

# Prohibiting all corporal punishment of children: assessing the law (“Assessment guidelines”)

Prepared by the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), February 2014



## 1 The Global Initiative’s mapping of progress towards universal prohibition of all corporal punishment

The Global Initiative maintains a detailed individual report on the legal status of corporal punishment in each state and territory worldwide (see [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)) which enables us to construct a global table of progress towards universal prohibition. Nothing excites us more than adding a state or territory to the list of those (currently 35 states, 4 territories) which have fully prohibited corporal punishment in all settings of children’s lives, including the home and family. But we, together with human rights monitoring bodies, have learned that legislation which is claimed as achieving full prohibition needs to be rigorously examined to ensure that it does so effectively – and is interpreted as doing so. The strong traditional acceptance of violent punishment of children in all regions demands clear reforms, clearly interpreted by governments and others.

## 2 How the Global Initiative confirms the achievement of prohibition

The Global Initiative’s approach to assessing whether or not legislation prohibits all corporal punishment of children is based on the requirements for compliance in this respect with the UN Convention on the Rights of the Child as set out in General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”, adopted by the Committee on the Rights of the Child in 2006.<sup>1</sup>

Prohibiting corporal punishment of children involves repealing all legal defences, justifications and authorisations for its use so that the criminal law on assault applies equally to assaults on children, whether or not they are described as discipline or punishment. This can be achieved by explicit repeal or by repeal accompanied by an explicit statement of prohibition. Where there are no defences, justifications or authorisations of corporal punishment to be repealed (where the law is silent on the issue), it cannot automatically be assumed that corporal punishment is unlawful under criminal laws on assault: in these cases in particular it may be necessary to include in legislation an explicit prohibition.

When the Global Initiative is satisfied that no defences, justifications or authorisations for corporal punishment exist and that the law is interpreted as prohibiting all corporal punishment, states are added to the list of those which have achieved full prohibition. In most cases, and always when a reading of the law raises any uncertainty or appears to have the potential for ambiguity, the Global Initiative seeks official confirmation from governments and other sources that the new law is unequivocally interpreted as prohibiting all corporal punishment in childrearing.

The following issues are taken into account when examining legislation which is said to prohibit all corporal punishment, particularly in the home.

***(a) Does the law repeal all legal defences, justifications and authorisations for the use of corporal punishment in childrearing? If the law confirms a “right to discipline/correct” or similar provision, does it explicitly state that this excludes the use of corporal/physical punishment?***

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<sup>1</sup> The General Comment is available at [www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx) in English, French, Spanish, Arabic, Russian and Chinese.

So long as the law provides for a “right of correction”, a “right to administer reasonable punishment”, a “right to use force by way of correction” or other similar right, some level of corporal punishment will remain lawful. This right may be in written legislation and/or in common/case law. Wherever it is, it must be repealed/amended.

Occasionally, prohibiting legislation is enacted which takes precedence over existing legal provisions which are contrary to it – but further reform is necessary to formally repeal those provisions. In such cases, providing the prohibition is robust, the state is added to the list of those which have achieved prohibition and the Global Initiative continues to advocate for the removal of the contrary provisions from the statute book.

***(b) Does the law explicitly prohibit corporal punishment? If the law does not refer specifically to “corporal” or “physical” punishment, does it use some other phrase which clearly means the same thing – e.g. prohibiting “the use of force for the purpose of discipline/correction”?***

It is not enough for the law to prohibit “violence”, “abuse”, “cruelty”, etc. The deep-rooted and near universal acceptance of physical punishment in childrearing means that it is not readily perceived or understood (by lawmakers and parliamentarians any more than by professionals and the public) as a violent, abusive or cruel act: quite the opposite, it is often argued that it is for a child’s “own good”. For the same reason, a law prohibiting “all forms of violence” does not give a clear message that corporal punishment, particularly in its lighter forms, is unlawful. However, a law which prohibits “violent punishment” may be satisfactory depending on the context, since it incorporates the punitive intention of the violence.

Similarly, it is not enough for the law to confirm a child’s right to respect for human dignity and/or physical integrity. While corporal punishment is a violation of this right, for reasons stated above it is typically not perceived as such.

Constitutional provisions against “cruel and degrading treatment/punishment” are not considered to prohibit all corporal punishment unless there is a high level court judgment confirming this (see (d) below).

***(c) Does the prohibition clearly apply to all forms of corporal punishment, without exception?***

A law which prohibits “corporal punishment which is harmful”, “corporal punishment which is humiliating”, “corporal punishment which is degrading” or similar will not necessarily be interpreted as applying to all corporal punishment however light. Prohibiting “harmful” etc. corporal punishment leaves open the possibility that there is a threshold which must be reached before the punishment becomes unlawful and that “light” corporal punishment remains lawful.

***(d) If the letter of the law is ambiguous, is there strong evidence that it is interpreted as prohibiting all corporal punishment without exception?***

If, after examining the legislation in light of the previous questions, it seems that there is still a possibility that the law was intended to achieve full prohibition or may be interpreted as doing so, the Global Initiative seeks firm evidence of this. Evidence might include a statement in the explanatory note of the law stating that it is to be interpreted as prohibiting all corporal punishment, a record of parliament clarifying that this was the intention in passing the law, a relevant high court ruling or other significant case law, evidence of public awareness raising concerning the prohibition (educating people about the law in addition to promoting positive discipline), correspondence with government officials and parliamentarians, official statements, etc.

Each case is decided on its merits. Following investigation, the Global Initiative may add the state to the list of those achieving prohibition or continue to promote and support advocacy for further law reform or both.

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