schools in Australian Capital Territory and Tasmania; prohibited in state schools in Victoria and expected to be prohibited in private schools by 2007; prohibited by Ministerial guidelines in New South Wales and by policy in Queensland and Western Australia but "reasonable chastisement" defence potentially available

9 "Reasonable chastisement" defence potentially available in Queensland and Tasmania

10 Prohibited in child care centres except in Northern Territory; prohibited in residential centres in New South Wales, Queensland, South Australia and Victoria; prohibited in foster care in Queensland, South Australia, Tasmania and New South Wales, but "reasonable chastisement" defence available in all but the last

11 Ministerial directives advise against use

12 Prohibited in state-arranged foster care and pre-school settings, and in day care centres and children's residential centres run by the Child Care Board, but lawful in private foster care

13 1994 Rights of the Child Act prohibits "all forms of exploitation, physical or mental violence, cruel, harsh or negligent treatment, sexual exploitation or sexual perversion, including on the part of parents, persons acting in loco parentis or relatives....", but no evidence of application to all corporal punishment in the home

14 Prohibited in boarding institutions; not prohibited in foster care

45 Ending legalised violence against children

- 15 2000 Constitutional amendment recognises children's physical integrity, but no explicit prohibition; proposed amendment to Civil Code pending before the Senate (2005)
- 16 Prohibited in institutions and foster care by decrees in some communities; not prohibited in non-institutional childcare
- 17 Prohibited in "Youth Hostel" detention centre but lawful in prisons and by law enforcement officials
- 18 Prohibited in residential care facilities and in day care centres
- 19 Prohibited in formal education by government circular
- 20 Prohibited by regulation
- 21 Prohibited in state laws, but ordered by community elders in traditional Indian justice systems
- 22 No explicit prohibition, but unlawful under child protection laws
- 23 2003 Bill No. 2,654 proposes explicit prohibition
- 24 Discipline guidelines for teachers which make no reference to corporal punishment in preparation by the Ministry (2003)
- 25 Prohibited in institutions; not prohibited in foster care
- 26 Prohibited in primary schools but not explicitly in secondary schools; prohibited in draft Education Law (2005)
- 27 But prohibited in draft Minimum Standards
- 28 2004 Supreme Court ruling upheld parents' right to administer corporal punishment to children aged 2-12 years, but not using objects and not involving slaps or blows to the head; right of correction has been removed from civil law in Quebec
- 29 2004 Supreme Court ruling limited use of force by teachers to restraint and removal and excluded corporal punishment, but not reflected in legislation in all provinces and territories; no legal prohibition in Alberta, Manitoba, Ontario or Saskatchewan
- 30 Prohibited in state provided care in Alberta, British Colombia and Manitoba; in Ontario prohibited in provincially-licensed childcare programmes and foster homes and for all children receiving services from a child protection agency or other service provider licensed or approved by the province; in Quebec there is no right of correction under the Civil Code but the right of correction in the Federal Criminal Code applies
- 31 Prohibited by Ministry of Education guidelines
- 32 New Children's Code, Bill 32 (2004) proposes explicit prohibition
- 33 Possibly prohibited by Law No. 509; new Children's Code, Bill 32 (2004) proposes explicit prohibition
- 34 Prohibited in laws of the Republic, but under Constitutional case law permitted among indigenous Indian communities
- 35 2004 draft Law on the Abolition of Corporal Punishment Against Minors proposes explicit prohibition
- 36 But no explicit prohibition
- 37 Prohibited by policy
- 38 Prohibited in Antoinette Sassou-Nguessou Re-education Centre
- 39 But possibly lawful among indigenous communities
- 40 Prohibited in institutions but lawful in other childcare settings
- 41 But possibly permitted in social welfare institutions
- 42 Lawful under Transitional Penal Code but prohibited in Draft Penal Code
- 43 Prohibited by government directive and Constitution, but "reasonable chastisement" defence potentially available
- 44 Prohibited in institutions by the Constitution, but "reasonable chastisement" defence available
- 45 Ruled unconstitutional in 2002 High Court ruling, but legislation not amended
- 46 1889 High Court ruling allowed "right to correction" for teachers; 2000 ruling stated that habitual and non-educational corporal punishment not covered by this
- 47 But no explicit prohibition
- 48 But 2005 Children's Act provides for the responsibility of parents to "ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child"
- 49 But possibly prohibited under 2005 Children's Act
- 50 Prohibited in institutional care establishments
- 51 In 2005, Government established a Committee to draft legislation prohibiting corporal punishment in the home and all settings
- 52 Prohibited in residential and day care institutions and nursery schools; in 2005, Government established a Committee to draft legislation prohibiting in the home and all settings
- 53 Prohibited in child care homes by licensing requirements
- 54 Penal Code punishes "anyone who has deliberately injured or beaten a child under the age of fifteen", but no evidence of application to parental corporal punishment
- 55 Prohibited in childcare and childminding services in Children's Bill, as at February 2005 not in force
- 56 Possibly prohibited by 2001 law, but no unequivocal confirmation
- 57 National Policy on Education recommends prohibition; prohibited in Andhra Pradesh, Tamil Nadu, Chandigarh and Delhi; ruled unlawful in West Bengal by Calcutta High Court; draft Free and Compulsory Education for Children Bill which would prohibit at national level under discussion (2005)
- 58 Prohibited except under Shari'a law in Aceh province; Penal Code and juvenile justice system under review (2005)
- 59 Penal Code and juvenile justice system under review (2005)
- 60 Prohibited in pre-school settings except for childminders caring for children of relatives, children of the same family or up to three children from different families; prohibited in foster care and residential care services by guidance
- 61 Prohibited in schools for children up to the age of 6 years
- 62 Prohibited in children's villages, youth homes and other institutions, but no prohibition in foster care
- 63 But some legislation not amended (2005)
- 64 Prohibited in institutions
- 65 But permitted in traditional practice and ordered by island councils on some outer islands
- 66 Prohibited in residential institutions
- 67 But government committed to law reform (2006)
- 68 Legislation in preparation (2006)
- 69 Penal Code prohibits physical and psychological harm and government has stated (January 2006) corporal punishment is not permitted, but no explicit prohibition
- 70 Prohibited in state alternative care settings but not in privately run alternative care settings
- 71 But government has stated its intention to introduce explicit prohibition in legislation (January 2006)
- 72 But no explicit prohibition
- 73 Prohibited in Constitution, but permitted in other legislation
- 74 Prohibited in state institutions by Constitution
- 75 Prohibited in the Education and Training Centre for Children
- 76 But no explicit prohibition
- 77 Prohibited by Ministerial Order
- 78 Possibly lawful under Islamic law
- 79 But "right of correction" removed from the Civil Code of the Federal Territory
- 80 Except possibly in Sonora
- 81 But no explicit prohibition
- 82 Prohibited by Ministerial direction
- 83 But prohibited by Government directive

