

Ending legalised violence against children:

**Prohibiting and eliminating corporal
punishment in all alternative care
and day care settings**

Updated October 2012





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1. Messages

It should be illegal to administer corporal punishment to a child in care for many reasons. Many children come into care because they have been the victims of physical abuse or have witnessed violence within the home. These children want to feel safe and secure in their home as they try to adjust to their new life. If these children are then subjected to corporal punishment it can have a detrimental effect on their health and wellbeing. Children who have been a victim of corporal punishment and/or violence may misuse alcohol and drugs as a means of escape. They may start to skip school because they are ashamed and so they leave education with no qualifications or future goals. They may also withdraw from their friends. Physical punishments can also affect a child's relationship with their carers. When they need help they may not confide in the staff because they fear being punished. When a child/young person feels safe and secure they will talk about issues with staff members and these issues can then be resolved. There are many other methods of punishment that are more effective, for example, being grounded or doing chores that young people don't like. Violence is never the answer.

Young people from Voice of Young People In Care, Northern Ireland, UK
(www.voypic.org, info@voypic.org)

SOS Children's Villages International is fully committed to the eradication of all forms of violence against children in all forms of alternative care. Children deprived of parental care are often already vulnerable, marginalised, or have already suffered from violent forms of punishment. All our efforts must be directed at preventing violence against children from occurring but also at ensuring when physical, sexual or psychological violence does occur that children have access to an impartial complaints procedure and are supported in pursuing complaints throughout a process that holds perpetrators accountable. Caregivers require all necessary training in respectful and non-violent disciplinary techniques and positive parenting methods that challenge corporal punishment. SOS Children's Villages International is committed to promoting child protection in all policy and practice and to ensuring that caregivers have the appropriate capacities and skills to prevent violence. Additionally, we recognise the important role of the Guidelines for the Alternative Care of Children, which were welcomed by consensus in the UN General Assembly in 2009, in promoting the principles outlined above and welcome the scope of this study which fully encompasses these issues in calling for an end to legalised violence against children in alternative care.

SOS Children's Villages International
(www.sos-childrensvillages.org)

As Social Workers we are only too well aware of the lifelong emotional damage that can result from corporal punishment and other forms of demeaning treatment inflicted on children by adults entrusted with their care. Many children who are unable to live with their own parents have already experienced such abuse. It is absolutely essential that the fundamental right of all children to full protection in law from unacceptable treatment wherever they reside is upheld in all jurisdictions.

Nicolai Paulsen, European President, International Federation of Social Workers
(www.ifsw.org)

2. Summary

Corporal punishment is inflicted on children in nearly all societies and cultures. Its legal and social acceptance is a potent symbol of children's perceived low status. Although it is just as violent to hit a child as it is to hit an adult, by September 2012, only 33 states worldwide had recognised this in legislation. In the remaining 165 states, children can be legally subjected to violent, humiliating and degrading punishment by those whose role it is to take care of them. But all children have a right to legal protection from all violent punishment, however "light", wherever they are and whoever the perpetrator. This report provides guidance on achieving law reform which gives children in alternative care and day care the protection from all forms of corporal and other cruel and degrading punishment that is their absolute right.

a) Key findings

- In alternative care and day care settings progress towards prohibition of corporal punishment has been especially slow, with these settings often among the last in which prohibition is enacted. Worldwide, only 52 states explicitly prohibit corporal punishment of children in all group care, including institutional care. Only 40 prohibit corporal punishment of children in all formal foster care, and only 41 in all formal day care settings. At least 123 states have no prohibition of corporal punishment in any form of alternative care or day care. This leaves millions of children, including some of society's most vulnerable, subject to violent and humiliating punishment by those whose role it is to take care of them. See section 8 for information on the law in every state worldwide
- Children in alternative care and day care settings include some of the most vulnerable in society – young children, children with disabilities, and children who have already experienced violence and other severe violations of their rights. Research is beginning to make visible the high prevalence and severity of corporal punishment in alternative care and day care. See section 3 for summaries of research from around the world
- International human rights law makes it very clear that states have an obligation to prohibit all corporal and other cruel or degrading punishment of children, including in all alternative care and day care. Legal mechanisms can be used to place pressure on governments to enact prohibition. A detailed analysis of applicable international and regional provisions, designed to be used to promote prohibition, is provided in section 4
- Children and young people themselves and organisations working in the sector agree that children have the right to protection from all corporal punishment in alternative care. Respected authorities from the world's major religious communities have stated that their faiths, texts and teachings do not inherently support corporal punishment of children. See section 5 for more information
- Enforceable laws which clearly prohibit all corporal punishment are needed to fulfil the right of all children, including those in alternative care and day care, to legal protection. Laws must be applicable in all settings and must clearly cover all forms of corporal punishment, however "light". Detailed guidance on the process of enacting law reform to prohibit all corporal punishment in all alternative care and day care is provided in section 6
- To ensure genuine protection of all children in practice, a range of measures to support law reform is necessary. These include training and awareness-raising measures and legislative and regulatory provisions to ensure that the prohibition is meaningfully enforced. See section 7 for more information.

What is meant by "corporal punishment"?

The Committee on the Rights of the Child, which monitors implementation of the Convention on the Rights of the Child, adopts a comprehensive definition of corporal punishment:

The Committee defines "corporal" or "physical" punishment 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 – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, 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 that 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.¹

In some alternative care settings, children are punished by being denied food, sleep, shelter, or contact with others, or are forced or allowed to punish one another. All these forms of punishment are cruel or degrading and are unacceptable. **In this report, "corporal punishment" means all forms of cruel and degrading punishment, both physical and non-physical.**

¹ Committee on the Rights of the Child, 2006, *General Comment no. 8: the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, para. 11, available at www2.ohchr.org/english/bodies/crc/

b) How can this report be used?

The aim of the report is to accelerate the prohibition and elimination of all corporal punishment and other cruel or degrading punishment in all alternative care and day care – supporting its universal prohibition and elimination in all settings of children’s lives. The report can be used to:

- raise awareness about the violation of children’s rights constituted by the legal and social acceptance of corporal punishment in alternative care and day care (see section 3) and about the human rights imperative to prohibit all corporal punishment of children, including in all alternative care and day care (see section 4)
- support the use of human rights instruments and standards in campaigning for law reform, including through use of legal mechanisms (see section 4)
- promote active support for the prohibition of all corporal punishment, including among alternative care and day care professionals and children’s rights advocates (see section 5)
- support the drafting and enactment of legislation which prohibits all corporal punishment, including in alternative care and day care (see section 6)
- promote the introduction of measures to raise awareness about, implement and enforce prohibition of corporal punishment in alternative care and day care (see section 7).

c) Why focus on corporal punishment in alternative care and day care?

In alternative care and day care settings progress towards prohibition of corporal punishment has been especially slow, with these settings often among the last in which prohibition is enacted. However, there are opportunities for NGOs to promote prohibition of all corporal punishment, including in alternative care and day care, in the context of increased global concern around children’s rights in these settings.

The especially severe violations of children’s rights which have occurred in many institutions are a particular focus for many advocates of children’s rights in alternative care. In some countries there is a move towards reform of the care system, reducing the use of institutions, creating alternative forms of care and improving the standards of care throughout. Prohibition of all corporal punishment is an essential element of this process.

Prohibition is an obligation not only in institutional settings, but also in the family- and community-based forms of care which are increasingly replacing institutions, and in all day care settings. The development in many states of properly regulated alternative care systems, child protection systems and early childhood care and education systems must also include prohibition of all corporal punishment.

It must be emphasised that prohibition is an immediate obligation. There is no need to wait for systems to change or reform to enact prohibition: children have a right to protection now, wherever they are.

What is meant by “alternative care and day care”?

Alternative care is care provided for children who are temporarily or permanently without parental care; day care is temporary care for children who are normally cared for by their parent(s). Worldwide, a great variety of alternative care and day care settings exists.

As acknowledged in the Guidelines for the Alternative Care of Children,¹ care settings can be formal or informal. Formal alternative care is “all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures” (para. 29(b)(ii)). This includes all care provided for children without parental care in a group – for example, care in institutions, children’s homes, cluster foster care and health and psychiatric institutions. It also includes formal foster care. In some cases, there is an overlap with education or justice settings – for example, boarding schools which also provide care for some children and institutions in which children are detained which may have both a care and justice function. Informal alternative care settings are “private arrangement[s] provided in a family environment ... without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body” (para. 29(b)(i)). This includes kinship care and informal foster care.

Formal day care includes early childhood care such as nurseries, kindergartens, preschools, crèches, children’s centres and family centres, as well as day care for older children, such as after-school childcare and childminding. Informal day care includes all temporary care provided for children by their relatives or friends.

Since corporal punishment must be prohibited and eliminated everywhere children live and are cared for, this report is deliberately broad in its approach. It does not adhere to a rigid definition of “alternative care and day care settings”, but highlights the importance of prohibiting corporal punishment in all settings including the home, providing examples in relation to particular alternative care and day care settings. The categories of care setting used in the legality table in section 8 reflect the categories typically used in national laws.

¹ General Assembly, 2010, *Guidelines for the Alternative Care of Children* (A/RES/64/142)

3. Making corporal punishment in alternative care and day care visible

Relatively little research focussing specifically on corporal punishment in alternative care and day care has been carried out, with reports tending to focus more generally on “violence” or “abuse”. Yet much of this physical violence *is* corporal punishment – adults using violence to control children. Globally, concern about violence in institutional care of children has increased in recent years. The 2006 report of the UN Secretary General’s Study on Violence Against Children,¹ revelations of severe violations of children’s rights in institutional care in Central and Eastern Europe and the former Soviet Union² and the exposure in many countries of horrific violence against children in church-provided and other institutions (see for example research from Australia and Ireland summarised on pages 6 and 7) highlight adult violence against children in institutions which occurs wherever laws do not provide adequate protection for children or are inadequately implemented.

Little research into violence in foster care or in day care has been carried out. However, where corporal punishment of children in the family home is lawful, the belief that violence is an acceptable part of childrearing will often be carried into foster care and day care, especially informal care. In a major large-scale UNICEF study of child discipline within the home in more than 30 low- and middle-income countries, mothers and primary caregivers of children aged 2-14 answered questions on a range of violent disciplinary practices. The study found that on average 75% of children experienced physical punishment and/or psychological aggression, with 17% experiencing severe physical punishment (being hit or slapped on the face, head or ears or being hit over and over with an implement).³

Certain children are particularly vulnerable to corporal punishment. For example, children with disabilities may be especially likely to experience severe corporal punishment because of their presence in large numbers in care institutions and their particular disabilities, which may make it more difficult for them to report their experiences or defend themselves. Young children’s vulnerability to physical punishment relates to their perceived low social status, smallness and difficulties in reporting their experiences. Children from minority groups, including linguistic, ethnic and sexual minorities, may be more likely to experience corporal punishment than others, and corporal punishment may have a gender dimension, with girls and boys experiencing different types or frequencies of violent punishment. Evidence of the prevalence and nature of corporal punishment comes from various sources, a selection of which is summarised below. For further information on relevant research – including prevalence studies, attitudinal studies, research on children’s views and studies on the effects of corporal punishment – see www.endcorporalpunishment.org.



