

Prohibiting corporal punishment of children

A guide to legal reform and other measures



Prepared by the Global Initiative to End All
Corporal Punishment of Children

www.endcorporalpunishment.org

February 2009



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

Preface

"One of the key recommendations of the UN Secretary-General's Study on Violence against Children is that states should prohibit all forms of violence against children, including all corporal punishment. The report of the Study, which was submitted to the General Assembly in October 2006, sets a target of 2009 for completing prohibition.

The Committee on the Rights of the Child, in its authoritative General Comment on 'The right of the child to protection from corporal punishment', emphasises that prohibition is an immediate obligation of States parties to the Convention, and provides detailed guidance to states.

I very much welcome this handbook, and the associated web-based resources, which are designed to help states in all regions achieve effective prohibition and to highlight the advice of the Committee. It is not easy to change the mindset of societies and move adults on from justifying violence against children as 'discipline'. But we really cannot keep children waiting any longer for the legal protection from being hit which we as adults take for granted."

Paulo Sérgio Pinheiro, Independent Expert appointed by United Nations Secretary-General Kofi Annan in 2003 to lead the comprehensive global UN Study on Violence against Children



Paulo Sérgio Pinheiro in Mali classroom

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Acknowledgements

Design and layout by Simon Scott
Printed in the UK by The Russell Press Limited, Nottingham

The Global Initiative to End All Corporal Punishment of Children is administered by the Association for the Protection of All Children, APPROACH Ltd, a registered charity No. 328132.
Registered office 94 White Lion Street, LONDON N1 9PF, UK.

PUBLISHED 2009 BY:
Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org
Originally published in English January 2008; revised edition February 2009 also available in French and Spanish

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

Introduction

This handbook describes the legal and other measures necessary for effective prohibition and elimination of all corporal punishment of children, in the home and all other settings. The first section outlines the human rights imperative to prohibit all corporal punishment of children. Section 2 outlines how to undertake legal reform to achieve this. Other measures to support prohibition are the focus of section 3. Online resources to support the handbook are available on the Global Initiative website:

www.endcorporalpunishment.org/reform.

In June 2006, the Committee on the Rights of the Child issued a General Comment on children's right to protection from all corporal punishment and all other cruel or degrading punishment, which confirms governments' obligation to prohibit and eliminate all corporal punishment in all settings, including the home, and gives detailed guidance on law reform and other necessary measures.

In October 2006 the Report of the UN Secretary-General's Study on Violence against Children was submitted to the General Assembly: it urges all states to prohibit all corporal punishment of children in all settings, setting a target date of 2009.

1. The human rights imperative to prohibit all corporal punishment

The human rights imperative to prohibit and eliminate all corporal punishment and all other degrading forms of punishment of children is premised on the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law, originally formulated in the International Bill of Human Rights and affirmed and developed in the UN Convention on the Rights of the Child (CRC) and other international human rights treaties.

Article 37 of the CRC requires states to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"; article 19 requires states to protect children "from all forms of physical or mental violence". The Committee on the Rights of the Child – the monitoring body for the CRC – has repeatedly emphasised that this includes the prohibition and elimination of corporal punishment in all settings, including the home, most comprehensively in General Comment No. 8 (2006) on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)".¹ General Comments by the Committee on education and on juvenile justice similarly stress the obligation to prohibit corporal punishment.² The Committee has also emphasised that it is referring to *all* corporal punishment, "however light", providing a comprehensive definition in its General Comment No. 8:

"... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). ... [C]orporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention [on the Rights of the Child]. These include, for example, punishment

¹ See also the Committee's recommendations to states parties (extracts concerning corporal punishment available at www.endcorporalpunishment.org)

² General Comment No. 1 on "The aims of education" (2001), para. 8; General Comment No. 10 on "Children's Rights in Juvenile Justice" (2007), paras. 25 and 28c

*which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.*³

Other international human rights instruments include provisions which have been interpreted as requiring explicit legal prohibition of corporal punishment.⁴ Many regional human rights instruments and their monitoring bodies similarly call for prohibition.

Human rights standards do not support the assertion that a certain degree of “reasonable” or “moderate” corporal punishment is in the “best interests” of the child. The Committee on the Rights of the Child states that “interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child’s views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity”.⁵

Neither do human rights standards support the argument that prohibition of corporal punishment within the home is a breach of family rights to privacy. The Convention on the Rights of the Child fully upholds the importance of the family unit, and there is no conflict between this and realising the equal right of all family members to protection within it.

Faith-based arguments for corporal punishment – including those based on Biblical interpretation and on Shariah law – are also unsustainable. International human rights law upholds every person’s right to religious freedom, but requires that manifestation of religious beliefs be limited in order to protect the fundamental rights and freedoms of others.⁶

And as the Committee on the Rights of the Child emphasises, prohibiting and eliminating corporal punishment of children is not only an immediate human rights obligation for States; it is also a key strategy for reducing and preventing all forms of violence in societies.⁷

2. Legislative measures to prohibit corporal punishment

Effective prohibition of corporal punishment requires that it be explicitly prohibited in law. Prohibition by policy or guidelines is inadequate because it does not achieve equal legal protection for children from assault and is often undermined by legal defences and justifications for the use of corporal punishment (see page 7). Prohibition in law necessitates a clear, unambiguous statement in legislation that all corporal punishment is prohibited (see examples in Box 5, pages 14 and 15). Children, like all people, have a right to equal protection under the law, including equal protection from assault. This should apply in all contexts – in the family home, schools, juvenile justice systems, alternative care (institutions, foster care, day care, etc), in the community and in situations of employment.