84 But some legislation not amended/repealed

85 Declared unconstitutional in 1991 Supreme Court ruling; as at March 2005 not confirmed in legislation though a Child Justice Bill was under discussion

86 Unlawful in state institutions under 1991 Supreme Court ruling, but not confirmed in legislation; not prohibited in privately administered settings

87 Prohibited for children under 16 years, but permitted for older children

88 Supreme Court ruling on 6 January 2005 removed the legal defence available to parents, guardians and teachers

89 Prohibited in state laws except possibly for 17 year olds, but permitted in Maoist courts

90 But in February 2005 Cabinet agreed to proceed with prohibition in home

91 Prohibited in residential care institutions

92 Legal justification for using "force by way of correction" under review since 2000; decision expected in 2006

93 Prohibited in pre-school settings and early childhood centres, except in the case of guardians, and in state day care and residential institutions; not prohibited in private foster care

94 Prohibited as sentence in 2003 Child Rights Act, but this not enacted in all states and other legislation not amended

95 But 2005 National Child Policy recognises the right of the child to protection from corporal punishment

96 Prohibited in North West Frontier Province, by Federal Ministerial directive and by directives in the Punjab and Sindh Provinces; 2005 National Child Policy recognises the right of the child to protection from corporal punishment

97 Prohibited in 2000 Juvenile Justice System Ordinance but this not implemented in tribal areas and other legislation not amended (2006); 2005 National Child Policy recognises the right of the child to protection from corporal punishment

98 2005 National Child Policy recognises the right of the child to protection from corporal punishment