¹ Pinheiro, P. S., 2006, *World Report on Violence against Children*, NY: United Nations

² See for example EveryChild, 2005, *Family Matters: a study of institutional childcare in Central and Eastern Europe and the Former Soviet Union*

³ UNICEF, 2010, *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries*, NY: UNICEF

Summaries of research into the prevalence of corporal punishment in alternative care and day care

Australia

A Senate inquiry into institutional and out-of-home care for children in Australia during the twentieth century found that punishments included beatings with straps, canes, cricket bats, and bunches of keys, being forced to perform repetitive tasks, food rationing, forced immobility for long periods, isolation and humiliation. Children were punished for talking during mealtimes, laughing, not standing still, being left-handed, bedwetting and running away.⁴



The Victoria Education Department investigated 187 cases of “inappropriate discipline” in childcare centres providing early childhood care between 2007 and 2009, including “smacking”, despite corporal punishment being prohibited.⁵

Cambodia

A 2010 report by Human Rights Watch found that in Cambodia brutal physical punishment, including beatings and the administration of electrical shocks, was inflicted on children and adults detained in “drug detention centres”, used to keep the streets clear of “undesirables” such as street children, drug addicts, gamblers, alcoholics and mentally ill people.⁶

Guyana

In 2005, Government-commissioned research was published based on accounts of almost 4,000 children aged 3-17 years about their experiences of violence in the home, schools and the wider community. Over a quarter (27%) of children in the children’s homes visited reported being physically hurt by a caregiver there.⁷

4 Senate Community Affairs References Committee, 2004, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*

5 Reported in *The Herald Sun*, 11 April 2011, www.heraldsun.com.au

6 Human Rights Watch, 2010, “Skin on the Cable”: *The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia*

7 Cabral, C. & Speek-Warnery, V., 2005, *Voices of Children: Experiences with Violence*, Georgetown: Ministry of Labour, Human Services and Social Security/Red Thread Women’s Development Programme/ UNICEF-Guyana

India

In 2007, the Ministry of Women and Child Development published the first nationwide study on child abuse in India, based on the experiences of 12,447 children aged 5-18 years from across 13 states and also involving 2,324 young adults (aged 18-24) and 2,449 other adults. Of the 2,245 children living in institutions involved in the study, 53% reported experiencing physical abuse, including corporal punishment, in their institutions (which included shelter homes, children’s homes and orphanages). Nearly one in ten (9.45%) of the children who experienced physical abuse outside the family reported that a caregiver was the perpetrator, and nearly one in twenty (4.78%) reported that the perpetrator was an NGO worker. Across the whole sample, the

most commonly reported punishment was being slapped and kicked (64%), followed by being beaten with a stave or stick (31%), and being pushed, shaken, etc (5%).⁸

Indonesia

A study based on a survey of 36 childcare institutions in six provinces plus a Government owned orphanage found that physical and psychological punishment was widespread in the childcare institutions, most of which were run privately by religious organisations. Corporal punishment was often routine and accepted as a part of daily life by children and staff. Pinching children’s stomachs and caning them were the most common forms of punishment. Shaving of heads and throwing dirty water on children were also common for repeat “offenders”.⁹



8 Kacker, L., Varadan, S. & Kumar, P., 2007, *Study on Child Abuse: India 2007*, New Dehli: Ministry of Women and Child Development

9 Martin, F. & Sudjarat, T., 2007, *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF & DEPSOS RI, www.savethechildren.org.uk/en/docs/someone-that-matters.pdf

Ireland

The report of the Commission to Inquire into Child Abuse, established in 2000 to investigate abuse of children in industrial and reform schools between 1914 and 2000, was published in 2009. Industrial schools were for children who were poor, neglected or orphaned; reform schools were for children convicted of offences. The Commission also examined children’s homes (for children without parental care, generally smaller than industrial schools), foster homes, hospitals, facilities attended by disabled children and other forms of residential care. The Commission uncovered the routine use of severe and arbitrary corporal punishment. Punishments reported by witnesses included being beaten with wooden sticks and other implements, having their heads submerged underwater, being force fed, being lifted by the ears and hair, isolation and being burned. They reported being punished for no reason at all, as well as for “offences” such as running away, bed-wetting, not knowing lessons, having torn or worn clothes, talking, speech and writing difficulties, being left-handed and disclosing sexual abuse. They described an environment of pervasive fear of physical punishment.¹⁰

Mongolia



Large-scale comparative research into the physical and emotional punishment of children examined the views and experiences of 3,322 children and 1,000 adults in eight countries in Southeast Asia and the Pacific.

In Mongolia, the research included 55 children living in institutions, who mentioned the following punishments: adults stomping on their stomachs, being forced to the ground, having to stand in the hot sun, being hit with a rubber baton. One in four (25%) reported punishments such as being beaten with a rubber truncheon and having to maintain uncomfortable positions for long periods of time.¹¹

10 Commission to Inquire into Child Abuse, 2009, *Commission Report*, www.childabusecommission.com/rpt

11 Beazley, H., Bessell, S. et al., 2006, *What Children Say: Results of comparative research on the physical and emotional punishment of children in Southeast Asia and Pacific, 2005*, Stockholm: Save the Children Sweden

Myanmar

A report on alternative care for children in some countries affected by the 2004 Indian Ocean tsunami found that the use of corporal punishment was one of 10 fundamental issues affecting the care and protection of children in residential care in Myanmar.¹²

Senegal

A 2010 report by Human Rights Watch found that in residential Quranic schools, children were forced by the teachers, who also served as their guardians, to beg on the streets and experienced severe physical punishment including being beaten with electric cables or clubs for not bringing back the quota of money and food set by the teachers.¹³

Turkey

A 2005 study found that children as young as nine in psychiatric institutions were subjected to electroconvulsive or “shock” treatment (ECT), including as a punishment, without the use of muscle relaxants or anaesthesia. The report also documents an incident of corporal punishment where a child was locked up, thrown across a room, tied up and hit. The same report found that children in rehabilitation centres and orphanages were restrained, sometimes for very long periods, by being tied by their arms and legs or having plastic bottles taped over their hands.¹⁴



12 UNICEF, 2006, *Alternative Care for Children without Primary Caregivers in Tsunami-Affected Countries: Indonesia, Malaysia, Myanmar and Thailand*

13 Human Rights Watch, 2010, *Off the Backs of the Children: Forced Begging and Other Abuses against Talibés in Senegal*

14 Ahern, L., Rosenthal, E. et al, 2005, *Behind Closed Doors: Human Rights Abuses in the Psychiatric Facilities, Orphanages and Rehabilitation Centers of Turkey*, Mental Disability Rights International

Uganda

A 2005 study which included interviews with orphans living with guardians (often family members) reported that orphans experienced corporal punishment daily to monthly, including slapping and caning with sticks and logs. The orphans reported experiencing more frequent and severe corporal punishment than other children, including the children of their guardians. Orphans were also spoken to more severely than other children. The motive for the severity and frequency of punishments was understood by the children to be the guardians' anger and frustration about having to care for the orphans when their resources were limited.¹⁵

United States of America

A 2010 report on the Judge Rotenberg Center, a residential facility and school for children and adults with mental disabilities, found that severe corporal punishment was widespread. Punishments included electric shocks, long-term restraint, food deprivation and isolation.¹⁶

A report on children in foster homes and residential facilities in Texas documented several incidents of severe corporal punishment, including children being punched in the stomach, pushed down the stairs, thrown against walls, kicked and isolated. The report states that investigation of these and other incidents by the Department of Protective and Regulatory Services was inadequate.¹⁷



Viet Nam

A 2004 situation analysis of institutional and alternative care programmes in Vietnam found that physical punishment took place in institutional alternative care settings. Children with mental disabilities were especially likely to experience physical punishment, as were children previously involved in commercial sex work and now living in residential “rehabilitation” facilities in Ho Chi Minh City. In interviews, children said that punishments included beating them, locking them in their rooms, punishing them by making them kneel in front of the caregivers, and forcing them to clean the toilets or animal stables.¹⁸

¹⁵ World Vision International – Africa Office, 2005, *Violence Against Children affected by HIV/AIDS: a case study of Uganda*

¹⁶ Ahern, L. & Rosenthal, E., 2010, *Torture not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center*, Mental Disability Rights International

¹⁷ Strayhorn, C. K., 2004, *Forgotten Children: A Special Report on the Texas Foster Care System*

¹⁸ MOLISA, Canadian International Development Agency & UNICEF Viet Nam, 2004, *Situation Analysis of Institutional and Alternative Care Programs in Vietnam*

4. The human rights imperative to prohibit corporal punishment

a) Using human rights standards

International and regional human rights instruments and standards require the prohibition and elimination of all corporal punishment of children. The human rights instruments mentioned below are a part of international law: when states ratify them they have a legal obligation to implement them. Understanding this provides a firm foundation for promoting prohibition of corporal punishment, for example by:

- reminding governments of their legal obligations under the Convention on the Rights of the Child (and possibly other relevant instruments they have ratified, see below) to prohibit corporal punishment of children in all settings
- increasing pressure on governments to reform their laws by submitting information about corporal punishment of children in a particular state to the committees (treaty monitoring bodies) responsible for monitoring implementation of human rights conventions. Information can also be sent to the Human Rights Council as part of the Universal Periodic Review of states' overall human rights records
- taking legal action – using international human rights law (such as the Convention on the Rights of the Child) and national law (such as constitutional provisions against cruel or degrading punishment) to challenge the legality of corporal punishment in national courts
- using international and regional complaints/communication mechanisms. Some human rights instruments have a procedure which allows them to receive complaints or communications about alleged violations of rights, usually made by or on behalf of a victim or group of victims of the violation: NGOs can support this process. It is usually necessary for all possibilities of challenging the violation in the national legal system to have been tried and to have failed (“exhausting domestic remedies”).

Further resources

The Global Initiative publishes detailed **individual country reports** on all states worldwide on its website (www.endcorporalpunishment.org). These include regularly updated information on the legality of corporal punishment in all settings, research on the prevalence of and attitudes towards corporal punishment, and relevant recommendations by human rights treaty monitoring bodies. Special “legal action” reports are being prepared for some states, to provoke and support legal action where there is no progress towards prohibition. For further general guidance on using legal mechanisms to promote the prohibition and elimination of all corporal punishment of children, see the *Campaigns Manual: ending corporal punishment and other cruel and degrading punishment of children through law reform and social change* (2010), published by the Global Initiative to End All Corporal Punishment of Children and Save the Children Sweden and available free at www.endcorporalpunishment.org. For specific guidance on the process of using each mechanism to promote children's rights, see the **Child Rights International Network** (www.crin.org/law/mechanisms_index.asp).

Sources of further information on individual mechanisms are noted below. The Global Initiative provides information on making submissions to treaty bodies and the Human Rights Council in its regular newsletter, and can give detailed information on the mechanisms applicable in any state and technical advice and support in their use.

For further information and to subscribe to the Global Initiative newsletter email info@endcorporalpunishment.org.

b) International human rights instruments and standards

Convention on the Rights of the Child

The position on corporal punishment of children in international law is extremely clear. The Convention on the Rights of the Child, the most important international legal instrument for children and ratified by nearly all states worldwide, obliges states to:

... 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. (article 19)

The Convention also requires states to ensure that school discipline respects children's human dignity (article 28(2)) and that children are not subjected to torture or other cruel, inhuman or degrading treatment or punishment (article 37(a)).

The Committee on the Rights of the Child, which monitors states' compliance with the Convention, has consistently interpreted the Convention as putting an obligation on states to prohibit corporal punishment in all settings, including the home and all alternative care settings. General Comment No. 8 (2006), on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", provides a clear statement of the position of the Committee: "There is no ambiguity: 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children" (para. 18). It provides a comprehensive definition of corporal punishment (see box on page 3).



The Committee emphasises that no corporal punishment can be justified as being in the "best interests" of a child (para. 26) and states that "eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties" (para. 22). States should ensure that the criminal law on assault applies fully to assaults on children, and enact prohibition in sectoral legislation, including that applying to alternative care (paras. 34-35).

General Comment No. 13 (2011), on "Article 19: The right of the child to freedom from all forms of violence" recognises that "professionals and State actors have often misused their power over children" in institutional settings including residential homes (para. 36), and that children in these and other forms of alternative care are especially likely to be exposed to violence (para. 72(g)). States have a duty to protect all children from all forms of violence, and must "address discrimination against vulnerable or marginalized groups of children" including those in alternative care, and "make proactive efforts to ensure that such children are assured their right to protection on an equal basis with all other children" (para. 60).

Prohibition of corporal punishment should be enacted in relation to all alternative care and day care, regardless of whether it is provided by the state or the private sector (businesses, faith-based organisations, NGOs, etc). This was made clear by the Committee on the Rights of the Child, in recommendations following its 2002 day of general discussion on the private sector as service provider and its role in implementing child rights:

States parties ... have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-state service providers operate in accordance with its provisions. (Recommendation 1)

Further resources

The **NGO Group for the Convention on the Rights of the Child** (www.childrightsnet.org) supports NGO engagement in the work of the Committee on the Rights of the Child, including through providing guidelines on reporting to the Committee. The **Child Rights International Network** provides detailed information on the work of the Committee and on the recently adopted **complaints procedure for the Convention on the Rights of the Child** (<http://tinyurl.com/bmmujlb>).



Convention on the Rights of Persons with Disabilities

Children and young people with disabilities are more likely than other children to be in certain forms of alternative care, such as institutional care. The Convention on the Rights of Persons with Disabilities requires states to ensure that persons with disabilities are not subjected to torture or cruel, inhuman or degrading treatment or punishment (article 15), are protected from exploitation, violence and abuse (article 16) and that their physical integrity is respected (article 17). Alternative care must be provided within the community in a family setting (article 23(5)). The Optional Protocol to the Convention allows the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals who claim that their rights under the Convention have been violated.

Further resources

The **International Disability Alliance** (www.internationaldisabilityalliance.org) provides information on the work of the Committee on the Rights of Persons with Disabilities, including guidance on how NGOs can contribute.

Guidelines for the Alternative Care of Children

In 2009, the General Assembly of the United Nations welcomed new "Guidelines for the Alternative Care of Children",¹ which state:

All disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, including closed or solitary confinement or any other forms of physical or psychological violence that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law. States must take all necessary measures to prevent such practices and ensure that they are punishable by law. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction. (para. 96)

¹ General Assembly, 2010, *Guidelines for the Alternative Care of Children* (A/RES/64/142)

Other international instruments

The monitoring treaty bodies for the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights have recommended that states prohibit all corporal punishment of children. All these instruments have complaints/communications procedures. The Committee Against Torture and the Committee on the Elimination of Discrimination against Women can also undertake inquiries into systematic violations of rights.

The Optional Protocol to the Convention against Torture establishes the Subcommittee on Prevention of Torture and requires states to have national preventive mechanisms; both of these can visit places where people are deprived of their liberty, including some kinds of alternative care, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The Universal Periodic Review

The Universal Periodic Review (UPR) is a review, carried out every four years by the UN Human Rights Council, of the overall human rights situation in all UN member states. The review assesses the extent to which states are implementing their human rights obligations. During the review, recommendations are made to states by members of the Human Rights Council on how their human rights obligations can be fulfilled. NGOs may submit information in advance of the review. From 2008 to 2011, the obligation to prohibit corporal punishment of children was raised in the reviews of most states, more than 50 of which accepted recommendations to prohibit it.

Further resources

The "Human Rights Council – Universal Periodic Review" section of the **Global Initiative website** (www.endcorporalpunishment.org) analyses the recommendations on corporal punishment made during the UPR and governments' responses to them. **UPR Info** (www.upr-info.org) provides general information on the Universal Periodic Review, including a detailed explanation of the UPR process and how NGOs can contribute to it.

c) Regional human rights instruments and standards

In addition to international human rights instruments, some regions have their own instruments, standards and monitoring bodies which further reinforce children's rights.



Africa

The African Charter on the Rights and Welfare of the Child requires states to ensure that children are protected from all forms of torture and inhuman or degrading treatment by parents and others caring for the child (article 16) and that children deprived of their family environment for any reason are provided with special protection (article 25). The African Committee of Experts on the Rights and Welfare of the Child is now addressing the issue of corporal punishment in its examination of state party reports. States which have ratified the African Charter on Human and Peoples' Rights must ensure that every person has equal protection of the law (article 3), respect for personal integrity (article 4), respect for human dignity (article 5) and protection from torture and cruel, inhuman or degrading punishment and treatment (article 5).

Further resources

Advancing Children's Rights: A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child, 2010 (2nd edition), Plan International & Save the Children Sweden, available at www.forum-acerwc.org

The Americas and the Caribbean

In its 2009 *Report on Corporal Punishment and Human Rights of Children and Adolescents*, the Office of the Rapporteur on the Rights of the Child in the Inter-American Commission on Human Rights called on states to fulfil their obligations under the Convention on the Rights of the Child by "act[ing] immediately on the problem of corporal punishment by placing explicit and absolute legal bans on its use in all contexts" (para. 3). The report focuses on corporal punishment in all settings, including alternative care, stating that:

the State's obligation to prohibit the use of corporal punishment as a way to discipline children and adolescents under the custody and protection of the State's public institutions – detention centers, hostels, orphanages, hospitals, schools, military schools, etc. – is absolute. (para. 36)

There is an equal obligation to prohibit all corporal punishment in privately-run care settings.

International human rights law does not admit arguments based on a dichotomy between the public and private spheres that would tend to ignore or place unjustified restrictions on human rights.... (para. 70)

States are obliged to protect all people under their jurisdiction, with regard to the actions of private third parties as well as the state (para. 74), and "no room for discretion exists in the private sphere, particularly as regards the full respect for the human rights of children and adolescents" (para. 75).

The report also notes that some children and young people with mental disabilities experience corporal punishment in facilities designed for their care, and stresses the importance of legal protection for these children.

The report followed on from a statement by the Inter-American Court of Human Rights that states' obligations under the Convention on the Rights of the Child, as well as other international treaties and past decisions of the Court, are clear that "children have rights and are an object of protection", that they have the same rights as all human beings, that the state must protect these rights in the private as well as the public sphere, and that this requires legislative as well as other measures.¹

¹ Resolution of the Inter-American Court of Human Rights: Request for Advisory Opinion Presented by the Inter-American Commission on Human Rights, available at www.endcorporalpunishment.org/pages/pdfs/ResolutionACHR.pdf

Europe

Under the European Convention on Human Rights, states must secure to everyone within their jurisdiction the right to life (article 2), to freedom from torture or inhuman or degrading treatment or punishment (article 3) and to liberty and security of person (article 5). The European Court of Human Rights has progressively ruled against corporal punishment of children in relation to the European Convention on Human Rights.² The Council of Europe runs an ongoing campaign to ensure that all 47 member states achieve law reform to prohibit corporal punishment in all settings.³

Articles of the European Social Charter and Revised Social Charter oblige states to protect children from violence and the European Committee of Social Rights, monitoring compliance with the Charters, repeatedly concludes that states which do not prohibit corporal punishment of children in all settings are in breach of the Charters.⁴ Under an Additional Protocol, organisations can submit collective complaints of violations of the Charters. A series of collective complaints relating to corporal punishment of children has been made, in which the Committee has repeatedly confirmed that failure to prohibit corporal punishment of children in any setting is a violation of the Charters.⁵

A recommendation on the rights of children living in residential institutions, adopted by the Committee of Ministers of the Council of Europe in 2005, states that children in residential care must be protected from corporal punishment.⁶

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carries out periodic and occasional visits to places where individuals are deprived of their liberty by a public authority. The Committee has stated that physical chastisement of juveniles deprived of their liberty must be prohibited.⁷

Middle East and North Africa

The obligation to prohibit all corporal punishment of children is confirmed in the Cairo Declaration on the Convention on the Rights of the Child and Islamic Jurisprudence, which includes a recommendation to all Organisation of the Islamic Conference (OIC) member states to prohibit corporal punishment in the family and other settings. The Declaration was adopted at a 2009 conference co-sponsored by the OIC which aimed to consolidate understanding of the Convention on the Rights of the Child in the light of the Islamic *Shari'a*.

The Arab Charter on Human Rights protects all persons from cruel, inhuman or degrading treatment or punishment (article 8), commits State parties to ensure that children deemed "at risk" are given special treatment which protects their dignity (article 17) and obliges states to "take all appropriate legislative, administrative and judicial provisions to ensure the protection, survival and well-being of children in an atmosphere of freedom and dignity" (article 33(3)). It also prohibits "all forms of violence and abusive treatment in the relations between family members, especially towards women and children" (article 33(2)).



² See Council of Europe, 2007, *Eliminating corporal punishment: a human rights imperative for Europe's children* (2nd edition), Strasbourg: Council of Europe Publishing. Summaries of judgments of the Court related to children's rights can be found in the Theseus database, at www.coe.int/children

³ See www.coe.int/t/dg3/children/corporalpunishment

⁴ The Revised European Social Charter came into force in 1999 and is gradually replacing the 1961 European Social Charter

⁵ The results of collective complaints are available at www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

⁶ Committee of Ministers recommendation Rec(2005)5

⁷ Committee for the Prevention of Torture, 1999, *9th General Report*, covering the period 1 January to 31 December 1998 (CPT/Inf (99) 12), para. 24



Further resources

Council of Europe, 2008, *Eliminating corporal punishment: a human rights imperative for Europe's children* (2nd edition), Strasbourg: Council of Europe Publishing

5. Support for prohibition of corporal punishment in alternative care



What children recommend

Develop and implement legislation which abolishes all forms of violence in children's institutions, including corporal punishment. If there are no laws, policies or guidelines on these issues, write new ones. Make sure that children in institutions can be involved in developing such laws, policies or guidelines.

Children's recommendation on ending violence against children in institutional settings¹

a) Children's voices against corporal punishment in alternative care

Although the voices of children in alternative care too often go unheard, all over the world children are speaking out against violence against them by their carers, including violence disguised as discipline.

During the UN Secretary General's Study on Violence against Children (the UN Study), children from the Middle East and North Africa chose to focus on violence in institutions.² Two children, from Sudan and Tunisia, talked about the kinds of physical and psychological violence which occur, including being "exposed to all sorts of violent acts such as pulling out nails [and] stand[ing] in the sun for long periods for time". Their recommendations for how to stop it included creating legislation which abolishes all forms of violence. Children from South Asia and the Caribbean also highlighted the importance of legislation protecting children and young people from violence in institutions.

"She told me that the staff of [the] observation home punishes girls for misbehaving. The punishment that they get is[...] 500 to 300 sit ups and they beat them also [...] and it happens very frequently."

Researcher's observations, study on child abuse in India³

"I hate aunt Mai [a caregiver], I hate people who beat small children."

Nine-year-old child in Vietnam⁴

"It's the physical beatings and kickings. He [foster father] ... would, for no apparent reason ... deal out.... It was like a daily ritual, any whimsical time that suited him ... he beat us.... I have this vision in my mind of cowering in a corner and being beaten with a stick, and kicked."

Witness to the Irish Commission to Inquire into Child Abuse⁵

"There were teachers [at the 'orphanage'] who exceeded their authority and could beat us for no reason. They know that children have nowhere to turn. And they could do anything they wanted."