99 Prohibited by Ministerial direction

100 But possibly permitted under Shari'a law

101 But as at April 2005, right of correction still in Criminal Code

102 But prohibited in draft Juvenile Justice Act, intended to replace Juvenile Courts Act (2005)

103 Legislation protects dignity but does not explicitly prohibit corporal punishment

104 Draft legislation prohibiting all corporal punishment under consideration (2006)

105 Prohibited by Decree, but not in law; see note 104

106 Prohibited in residential institutions and day care centres

107 Prohibited in 1997 Constitution, but not confirmed in law

108 1994 Supreme Court ruling stated parents have no right to use physical aggression in childrearing but in 2006 Supreme Court ruled that corporal punishment in childrearing is lawful and necessary

109 Prohibited by Ministerial Decree

110 But possibly prohibited by recent legal reform

111 But no explicit prohibition

112 But legislation in preparation (2005)

113 Prohibited by policy

114 Prohibited for persons under the age of 17 years, but possibly lawful for those aged 17 years

115 Prohibited by Ministerial circulars

116 Prohibited in prisons and in training centres but possibly lawful in other penal institutions

117 Possibly prohibited in Serbia by 2005 Serbian Family Act

118 Prohibited by policy

119 Prohibited in child care centres

120 Government has stated its intention to prohibit corporal punishment in the home (2005)

121 Prohibited in day care centres and residential schools

122 The Law Commission and others have proposed to include in the Children's Bill a provision to remove the "reasonable chastisement" defence but debate continues (2006)

123 Government has stated its intention to pursue law reform (2004)

124 Prohibited by government circular; court ordered corporal punishment for truancy possibly prohibited by Act No. 23 (2005)

125 But not among permitted disciplinary measures in training schools for persons aged 16-22 years; prohibited in prisons by Act No. 23 (2005)

126 Prohibited by government directives

127 Prohibited in private and state institutions in a draft Children's Home Bill (2005)

128 But prohibition proposed in new legislation due for presentation in late 2006

129 2003 Federal Court ruling stated that repeated and habitual corporal punishment was unacceptable, but did not rule out the right of parents to use corporal punishment

130 Prohibited by federal law pursuant to cantonal legislation; 1991 Federal Court ruled it permissible in certain circumstances, but this considered impossible under current (2006) legislation

131 Ministry of Education advises against its use

132 Amendment to the Fundamental Law of Education (articles 8 and 15) to explicitly prohibit corporal punishment under discussion (2006)

133 2000 Law on Protection of Children prohibits corporal maltreatment, punishment and other inhuman treatment and abuse, but not interpreted as prohibiting parental corporal punishment

134 Prohibited by policy in child care centres, orphanages and boarding houses from April 2005

135 Prohibited in 1980 Ministerial Order

136 But used in traditional courts

137 Prohibited by 2000 Children (Amendment) Act, as at January 2006 not in force

138 Prohibited in health care and psychiatric institutions as a matter of policy

139 Prohibited by Ministerial circular

140 Possibly prohibited under 2002 Rights of the Child (Guarantees) Act

141 Prohibited in state schools by Ministerial Guidance

142 But some legislation not amended (2006)

143 In Scotland, 2003 Criminal Justice (Scotland) Act restricts common law defence by introducing concept of "justifiable assault" of children and defining blows to the head, shaking and use of implements as unjustifiable; in England and Wales, 2004 Children Act prevents the defence of "reasonable punishment" being used in cases of serious assault

144 Prohibited by regulations in residential care institutions and foster care arranged by local authorities or voluntary organisations, and in day care institutions and childminding in England and Wales; prohibited by guidance in day care institutions and childminding in Northern Ireland; not prohibited in private foster care

145 Prohibited in public and private schools in Iowa and New Jersey, in public schools in a further 24 states and the District of Columbia, and in some large city school districts in other states

146 Prohibited in 31 states

147 Prohibited in all alternative care settings in 30 states and in certain settings in other states and the District of Columbia

148 But possibly permitted under mahallyas system

149 But ordered by traditional chiefs in rural areas

150 Ruled unconstitutional by Supreme Court in 1999, but as at January 2005 some legislation not amended

47 Ending legalised violence against children

THE GLOBAL INITIATIVE to End All Corporal Punishment of Children was launched in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to “own” the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. Its aims are supported by UNICEF, UNESCO, human rights institutions, and international and national NGOs. We believe ending all corporal punishment is fundamental to improving the status of children and realising their rights to respect for their human dignity and physical integrity and to equal protection under the law.



Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org

Contact: info@endcorporalpunishment.org

For information about the
UN Secretary General's Study on Violence against Children, see
www.violencestudy.org
email: secretariat@sgsvac.org