Child in Europe/Central Asia, 2003⁶

³ Kacker, L., Varadan, S. & Kumar, P., 2007, *Study on Child Abuse: India 2007*, New Delhi: Ministry of Women and Child Development, p. 42

⁴ MOLISA, Canadian International Development Agency and UNICEF Viet Nam, 2004, *Situation Analysis of Institutional and Alternative Care Programs in Vietnam*, p. 43

⁵ Commission to Inquire into Child Abuse, 2009, *Commission Report*, section 15.28

⁶ Pinheiro, P. S., 2006, *World Report on Violence Against Children, UN Secretary General's Study on Violence Against Children*, p. 180

Worldwide, children and young people participate in actions to end corporal punishment in many ways, including through child-led groups campaigning against corporal punishment, representation on adult-led bodies, engagement with the media and attendance at events such as conferences.⁷ In Indonesia, 60 child participants in a 2007 adult-led study of life for children in institutions⁸ went on to design and carry out their own research into the concerns of children living in institutions. Corporal punishment featured strongly as a concern of the children, and the children's presentations of the research to adults, including government officials and institution staff, led to promises that less corporal punishment would be used in future. Child-led groups of children in care may choose to speak out against corporal punishment in care, as young members of Voice of Young People In Care (Northern Ireland, UK) do in their message in this report (see section 1). In care as elsewhere, however, the voices of children who are particularly vulnerable to corporal punishment, including very young children, are among the least likely to be heard.



b) NGO support for prohibiting corporal punishment in alternative care

The aims of the Global Initiative to End All Corporal Punishment of Children are supported by many international and national organisations, including organisations working in alternative care of children (see inside front cover). Adults working with and for children in alternative care have long condemned the use of corporal and other cruel and degrading punishment, and many organisations have produced standards, guidelines and other documents which condemn the use of corporal punishment. The set of indicators for formal care developed by the Better Care Network and UNICEF recommends that detailed standards for childcare, including the prohibition of violence are set out for all services providing or supporting formal care settings (formal foster care and residential care).⁹ Guidelines from the International Labour Organisation (ILO) focusing on care for children who have been trafficked,¹⁰ international guidelines on foster care from the International Foster Care Organisation¹¹ and standards for childcare developed by Save the Children (originally for use in East and Central Africa, but applicable globally)¹² state that corporal punishment must not be used. Standards developed by the Fédération Internationale des Communautés Educatives, the International Foster Care Organisation and SOS Children's Villages International with the participation of children and young people with care experience and caregivers in Europe stress the importance of the care environment being protective and caring and of respectful relationships between caregivers and children.¹³

It should be noted that while standards and policies which state that no corporal punishment should be used are a positive development, they are no substitute for law reform. **Legal prohibition of all corporal punishment is the only foundation for its elimination, and is children's absolute right.** The state is ultimately responsible for children's right to protection from all corporal punishment, and is obliged under international law to enact legislation to prohibit it (see section 4). In addition to the development of standards, policies and other documents, the work of NGOs should include advocacy to promote the duty of the state to enact prohibition of corporal punishment in all settings, including alternative care.

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⁷ See Global Initiative to End All Corporal Punishment of Children, 2011, *Guide to children and young people's participation in actions against corporal punishment* and www.endcorporalpunishment.org/children

⁸ Martin, F. & Sudjarat, T., 2007, *Someone That Matters: The Quality of Care in Childcare Institutions in Indonesia*, Jakarta: Save the Children, UNICEF & DEPSOS RI

⁹ Better Care Network & UNICEF, 2009, *Manual for the Measurement of Indicators for Children in Formal Care*, p. 58

¹⁰ International Labour Organisation, 2006, *Child-friendly Standards and Guidelines for the Recovery and Integration of Trafficked Children*, p. 54

¹¹ International Foster Care Organisation, 1995, *Guidelines for Foster Care*, C1, available at www.crin.org/bcn

¹² Save the Children, 2005, *Raising the Standards: Quality childcare provision in East and Central Africa*, p. 23

¹³ Quality 4 Children, 2008, *Quality 4 Children Standards for Out-of-Home Child Care in Europe*

c) Religion and corporal punishment of children in alternative care

All the major religions profess respect for the inherent human dignity of the child. In Islam children are regarded as *amanat* (trust) from Allah and Christians believe human beings are created in the image of God. Many faiths and religious communities recognise a duty to care for children without parental care. Faith-based organisations play a major role in the provision and financing of alternative care in many states, and there is increasing recognition of their responsibility to ensure their actions respect children's rights. Equally, understanding of children's right to legal protection from all corporal punishment is growing among faith communities. While it is sometimes asserted that faith-based traditions endorse the use of corporal punishment, respected authorities from all the world's major religious communities have stated that their faiths, texts and teachings do not inherently support corporal punishment of children.¹⁴

In 2006, the 8th World Assembly of Religions for Peace, which included more than 800 religious leaders from every region of the world and all major faith traditions, endorsed "A Multi-Religious Commitment to Confront Violence against Children" (the Kyoto Declaration), which calls on governments "to adopt legislation to prohibit all forms of violence against children, including corporal punishment". Acknowledging that religious communities "have at times tolerated, perpetuated and ignored the reality of violence against children in homes, families, institutions and communities", delegates committed to "work actively to change attitudes and practices that perpetuate violence in homes, families, institutions and communities, including corporal punishment".¹⁵

We find strong consensus across our religious traditions about the inherent dignity of every person, including children. This requires that we reject all forms of violence against children and protect and promote the sanctity of life in every stage of a child's development. Our religions share principles of compassion, justice, love and solidarity that are great strengths in dealing with the difficult presence of violence in human society. (Kyoto Declaration)



Islam and corporal punishment in alternative care

A growing number of Islamic religious leaders are speaking out against the misuse of religious texts which appear to promote violence against children, emphasising the non-violent teaching which lies at the heart of their faith. There is no instance in the Qur'an of Muhammed ever striking a child. Eminent Muslims including Grand Ayatollah Abdolkarin Mousavi Ardebili of Iran have condemned corporal punishment and other violence against children, and the Network of Imams in Mauritania carried out a study which concluded that corporal punishment has no place in Islam and which formed the basis for a *fatwa* (religious edict) against using physical and verbal violence in children's upbringing.

A study by Al-Azhar University in Cairo and UNICEF states that no corporal punishment should be used in childrearing. It highlights the duty within Islam of society to care for children without parental care and treat them with dignity, kindness and mercy, and quotes warnings against abusing or causing distress to orphans in the Qur'an and the Prophetic tradition. It stresses that the primary responsibility for children without parental care "rests on the shoulders of the state, the media, and the imams and Muslim callers/preachers inside the mosques" (p. 77), and that this responsibility includes "the responsibility to monitor and directly supervise the performance of child care homes in order to guarantee that children in them are not subjected to any form of exploitation or violence" and to "make sure that children living with alternative sponsoring families or at various care homes can resort to effective and reliable official channels for help when subjected to any practice posing a threat to their lives, health, education or psychological well-being" (p. 81).

¹⁴ For more information, see www.churchesfornon-violence.org/links.html

¹⁵ Religions for Peace 8th World Assembly, Kyoto, 2006, *A Multi-Religious Commitment to Confront Violence against Children*, www.churchesfornon-violence.org/links.html

Christianity and corporal punishment in alternative care

Some passages from the Old Testament book of Proverbs have been used by some Christians to condone corporal punishment of children. Verses such as "He who spares the rod hates his son but he who loves him is diligent to discipline him" have often been referred to in shorthand as "Spare the rod and spoil the child" and used to justify corporal punishment. But many Christians note that all of Jesus' recorded encounters with children were respectful and loving and that there is no evidence in the New Testament of Jesus condoning corporal punishment. Christian groups worldwide are rejecting the idea that their faith condones violent punishment of children, instead opting to work against corporal punishment within and outside the structures of their faith. For example, in 2004, a General Conference of the United Methodist Church, the second largest Protestant church in the USA, passed a resolution calling for the complete abolition of corporal punishment of children. In New Zealand, Anglican bishops supported the law reform that led to prohibition of all corporal punishment. And in South Africa, the Catholic Bishops' Conference Parliamentary Liaison Office supported law reform which would have prohibited all corporal punishment of children during parliamentary deliberations.

The church plays a significant role in the provision of alternative care in many countries, as a provider of services and as a donor, and there is increasing recognition of the need for churches to ensure that the funding and services they provide are delivered responsibly and respect children's rights.² International standards developed for and by NGOs working with children, including the Catholic Agency for International Development (CAFOD), EveryChild, Plan, Save the Children, SOS Children's Villages International, Tearfund, World Vision and Viva state that there must be "alternative, positive ways of managing the behaviour of children that do not involve physical punishment or any other form of degrading or humiliating treatment".³

¹ Proverbs 13:24

² For example, the Better Care Network Faith-Based Organisation Outreach Committee (see www.crin.org/bcn) aims to promote better care practices among faith-based organisations, and the Faith to Action Initiative (www.faithbasedcarefororphans.org) provides best practice resources for faith-based organisations in Africa and the USA providing care and funding for care for orphans and vulnerable children in Sub-Saharan Africa

³ Keeping Children Safe Coalition, 2006, *Keeping Children Safe: Standards for child protection*, p. 14



Further resources

Dodd, C., 2011, *Ending Corporal Punishment of Children: A handbook for working with and within religious communities*, Churches' Network for Non-violence, Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden, available at www.endcorporalpunishment.org

Religions for Peace & UNICEF, 2010, *From Commitment to Action: What Religious Communities Can Do to Eliminate Violence Against Children*, available in English and Spanish at <http://religionsforpeace.org/resources/toolkits>

6. Achieving law reform

a) Prohibiting all corporal punishment

Prohibiting all corporal punishment and other humiliating and degrading punishment means:

- removing all defences, justifications and authorisations of corporal punishment so that the criminal law on assault applies equally to assaults on children, wherever they are and whoever the perpetrator
- explicitly prohibiting all corporal punishment, including in sectoral legislation applicable to alternative care and day care.

Prohibition of all corporal punishment and other humiliating and degrading punishment must begin with a review of existing law to achieve a clear understanding of the law as it is now and how it should be amended. The legality table in section 8 of this report and the individual country reports at www.endcorporalpunishment.org provide a useful starting point. Laws relevant to the issue may:

- offer a **defence** or justification of corporal punishment. In many states worldwide, legislation or common law states that some adults have the “right to discipline” or to administer “reasonable chastisement” to children. These laws nearly always apply to family members and to other adults who may care for children (for example, laws may refer to adults caring for a child, with parental authority, in the place of a parent or with legal charge of a child)
- be **silent** on corporal punishment, and therefore not protect children from it
- **authorise** corporal punishment. In a few states, laws explicitly authorise corporal punishment in alternative care and day care settings.



Alternative care and day care settings may be covered by a variety of laws, including common (case) law, national constitutions, civil or criminal codes and laws applying specifically to alternative care or day care or more generally to children, families, education and justice. Government circulars, policies and guidance stating that corporal punishment should not be used are welcome but they do not constitute prohibition, which can only be achieved by enforceable legislation which has been passed by Parliament. When the law has been reviewed, new legislation should be introduced which repeals (removes) all defences, justifications and authorisations of corporal punishment. Once this is done, the criminal law on assault should apply equally to assaults on children, wherever they are and whoever the perpetrator. However, simply removing any defence is a “silent” reform. In order to send a clear message about children’s absolute right to physical integrity, repeal should be explicit and the law should clearly state that all corporal punishment is prohibited.

The importance of prohibition in all settings for children in alternative care and day care

All children have a right to protection, wherever they are. Legislation which prohibits only in some settings does not fulfil all children’s right to protection in all areas of their lives. In particular, it is likely to fail to protect children in informal alternative care and day care settings, since in the vast majority of informal care settings (such as where children are cared for by members of their extended family or by friends) the carers will be subject to the same laws as parents, including laws which allow or condone the use of corporal punishment. Additionally, laws may fail to cover all formal care settings, given the wide variety which exists in many states.

Prohibition is simplest, clearest and most effective when it is included in legislation relating to the child rather than to a particular setting. For example, if a national child protection or child rights law confirms the right of a child not to be subjected to corporal punishment, that right applies wherever the child is, including in the home and in all alternative care and day care settings. This fulfils children’s right to protection wherever they are, provides a common foundation for all those living and/or working with children and families – whether informally or formally – and simplifies awareness raising among children themselves of their right not to be hit.



Further resources

Global Initiative to End All Corporal Punishment of Children resources to support law reform include:

- *Prohibiting and eliminating all corporal punishment of children with disabilities* (2012)
- *Campaigns Manual: Ending corporal punishment and other cruel and degrading punishment of children through law reform and social change* (2010)
- Annual *Global Reports*, published since 2006, on global progress towards prohibition of all corporal punishment of children, and occasional regional progress reports
- *Campaigning for law reform to prohibit corporal punishment* (2009), a series of seven briefings on aspects of law reform, available in English, Arabic and French
- *Prohibiting all corporal punishment of children: Frequently Asked Questions* (2009) available in adult and child-friendly versions in English, French and Spanish
- *Prohibiting corporal punishment of children: A guide to legal reform and other measures* (2009), available in English, French and Spanish, with accompanying online resources
- detailed reports on the legality of corporal punishment in all states worldwide
- regular e-newsletters (to subscribe email info@endcorporalpunishment.org)

All resources are freely available at www.endcorporalpunishment.org.

Prohibition must:

- be in enforceable legislation passed by Parliament
- ensure the repeal of all defences and authorisations of corporal punishment
- clearly prohibit all corporal punishment and other cruel or degrading punishment.

b) Reforming alternative care and day care laws

The traditional acceptance of violent punishment means that, in addition to the prohibition of all corporal punishment in all settings, it is also important that laws applying to alternative care and day care settings include explicit prohibition of corporal punishment and all other cruel or degrading forms of punishment. This sends a clear message to all involved in the sectors, and provides a clear foundation for training and other measures to ensure respect for the prohibition. This prohibition relating specifically to the various forms of care can be included in either primary or secondary legislation. Primary legislation is more robust and less easily changed than secondary legislation, but one act is unlikely to cover all alternative care and day care settings. Secondary legislation (regulations) tend to focus more specifically on individual types of care setting. Regulations may also provide a range of further safeguards for children. It is important to distinguish between secondary legislation and non-legislative standards, policies and guidance issued by governments (which are not law).

Legislation relating specifically to the various forms of care can provide partial prohibition, protecting some children in some areas of their lives, until comprehensive prohibition, which protects children wherever they are, is enacted. In this case, comprehensive prohibition is still an immediate obligation: corporal punishment must be prohibited in all settings, without exception. It is vital to ensure that prohibition applies to:

- care administered by the state and by non-state (private, religious etc) bodies
- care arranged formally and informally
- care arrangements that must be licensed/registered and those that are exempt from licensing/registration.

Ensuring that prohibition covers all forms of corporal and other humiliating and degrading punishment

Ideally, reform will lead to the enactment of legislation which explicitly prohibits “all forms of corporal punishment and other cruel or degrading forms of punishment”. Prohibition of “violence”, “abuse” or “inhuman and degrading treatment”, or provisions protecting children’s “physical integrity” or “dignity” do not amount to explicit prohibition of corporal punishment because of the deep rooted and widespread idea that a certain level of corporal punishment in childrearing is not “abusive” or does not count as “violence”.

It may also be appropriate for laws to explicitly prohibit specific types of punishment which are used in different kinds of alternative care or day care. For example, children living apart from their parents may be deprived of contact with them or other family members or friends and in institutional care children may be more likely to experience painful restraint used as a punishment or the deprivation of food, drink or sleep. (See box opposite for examples of laws which, in addition to prohibiting all corporal punishment, prohibit specific types of cruel and degrading punishment.)



Laws prohibiting corporal punishment in alternative care and day care settings

Section 59 [of the Crimes Act 1961, which allowed for the use of reasonable force “by way of correction”] is repealed and the following section substituted: “59 Parental control (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of— (a) preventing or minimising harm to the child or another person; or (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or (d) performing the normal daily tasks that are incidental to good care and parenting. (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction. (3) Subsection (2) prevails over subsection (1)...”
(New Zealand, Crimes (Substituted Section 59) Amendment Act (2007), section 5)

Parental authority confers the rights and imposes the duties to orient, educate, care, supervise and discipline the children, which in no case authorises the use of corporal punishment or any other form of degrading treatment against the minors. Children and adolescents have a right to receive counselling, education, care and discipline from their mother, father or tutor, as well as from their caretakers or the personnel from educational and health centres, shelters, youth detention or any other type of centres, that in no way represents an authorisation of any sort to these parties for the use of corporal punishment or degrading treatment.

(Costa Rica, Family Code (1974), article 143 and Code on Children and Adolescents (1998), article 24bis, as amended by the Law on the Rights of Children and Adolescents to Discipline Free from Corporal Punishment and Other Forms of Humiliating Treatment (Law No. 8654, 2008))

All children, both male and female, in the care of the Director shall have the right ... to be free from corporal punishment; and to be informed of the standard of behavior expected by their caregivers and of the consequences of not meeting their caregivers' expectations;... and to protection from all forms of violence, abuse, neglect, exploitation and discrimination.

(Papua New Guinea, Lukautim Pikinini (Child) Act 2009, article 88(1), (e) (f) and (k))

Corporal punishment shall not be inflicted on a child in an early childhood institution. A mechanical or electrical device shall not be used to restrain a child in an early childhood institution.

(Jamaica, Early Childhood Commission Act (2005), article 16)

The following shall not be used as a disciplinary measure on children accommodated in the institution – (a) any form of corporal punishment; (b) any punishment relating to the consumption or deprivation of food or drink; (c) any restriction, other than one imposed by a court or in accordance with [regulations] on – (i) a child's contact with his parents, relatives or friends; (ii) visits to him by his parents, relatives or friends; (iii) a child's communication with any person authorized by law to contact the child ... (d) any requirement that a child wear any distinctive or inappropriate clothes; (e) the use or withholding of medication or medical or dental treatment; (f) the intentional deprivation of sleep; (g) the imposition of any financial penalty, other than a requirement for the payment of a reasonable sum (which may be by instalments) by way of reparation; (h) any intimate physical examination of the child; (i) the withholding of any aids or equipment needed by a disabled child;... (k) any measures which involves – (i) any child in the imposition of any measure against any other child; or (ii) the punishment of a group of children for behaviour of an individual child; any measures which are degrading, dehumanizing or cruel.

(Kenya, Children (Charitable Children's Institutions) Regulations (2005), article 17 (6))

Children are not be punished for bedwetting or in the course of toilet training activities...

The foster parent shall not use, or delegate any other person to use, any of the following punishments on a child:

1. Corporal (physical) punishment of any form, including hitting, slapping, pinching, spanking, paddling, shaking, kicking, biting, mechanical restraint or un-approved physical restraint;
2. Requiring or forcing the child to take a painful or uncomfortable position, including but not limited to, squatting, kneeling, bending;
3. Requiring or forcing the child to repeat physical movements;
4. Verbal abuse, ridicule or humiliation;
5. Denial of elements of the case plan, including visitation with the legal family;
6. Delegation of discipline to other children, or to persons unknown to the child;
7. Assignment of physically strenuous exercise or work;
8. Withholding of any meal;
9. Unreasonable or prolonged denial of involvement in extracurricular or community activities, contact with peers, visiting or communicating privileges;
10. Denial of sufficient sleep;
11. Requiring the child to remain silent for long periods of time;
12. Denial of shelter, clothing, or bedding;
13. Isolation of a child in a small, confined space, including a closet, locked room, or a box;
14. Prolonged withholding of emotional response or stimulation; or
15. Destruction or unreasonable withholding of a child's property.

(Rhode Island, USA, State of Rhode Island Department of Children, Youth and Families, Foster Care Regulations (1998), (V) 3(b4) and (d))

Legitimate use of force – to protect children

Prohibiting corporal punishment by adults caring for children of course does not mean adults cannot use physical actions to protect children (for example, moving them away from danger). As the Committee on the Rights of the Child points out in its General Comment No. 8 (2006): “as adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children” (para. 14). The same General Comment recognises that restraint of children is necessary in “exceptional circumstances”. Here, too, there is a clear difference between the use of force for protection and for punishment: “the principle of the minimum necessary use of force for the shortest necessary period of time must always apply” (para. 15). The Committee also notes the importance of detailed guidance and training.

General Comment No. 10 (2007) on “Children’s rights in juvenile justice” discusses restraint in justice settings. The comments are also relevant to some alternative care settings:

Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.... (para. 89)



Some laws prohibiting all corporal punishment in alternative care and day care explicitly confirm that reasonable restraint is permissible in some circumstances. This is not necessary although it may be considered useful. It is essential, however, that laws place limits on the use of restraint. Regular checks should be made to ensure that force is only used for protecting children, not with the intention of inflicting pain or as a punitive response to unwanted behaviour.

Laws distinguishing between restraint and corporal punishment

Physical restraint of a child, or interference by a staff member or foster parent in a fight between children, while necessary at times to prevent physical harm or damage to property, shall not be used as a form of punishment.

(i) The purpose of physical restraint shall be to provide only that degree of physical control that the child is unwilling or unable to provide for himself or herself.

(ii) Physical restraint shall only be used to:

- (A) Protect the child from injury to himself or herself;*
- (B) Protect the child from injuring other people;*
- (C) Prevent the child from destruction of property; and*
- (D) Promote safety.*

(Wyoming, USA, Standards for Certification of Providers of Substitute Care Services for Children Regulations (1991), article 10(u))

1. *A registered person shall not give corporal punishment to a child for whom he acts as a child minder or provides day care and, so far as is reasonably practicable, shall ensure that corporal punishment is not given to any such child by –*

- (a) any person looking after children on the premises;*
- (b) any person in charge; or*
- (c) any person living or working on the premises.*

2. *A person shall not be taken to have given corporal punishment in breach of paragraph (1) if the action was taken for reasons that include averting an immediate danger of personal injury to, or an immediate danger of death of, any person (including the child himself).*

(England, UK, Day Care and Child Minding (National Standards) (England) Regulations (2003), SI 2003/1996, section 5)

Once prohibition of all corporal and other cruel or degrading punishment in all settings is enacted, children’s right to legal protection from all corporal punishment is respected. The next step is to ensure that prohibition is appropriately implemented and enforced, to ensure genuine protection of all children in practice.



The Guidelines for the Alternative Care of Children¹ state:

Use of force and restraints of whatever nature should not be authorized unless strictly necessary for safeguarding the child’s or others’ physical or psychological integrity, in conformity with the law and in a reasonable and proportionate manner and with respect for the fundamental rights of the child. Restraint by means of drugs and medication should be based on therapeutic needs and should never be employed without evaluation and prescription by a specialist. (para. 97)

¹ General Assembly, 2010, *Guidelines for the Alternative Care of Children* (A/RES/64/142)

7. Implementation and enforcement of prohibition in alternative care and day care

a) The alternative care and day care framework

The legislative framework around formal alternative care and day care settings must provide a system in which prohibition of all adult violence against children, including all corporal punishment, can be implemented and enforced. Provisions which assist implementation and enforcement of the prohibition are key to ensuring that the rights of children in alternative care and day care are respected, and help to fulfil not only children's right to protection from all corporal punishment but also their right to safe and participatory care settings more generally. Some of the guidance in this section draws on the Guidelines for the Alternative Care of Children¹ which were welcomed by the UN General Assembly in 2009.

In alternative care settings, it is important to:

- ensure that children's placements in alternative care settings are appropriate and in their best interests
- regularly review children's placements
- ensure that children have meaningful opportunities to express their views on their placements and that their views are given due weight.

In both alternative care and day care settings, it is important to:

- require alternative care and day care settings to be registered and regularly inspected with the inspectors able to talk privately with children and staff, and monitored by an independent body
- ensure that children are able to make complaints through child-sensitive complaints procedures and feel safe to do so



- ensure that children are able to access independent advocates and that children and their representatives have a right of access to the courts
- ensure that complaints procedures of national human rights or ombudsperson institutions are accessible to children, including those in alternative care, and their representatives
- require the reporting of all uses of force, including restraint
- require adults working in alternative care and day care settings to commit to not using corporal punishment as a condition of their employment
- ensure appropriate safeguards in the recruitment of staff for alternative care and day care settings, and of foster carers
- ensure that disciplinary procedures for staff refer to the legal prohibition of corporal punishment and incorporate a system of formal warning, suspension and ultimately dismissal for its use, in addition to the potential for legal proceedings under criminal laws on assault
- include information about the prohibition of corporal punishment in professional codes of ethics and staff codes of conduct for those working in alternative care and day care
- require all alternative care and day care settings to have child protection policies which include a clear statement that corporal punishment must not be used
- provide appropriate training for all staff and foster carers on children's rights, positive discipline and child development



- provide a system of supervision of staff and ensure access to external support and advice
- ensure that an appropriate mechanism for staff to make complaints and act as "whistleblowers" is in place
- ensure that the fulfilment of children's right to be free from all corporal punishment is monitored, including through confidential research with children.

¹ General Assembly, 2010, *Guidelines for the Alternative Care of Children* (A/RES/64/142)

b) Positive discipline and children's participation in alternative care and day care settings

Adults' use of corporal punishment is influenced by habit, tradition and lack of knowledge of alternatives, as well as the legal and social acceptance of this form of violence against children. For this reason, eliminating corporal punishment requires public education and awareness raising, and training of all those working with children.

Adults often argue that children's "bad" behaviour is the "reason" for using corporal punishment. But children's behaviour is never the reason for corporal punishment – adult attitudes are. It is adults who choose to use corporal punishment, and adults' responsibility to stop using it. The behaviour of children in alternative care due to past violations of their rights may present particular challenges. This does not increase the need for punitive measures; rather it increases the need for training for their carers in positive discipline techniques.

The Committee on the Rights of the Child has highlighted the importance of initial and in-service training for all professionals working with and for children on children's rights, including the right to be free of corporal punishment, and on positive discipline.² Staff should also be trained on child development, and on meeting the needs of particular children, including children with physical, mental and other disabilities. In addition, the elimination of corporal punishment, including in informal care settings, requires awareness raising across the whole of society about children's right to be protected from all corporal punishment. Information, advice and support should be provided to parents, other family members and all those who work with children. See "Further resources" opposite for more guidance on awareness raising across the whole of society.

Children must be made aware of their rights, including their right to be free from all corporal punishment, and can take part in raising awareness among other children about their rights. Children can also be involved in developing positive discipline strategies for care settings, in conflict resolution – for example through peer mediation – and in making day-to-day decisions about the running of alternative care and day care settings. Children can contribute to the development of services and of systems to prevent violence. The Committee on the Rights has highlighted the importance of involving children in efforts to end violence against them.³ Care settings which are participatory are more likely to be safe and free from corporal punishment, a system for reporting violence designed by or with children is more likely to be child-friendly, and children living in or being cared for in settings where their views are listened to are more likely to feel able to report their experiences of violence, including corporal punishment.

Ensuring that children can safely report their experiences is a key element of eliminating corporal punishment and all violence against children. In all settings, there should be a clear, accessible and child-friendly complaints procedure which all children, including young children, are aware of and able to use. It should be clear to all children that they can make a complaint about any instance of corporal or other humiliating or degrading punishment. Children should feel safe enough to make a complaint, without fear of repercussions for doing so. Phone helplines also allow children to be heard. Carers should be appropriately trained in listening to children and interpreting their actions, to enable them to understand children's efforts to communicate about their experiences.

Legal reform to prohibit all corporal punishment is children's right and an essential part of ending violence against them. Without law reform which prohibits all corporal punishment, other measures, including education and awareness raising measures, will not be sufficient to protect children.



² Committee on the Rights of the Child, 2011, *General comment No. 13: Article 19: The right of the child to freedom from all forms of violence*, para. 44; Committee on the Rights of the Child, 2006, *General Comment no. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, para. 48

³ Committee on the Rights of the Child, 2009, *General Comment No. 12: The right of the child to be heard*, para. 118

What children recommend

Develop and implement legislation which abolishes all forms of violence in children's institutions, including corporal punishment. If there are no laws, policies or guidelines on these issues, write new ones. Make sure that children in institutions can be involved in developing such laws, policies or guidelines.

Children in institutions should be given a strong voice, so that they can discuss and report on any form of violence that they face. The authorities, or organizations running the institution must take their views seriously and act upon all concerns.

Children in institutions should be supported to form their own groups so that they can share their views, access information, and organize collective action on issues affecting them, such as violence. Children's representatives should have a say in the running of the institution and should regularly have the chance to meet with government officials to discuss any concerns.

All staff and government officials who have a responsibility to care for children should have training in child rights, child protection, child development, and children's participation. Staff should have skills and attitude[s] to work in a friendly, caring way with girls and boys.

Increase the knowledge of children in institutions on child rights, life skills, peace, conflict resolution, peer mediation and healthy relationships.

Create child helplines with free numbers for children to report any forms of violence against them and ensure that children in institutions have access to phones.

Make sure children know where they can safely report any form of violence faced and make sure all complaints are followed up seriously.

Need more participatory research with girls and boys in institutions to understand the kinds of violence they face and their suggested action to end violence. Research should involve younger children, children with disabilities and children from ethnic minorities. The results of the research should be shared in a child-friendly form and used to make change.

Children's recommendations on ending violence against children in institutional settings⁴

Further resources

Churches' Network for Non-violence, 2006, *Respecting Children: A handbook on growing up without violence*, London: The United Reform Church, available at www.churchesfornon-violence.org/links.html

Dodd, C., 2011, *Ending Corporal Punishment of Children: A handbook for working with and within religious communities*, Churches' Network for Non-violence, Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden, available at www.churchesfornon-violence.org

Durrant, J., 2007, *Positive Discipline: What it is and how to do it*, Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden, www.endcorporalpunishment.org/pages/pdfs/PositiveDisciplineManual.pdf

Durrant, J. E., 2008, *Positive Discipline: What it is and how to do it: A manual for facilitators, educators, and trainers*, Global Initiative to End All Corporal Punishment of Children & Save the Children Sweden, available at <http://resourcecentre.savethechildren.se>

Global Initiative to End All Corporal Punishment of Children, 2010, *Campaigns Manual: ending corporal punishment and other cruel and degrading punishment of children through law reform and social change*, available at www.endcorporalpunishment.org

Kilpatrick, R. et al, 2008, *Working with challenging and disruptive situations in residential child care: sharing effective practice*, London: Social Care Institute for Excellence, available at www.scie.org.uk/publications/knowledgereviews/kr22.pdf

Ramsden, P. & Dr. Buvaneswari, 2008, *Positive Discipline Techniques to Promote Positive Behaviour in Children: A training manual for facilitators*, Save the Children, available at <http://resourcecentre.savethechildren.se>

Willow, C., 2010, *Children's right to be heard and effective child protection: A guide for Governments and children's rights advocates on involving children and young people in ending all forms of violence*, Save the Children, available at <http://resourcecentre.savethechildren.se>

See the Global Initiative website, www.endcorporalpunishment.org, for further positive discipline resources.

⁴ Save the Children, 2005, *Save the Children's Contribution to End Violence Against Children in Institutional Settings: Sharing Good Practice and Key Recommendations*

8. Legality of corporal punishment:

state by state analysis (September 2012)

Please note: The following information has been compiled from many sources, including reports to and by the United Nations human rights treaty bodies. **Information in square brackets is unconfirmed.** 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.

For information on the legality of corporal punishment in settings other than alternative care settings (the home, schools and the penal system), please see our website: www.endcorporalpunishment.org.

We are very keen to make contact with organisations with an interest in legal prohibition of corporal punishment in alternative care and day care, in any state. We can provide technical advice and support towards the process of law reform to prohibit all corporal punishment. Please contact us for more information, or if you believe any of the information in this table to be incorrect: info@endcorporalpunishment.org.

This table refers to four broad categories of care, reflecting the categories commonly used in national laws:	
1. Informal alternative care and day care: alternative care and day care for children which is provided informally, in a family environment, including kinship care.	3. Foster care: formally arranged care for children without parental care in a family home (not informal or kinship foster care: the extent to which foster care is formalised varies between states).
Alternative care (for children without parental care): 2. Group care: care for children in a context other than a family home. This includes all institutions, orphanages, children's homes, cluster foster care, "village" style care, baby homes, youth homes, safe homes/places of safety, emergency care, institutions where disabled children live, health and psychiatric institutions.	Day care (for children who have parental care): 4. Day care: for example, all early childhood care such as nurseries, kindergartens, preschools, crèches, children's centres and family centres, and all day care for older children, such as after-school childcare, childminding and day centres (not informal day care: the extent to which day care is formalised varies between states).

Numbers of states prohibiting and not prohibiting all corporal punishment in alternative care and day care

	Informal alternative care and day care	Group care	Foster care	Day care
Prohibited	33	52	40	41
Not prohibited¹	165	146	158	157

1 This includes states for which we have recorded "SOME" in the following table. A state is only counted as YES when the prohibition applies to all types of setting within each category.

States with full prohibition in legislation

The following 33 states have prohibited corporal punishment in all settings, including the home and all alternative care and day care settings:

Albania (2010); Austria (1989); Bulgaria (2000); Costa Rica (2008); Croatia (1998); Cyprus (1994); Denmark (1997); Finland (1983); Germany (2000); Greece (2006); Hungary (2004); Iceland (2003); Israel (2000); Kenya (2010); Latvia (1998); Liechtenstein (2008); Luxembourg (2008); Netherlands (2007); New Zealand (2007); Norway (1987); Poland (2010); Portugal (2007); Republic of Congo (2010); Republic of Moldova (2008); Romania (2004); South Sudan (2011); Spain (2007); Sweden (1979); Togo (2007); Tunisia (2010); Ukraine (2003); Uruguay (2007); Venezuela (2007)

Unlawful by Supreme Court ruling

In the following states Supreme Court rulings have declared corporal punishment to be unlawful in all settings, including the home, but these are not yet reflected in legislation: Italy (1996); Nepal (2005)

States committed to full prohibition

In each of the following states, corporal punishment is still permitted by law in one or more settings but the government has made a public commitment to enacting full prohibition.

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Afghanistan ²	X	X	X	X
Bangladesh ³	X	X	X	X
Bhutan ⁴	X	X	X	X
Brazil ⁵	X	X	X	X
Czech Republic ⁶	X	SOME	X	X
Estonia ⁷	X	X	X	X
India ⁸	X	✓ ⁹	X	X
Ireland ¹⁰	X	SOME ¹¹	X ¹²	SOME ¹³
Lithuania ¹⁴	X	X	X	X
Maldives ¹⁵	X	X	X	X
Pakistan ¹⁶	X	X ¹⁷	X	X ¹⁸

2 Commitment to prohibition in all settings, including the home, made at July 2006 meeting of the South Asia Forum, following 2005 regional consultation of the UN Secretary General's Study on Violence against Children

3 See note 2

4 See note 2; 2011 Child Care and Protection Act prohibits only corporal punishment which reaches a certain degree of severity

5 In July 2010, President Luiz Inacio Lula da Silva, before leaving office, submitted a bill to Congress which would prohibit in all settings; draft legislation which would prohibit in all settings under discussion (2011)

6 Government committed to prohibition; prohibition under discussion (2011)

7 Government committed to prohibition; legislation which would prohibit being drafted (2011)

8 Commitment to prohibition in all settings confirmed in third/fourth report to Committee on the Rights of the Child (2011)

9 Prohibited in care institutions under the Juvenile Justice (Care and Protection of Children) Rules (2007)

10 Government has stated long-term commitment to prohibition but given no indication of timing

11 Prohibited in Special Care Units; guidance advises against use in other residential care services but there is no prohibition in legislation

12 Guidance advises against use in foster care but there is no prohibition in legislation

13 Prohibited in pre-school settings; lawful for childminders caring for children aged over 5 and children aged 5 and under who are children of relatives, children of the same family or up to three children from different families

14 Government stated intention to introduce prohibition in law during January 2006 examination by Committee on the Rights of the Child; proposed new legislation to prohibit rejected in March 2010, new bill introduced in December 2010

15 See note 2; draft Penal Code would include justification for use of force by parents, teachers and others for prevention and punishment of misconduct

16 See note 2

17 Legislation which would prohibit under discussion (2011)

18 See note 17

States committed to full prohibition

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Peru ¹⁹	X	X	X	X
Serbia ²⁰	X	X	X	SOME ²¹
Slovakia ²²	X	✓ ²³	✓ ²⁴	✓ ²⁵
Slovenia ²⁶	X	SOME ²⁷	X	SOME ²⁸
Sri Lanka ²⁹	X	X	X	X
Taiwan ³⁰	X	X	X	X ³¹

Legal reform in progress but no explicit commitment to full prohibition

In the following states, bills are under discussion in parliament which would achieve full prohibition in law but the government has not publicly committed to full prohibition.

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Canada ³²	X	SOME ³³	SOME ³⁴	SOME ³⁵
Mongolia ³⁶	X	X	X	X
Nicaragua ³⁷	X	X	X	X
Philippines ³⁸	X	✓ ³⁹	X	SOME ⁴⁰

19 Congress pledged all party support for prohibition (2007); legislation which would prohibit in all settings under discussion (2010)
 20 Government committed to prohibition (2007)
 21 Prohibited in all day care which forms a part of the education system, including nurseries, kindergartens, preschools, after school care, workshops and additional education activities
 22 Government committed to prohibition (2005)
 23 Prohibited under article 7(3) of the Act No. 305/2005 Coll. as amended by Act No. 27/2009
 24 See note 23
 25 See note 23
 26 Government stated intention to explicitly prohibit in the home during 2004 drafting of domestic violence law; Family Law Bill which would prohibit under discussion (2011)
 27 Prohibited in residential school institutions; lawful in other forms of group care
 28 Prohibited in educational day care centres; lawful in other forms of day care
 29 See note 2
 30 Government committed to prohibition (2005)
 31 But law prohibiting in schools possibly applies to day care centres and cram schools
 32 2004 Supreme Court ruling upheld the right of parents and people standing in the place of parents to administer corporal punishment to children aged 2-12 years, but not using objects and not involving slaps or blows to the head; bills which would repeal the legal defence for corporal punishment have failed to be enacted but continue to be introduced in a sustained campaign for law reform
 33 Prohibited in state-provided care in Alberta, British Columbia and Manitoba; in Ontario prohibited for all children receiving services from a child protection agency or other service provider licensed or approved by the province; in Quebec no right of correction under the Civil Code but right of correction in Federal Criminal Code applies
 34 Prohibited in Alberta, British Columbia, Manitoba and Ontario; no explicit prohibition in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon; in Quebec no right of correction under the Civil Code but right of correction in Federal Criminal Code applies
 35 Prohibited in all states and territories except New Brunswick; in Quebec no right of correction under the Civil Code but right of correction in Federal Criminal Code applies
 36 Draft amendments to Family Law would prohibit in the home and all alternative care and day care settings (2010)
 37 Proposals to prohibit all corporal punishment in draft Family Code under discussion (2009)
 38 Legislation which would prohibit in all settings under discussion (2011)
 39 Prohibited in residential institutions under section 1.4 of the Standards in the Implementation of Residential Care Services (Administrative Order No. 141) (2002)
 40 Prohibited in day care centres by section 233 of Executive Order No. 209

Prohibition incomplete and no commitment to reform

In these states, corporal punishment is permitted by law in some or all settings and there is as yet no public commitment to full prohibition.

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Algeria	X	X	X	X
Andorra	X	SOME ⁴¹	X	X
Angola ⁴²	X	X	X	X
Antigua & Barbuda	X	X	X	X
Argentina	X	X	X	X
Armenia	X	SOME ⁴³	X	X
Australia ⁴⁴	X	SOME ⁴⁵	SOME ⁴⁶	SOME ⁴⁷
Azerbaijan ⁴⁸	X	X	X	X
Bahamas	X	✓ ⁴⁹	X	X
Bahrain	X	X	X	X
Barbados	X	SOME ⁵⁰	[SOME] ⁵¹	[SOME] ⁵²
Belarus	X	X	X	X
Belgium	X	SOME ⁵³	X	X
Belize	X	✓ ⁵⁴	X	✓ ⁵⁵
Benin	X	X	X	X
Bolivia ⁵⁶	X	X	X	X
Bosnia & Herzegovina	SOME ⁵⁷	X ⁵⁸	X ⁵⁹	X ⁶⁰
Botswana	X	X	X	X
Brunei Darussalam	X	X	X	X
Burkina Faso	X	X	X	SOME ⁶¹

41 Prohibited in La Gavernera children's centre
 42 Corporal punishment of a certain severity would be unlawful under the 2010 Domestic Violence Act but no explicit prohibition of all corporal punishment
 43 Unlawful in care institutions under the Rights of the Child Act, but possibly no explicit prohibition
 44 In 2003, Law Reform Institute in Tasmania recommended abolition of reasonable correction defence from criminal and civil law but as at July 2011 law reform not achieved; 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
 45 Prohibited in residential centres in all states and territories except Northern Territory, Tasmania, Victoria, Western Australia and Australian Capital Territory
 46 Prohibited in all states and territories except Northern Territory, Tasmania, Victoria, Western Australia and Australian Capital Territory
 47 Prohibited in all day care in Victoria (Education and Care Services National Law Act 2010 No. 69 of 2010, art. 166) and New South Wales (Children (Education and Care Services) National Law Application Act 2010 No 104, art. 166); prohibited in childcare centres in all states and territories except Northern Territory, Tasmania and Australian Capital Territory
 48 Draft legislation which would prohibit under discussion (2011)
 49 Prohibited in residential institutions under article 27(1) of the Residential Care Establishments Act (2003)
 50 Prohibited in children's residential centres run by Child Care Board
 51 Reportedly prohibited in state-arranged foster care; lawful in private foster care
 52 Reportedly prohibited in state-arranged pre-school settings and in day care centres run by Child Care Board
 53 Prohibited in institutions in the Flemish Community under article 28 of the Decree of the Flemish Council (7 May 2004) and articles 11 and 13 of the Flemish Government Decree of 13 July 1994 concerning grants to institutions for youth
 54 Prohibited in residential care facilities under the Social Service Agencies (Operators of Residential Care Facilities for Children) (Registration, Licensing and Minimum Operating Requirements) Regulations (2004)
 55 Prohibited in day care centres under the Social Service Agencies (Operators of Day Care Facilities) (Registration, Licensing and Minimum Operating Requirements) (Regulations) (1998) (section 15)
 56 Legislation prohibits only corporal punishment which is considered harmful
 57 Prohibited in Republic of Srpska
 58 But possibly prohibited in Republic of Srpska
 59 See note 59
 60 See note 59
 61 Prohibited in pre-school education settings

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Burundi	X	X	X	X
Cambodia	X	X	X	X ⁶²
Cameroon	X	X	X	X
Cape Verde	X	✓ ⁶³	X	SOME ⁶⁴
Central African Republic	X	X	X	X
Chad	X	X	X	X
Chile	X	X	X	X
China	X ⁶⁵	X	X	X
Colombia	X	X	X	X
Comoros	X	X	X	X
Cook Islands	X	X	X	X
Côte d'Ivoire	X	X	X	X
Cuba	X	[SOME]	X	X
Djibouti	X	X	X	X
Dominica	X	X	X	SOME ⁶⁶
Dominican Republic	X	X	X	X
DPR Korea	X	X	X	X
DR Congo	X	X	X	X
Ecuador	X	X	X	X
Egypt	X	X	X	X
El Salvador	X	X	X	X
Equatorial Guinea	X	X	X	X
Eritrea	X	X	X	X
Ethiopia	X	✓ ⁶⁷	X	SOME ⁶⁸
Fiji	X	X	X	X
France ⁶⁹	X	X	X	X
Gabon	X	X	X	X
Gambia	X	X	X	X
Georgia	X	[✓] ⁷⁰	X	X
Ghana	X	X	X	X

62 Minimum standards state corporal punishment should not be used, but no prohibition in legislation
 63 Prohibited in public and private institutions under the Civil Code
 64 See note 63
 65 But corporal punishment of girls prohibited in Shenzhen Special Economic Zone
 66 Prohibited in early childhood education facilities under the Education (Early Childhood) Regulations (2003) (article 54)
 67 Prohibited in institutions responsible for the care of children under article 36 of the Constitution but "reasonable chastisement" defence available
 68 See note 67
 69 Bill No. 2971 to abolish all physical and psychological violence against children by persons with parental authority under discussion (2011)
 70 Prohibited in institutional care establishments (information unconfirmed)

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Grenada	X	✓ ⁷¹	X	X
Guatemala	X	X	X	X
Guinea	X	X	X	X
Guinea-Bissau	X	[X]	[X]	[X]
Guyana	X	[SOME] ⁷²	[SOME] ⁷³	X
Haiti	X ⁷⁴	✓ ⁷⁵	[✓] ⁷⁶	✓ ⁷⁷
Honduras	X	X	X	X
Indonesia	X	X ⁷⁸	X	X
Iran, Islamic Republic of	X	X	X	X
Iraq	X	X	X	X
Jamaica	X	[✓] ⁷⁹	[✓] ⁸⁰	[✓] ⁸¹
Japan ⁸²	X	X ⁸³	X	X
Jordan	X	[✓] ⁸⁴	[X]	[X]
Kazakhstan	X	✓ ⁸⁵	X	[X]
Kiribati	X	X	X	X
Kuwait	X	X	X	X
Kyrgyzstan	X	✓ ⁸⁶	X	X
Lao PDR	X	X	X	X
Lebanon	X	X	X	X
Lesotho	X	X	X	X
Liberia	X	SOME	SOME	X
Libyan Arab Jamahiriya	X	[X]	[X]	[X]
Madagascar	X	X	X	X
Malawi	X	SOME ⁸⁷	X	SOME ⁸⁸
Malaysia	X	X	X	X

71 Prohibited in child care homes under the Requirements of the Approval and Licensing of Child Care Homes, Grenada Bureau of Standards GDS 654:2002
 72 Prohibited in some settings in the Child Care and Development Services Act (information unconfirmed)
 73 See note 72
 74 Possibly prohibited by 2001 law, but no unequivocal confirmation
 75 Prohibited under the Law Against Corporal Punishment of Children (2001)
 76 Possibly prohibited under the Law Against Corporal Punishment of Children (2001), but no unequivocal confirmation
 77 Prohibited under the Law Against Corporal Punishment of Children (2001)
 78 But National Standards of Care for Child Welfare Institutions, adopted under Ministry of Social Affairs regulation 30/HUK/2011 on March 18, 2011, state that corporal punishment should not be used
 79 Prohibited under article 62 of the Child Care and Protection Act in state provided care but possibly not in care provided by other bodies; prohibited in children's homes under the Child Care and Protection (Children's Homes) Regulations (No. 22 of 2005)
 80 Prohibited under article 62 of the Child Care and Protection Act in state provided care but possibly not in care provided by other bodies
 81 Prohibited in early childhood institutions under the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters (2005); prohibition in all forms of day care unconfirmed
 82 But prohibited in Kawasaki City by local ordinance
 83 Minimum Standards for Child Welfare Facilities (1948) address abuse of disciplinary methods but do not prohibit corporal punishment
 84 Possibly prohibited in institutions
 85 Prohibited in children's villages, youth homes and other institutions
 86 Prohibited in residential institutions under clause 31 of Regulation No. 489 (1998)
 87 Prohibited in state-run institutions under article 19 of the Constitution
 88 Prohibited in state-run day care settings under article 19 of the Constitution

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Mali ⁸⁹	X	X	X	X
Malta	X	X	X	X
Marshall Islands	X	X	X	X
Mauritania	X	X	X	X
Mauritius	X	X	X	X
Mexico ⁹⁰	X	X	X	X
Micronesia	X	X	X	X
Monaco	X	X	X	X
Montenegro	X	X	X	X
Morocco	X	X	X	X
Mozambique	X	X	X	X
Myanmar	X	X	X	X
Namibia	X	SOME ⁹¹	X ⁹²	SOME ⁹³
Nauru	X	X	X	X
Niger	X	X	X	X
Nigeria	X	X	X	X
Niue	X	[X]	[X]	[X]
Oman	X	X	X	X
Palau	X	X	X	X
Palestine	X	X	X	X
Panama ⁹⁴	X	X	X	X
Papua New Guinea	X	SOME ⁹⁵	SOME ⁹⁶	X
Paraguay ⁹⁷	X	SOME ⁹⁸	X	X
Qatar	X	X	X	X
Republic of Korea	X	X	X	X
Russian Federation	X	X	X	X
Rwanda ⁹⁹	X	X	X	X

89 Family Code (2009 as amended 2011) removed the right of correction but did not prohibit all corporal punishment
 90 But "right of correction" removed from Civil Code of Federal Territory
 91 Unlawful in forms of childcare provided by the state under 1991 Supreme Court judgment but some legislation still to be repealed; although Minimum Standards for Residential Child Care Facilities (2009) state that corporal punishment should not be used there is no explicit prohibition in privately-run facilities; Child Care and Protection Bill would prohibit (2010)
 92 Child Care and Protection Bill would prohibit (2010)
 93 Unlawful in forms of childcare provided by the state under 1991 Supreme Court judgment but some legislation still to be repealed; Child Care and Protection Bill would prohibit (2010)
 94 Legislation prohibits only corporal punishment which results in injury
 95 2009 Lukautim Pikinini (Child) Act prohibits corporal punishment of children "in the care of the Director", but this does not apply to private care arrangements and forms of care run by non-government bodies
 96 See note 95
 97 Draft legislation which would prohibit in all settings under discussion (2011)
 98 Prohibited in shelter homes; see also note 97
 99 Draft Child Protection Act would possibly prohibit (2010)

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Samoa	X	X	X	X
San Marino ¹⁰⁰	X	X	X	X
Sao Tome & Principe	X	X	X	X
Saudi Arabia	X	X	X	X
Senegal	X	X	X	X
Seychelles	X	[X]	[X]	[X]
Sierra Leone	X	X	X	X
Singapore	X	X	X	SOME ¹⁰¹
Solomon Islands	X	X	X	X
Somalia	X	SOME ¹⁰²	X	SOME ¹⁰³
South Africa ¹⁰⁴	X	✓ ¹⁰⁵	✓ ¹⁰⁶	✓ ¹⁰⁷
St Kitts & Nevis	X	X	X	X
St Lucia	X	X	X	X
St Vincent & Grenadines	X	X	X	X
Sudan	X	X	X	X
Suriname	X	X	X	X
Swaziland	X	X	X	X
Switzerland	X ¹⁰⁸	✓ ¹⁰⁹	✓ ¹¹⁰	✓ ¹¹¹
Syrian Arab Republic	X	X	X	X
Tajikistan	X	X	X	X
TFYR Macedonia	X	✓	✓	✓
Thailand	X	X	X	X
Timor-Leste	X	X ¹¹²	X	X
Tonga	X	X	X	X
Trinidad & Tobago	X	X ¹¹³	X	X
Turkey	X	X	X	X

100 Government has stated its intention to prohibit in all settings (2010)
 101 Prohibited in child care centres under Regulation 17 of the Child Care Centres Regulations, pursuant to the Child Care Centres Act (1988, revised 1989)
 102 Possibly prohibited in Somaliland under article 24 of the Constitution of the Republic of Somaliland
 103 See note 102
 104 Efforts to prohibit corporal punishment by parents failed in 2007; national campaign continues to promote law reform
 105 Prohibited in Regulations under the Children's Act (2005) in cluster foster care schemes (article 69) and child and youth care centres (articles 73 and 76)
 106 Prohibited under regulations under the Child Care Act (1983) until the new Children's Act comes into force; prohibited under regulations under the new act (article 65)
 107 Prohibited under National Norms and Standards for Drop-In Centres (sub-section 1) and National Norms and Standards for Early Childhood Development Programmes (sub-section 3)
 108 2003 Federal Court ruling stated repeated and habitual corporal punishment unacceptable, but did not rule out right of parents to use corporal punishment; draft legislation to prohibit rejected by Parliament in 2008
 109 Considered unlawful; Federal Court judgment BGE 117 IV 18 (1993), which states that there can be no customary law that would allow persons taking care of children to exercise corporal punishment against them, applies; but no explicit prohibition in legislation
 110 See note 109
 111 See note 109
 112 Policy advises against corporal punishment in childcare centres, orphanages and boarding houses, but no prohibition in law
 113 Policy advises against corporal punishment in health care and psychiatric institutions, but no prohibition in law

Prohibition incomplete and no commitment to reform

State	Prohibited in informal alternative care and day care	Prohibited in group care	Prohibited in foster care	Prohibited in day care
Turkmenistan ¹¹⁴	X	X	X	X
Tuvalu	X	X	X	X
Uganda	X	X	X	X
United Arab Emirates	X	X	X	X
United Kingdom	X	✓ ¹¹⁵	SOME ¹¹⁶	SOME ¹¹⁷
UR Tanzania	X	SOME ¹¹⁸	X	X
United States of America	X	SOME ¹¹⁹	SOME ¹²⁰	SOME ¹²¹
Uzbekistan	X	X	X	X
Vanuatu	X	X	X	X
Viet Nam	X	X	X	X
Western Sahara	X	[X]	[X]	[X]
Yemen	X	X	X	X
Zambia	X	X	X	X
Zimbabwe	X	X	X	X



114 2002 Rights of the Child (Guarantees) Act prohibits corporal punishment considered to be harmful

115 Prohibited in England under article 17 of the Children's Homes Regulations 2001, as amended by the Children's Homes (Amendment) Regulations 2011; in Wales under article 17(5) of the Children's Homes (Wales) Regulations 2002; in Scotland under article 10 of the Residential Establishments Child Care (Scotland) Regulations, 1996; and in Northern Ireland under article 16(3) of the Children's Homes Regulations (Northern Ireland) 2005

116 Prohibited in England in foster care arranged by local authorities or voluntary organisations under article 13(2) of the Fostering Services (England) Regulations 2011; in Wales under article 13(2) of the Fostering Services (Wales) Regulations 2003; in Scotland under Schedule 2 of the Fostering of Children (Scotland) Regulations 1996; and in Northern Ireland under Schedule 2 of the Foster Placement (Children) Regulations (Northern Ireland) 1996; lawful in private foster care in all areas

117 Prohibited in day care institutions and childminding in England under the Day Care and Child Minding (National Standards) (England) Regulations 2003, SI 2003/1996; in Wales under article 23(5) of the Child Minding and Day Care (Wales) Regulations 2010; and in Scotland under article 4(3) of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002; in Northern Ireland, guidance states that physical punishment should not be used in day care institutions and childminding, but there is no explicit prohibition in law

118 Prohibited in residential institutions in Zanzibar under 125 of the Zanzibar Children's Act (2011)

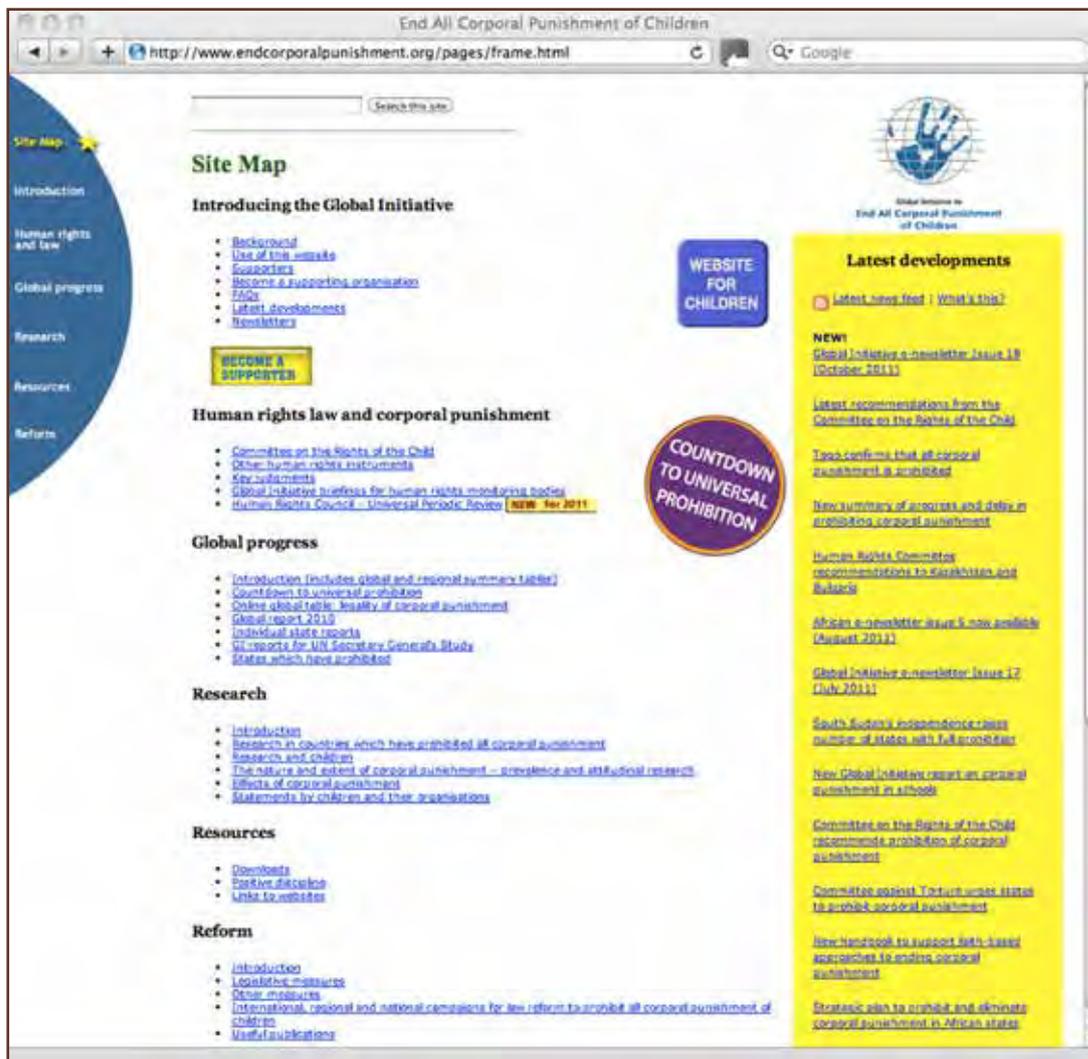
119 Not prohibited in Arkansas, Hawaii, Louisiana, Mississippi, South Carolina, Tennessee or Texas; prohibited in the remaining 43 states and the District of Columbia

120 Not prohibited in Delaware, Massachusetts, Tennessee or Texas; prohibited in the remaining 46 states and the District of Columbia

121 Not prohibited in the District of Columbia, Idaho, Indiana, Louisiana or South Carolina; prohibited in the remaining 46 states

Global Initiative website: www.endcorporalpunishment.org

Detailed information on all aspects of prohibiting corporal punishment is available on the Global Initiative website:



Human rights, law and corporal punishment – details of international and regional human rights standards, the work of the Committee on the Rights of the Child and other treaty monitoring bodies and briefings submitted to them by the Global Initiative, and national high level court judgments

Global progress – reports on the legality of corporal punishment and progress towards prohibition in every state worldwide, detailed information on states which have achieved prohibition in all settings including the home, and useful facts and figures

Research – research on prevalence, children's views and experiences, the effects of corporal punishment and on the experiences of states which have achieved full prohibition

Resources – internet and other resources to support the promotion of positive discipline for parents, teachers and carers, downloads of useful reports

Reform – details of legislative and other measures to support law reform, information on international, regional and national campaigns for law reform, online resources to support the promotion of law reform (designed to supplement the Global Initiative legal reform handbook)

Website for children

Keep up to date
The Global Initiative publishes a regular global e-newsletter with news of progress towards prohibition worldwide, new research and resources to support law reform, human rights monitoring and more (to subscribe email info@endcorporalpunishment.org). There is also a regional newsletter for Africa (to subscribe email vohito@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. The majority of states have no prohibition of corporal punishment in any form of alternative care or day care. This leaves millions of children, including some of society’s most vulnerable, subject to violent and humiliating punishment by those whose role it is to take care of them. This report provides guidance on achieving law reform which gives children in alternative care and day care the protection from all forms of corporal and other cruel and degrading punishment that is their absolute right.



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

The Global Initiative 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.

Global Initiative to End All Corporal Punishment of Children:

www.endcorporalpunishment.org

email: info@endcorporalpunishment.org

WORKING WITH



Save the Children

Save the Children is the leading independent organisation for children with programmes in 120 countries. Our vision is a world in which every child attains the right to survival, protection, development and participation. Our mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives.

For more information about this report, please contact Save the Children Sweden: info@rb.se

<http://resourcecentre.savethechildren.se>