States’ human rights obligations require prohibition (see page 3), and prohibition provides the essential foundation for effective child protection, as well as for the promotion of positive parenting and non-violent disciplinary measures. In its General Comment No. 8, the Committee on the Rights of the Child outlines the legislative and other measures necessary to achieve prohibition and elimination of all corporal punishment of children. It is not enough for states to advise parents and others that corporal punishment should not be used – it must be written into the law. Otherwise, the idea persists that breaching a child’s human dignity and physical integrity is acceptable, normal or even – as some still suggest – “in their best interests”, perpetuating children’s status as objects or property. As the definition adopted by the Committee makes clear (see above, page 3), all forms and degrees of corporal punishment should be prohibited. States do not compromise over protecting other population groups – women or older people for example – from all forms of violence: children have a right to equal protection.

All countries have laws making assault a criminal offence. It would seem that this criminal law on assault would logically prohibit hitting children, just as it prohibits hitting men and women. But in many states, the law also confirms that parents, and other people acting in the place of parents (*in loco parentis*), have a right to use “reasonable chastisement”, “reasonable punishment” or “lawful correction” – assault disguised as discipline or control. In some states this is explicitly stated in legislation (see examples in Box 3, page 10).

In other states, particularly those following the common law system, the right to use “reasonable” corporal punishment as a form of discipline is

3 Para. 11

4 Committee on Economic, Social and Cultural Rights (1999), General Comment No. 13 on the right to education; Human Rights Committee (1992), General Comment No. 20 on article 7 (prohibition of cruel, inhuman and degrading treatment or punishment); Universal Declaration of Human Rights (article 5); International Covenant on Civil and Political Rights (article 7); UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; case law of the Human Rights Committee, and the work of the Special Rapporteurs on Torture and on the Right to Education

5 Committee on the Rights of the Child General Comment No. 8 (2006), para. 26

6 Committee on the Rights of the Child General Comment No. 8 (2006), para. 29

7 Committee on the Rights of the Child General Comment No. 8 (2006), para. 3

not written into the law but has been established through case law, where courts have ruled that defendants charged with assault of children are not guilty because the nature and/or degree of assault on the child would be considered “reasonable” in childrearing.

In some states, the law is completely silent on corporal punishment and there is no case law on the issue, but nevertheless there is a traditional, assumed “right” of parents and others with parental authority to use it.

Where legal defences allow “reasonable” or “moderate” punishment, it is left to the courts to decide what is and is not reasonable. This contributes to a confused overall message about hitting or assaulting children in the name of “discipline”, confirming only that at least some level of violence is acceptable.

In recent years, there have been high level national court decisions in some states which have recognised all corporal punishment by parents and others as unconstitutional or incompatible with states’ obligations under the Convention on the Rights of the Child and/or other international or regional human rights instruments. While welcome, such judgments are not in themselves sufficient to achieve prohibition, because – until prohibition is achieved in legislation – they are always open to reversal by later judgments. (Examples of key judgments are available online at www.endcorporalpunishment.org.)

Key elements of law reform

Box 1: Summary – key elements of law reform and its implementation

- *repeal of any legal defences and any laws or regulations authorising corporal punishment so as to ensure that the criminal law on assault applies equally to any assault on a child, wherever the child is and whoever the perpetrator*
- *establishment of a range of appropriate responses and sanctions to address the continued use of corporal punishment by parents and others*
- *explicit prohibition of corporal punishment and other cruel or degrading punishment in legislation applying in the various settings of children’s lives – home and family, schools, and care and justice systems*
- *clear direction and training to all providers of services for children and families to support and enforce prohibition*
- *public and professional education about the law change*

Removal of defences, justifications and authorisations of corporal punishment

States need to review legislation (primary and secondary and any applicable customary or religious law) and case law (relevant judgments of courts) to identify any which may impact on children’s protection from corporal punishment and other cruel or degrading punishment in the family and in the context of care, education and justice systems.

Prohibition of corporal punishment of children in all settings requires the removal of any legal defences or justifications, wherever they exist in common (case) law or legislation. Also, of course, all laws authorising or regulating the administration of corporal punishment, for example in education law or legislation applying to care or penal systems, must be removed.

Simply repealing (removing) a defence or authorisation from written law is a “silent” reform. It does not send a clear educational message to society that corporal punishment is no longer lawful. When the repeal of the defence is accompanied by the insertion of a statement which makes it clear that assault can no longer be justified as punishment or correction, explicit prohibition is achieved.

In some states there is no written law recognising the “right” of parents to use corporal punishment in childrearing but the courts have allowed adults charged with cruelty or assault of a child to claim in their defence that they were exercising their “right” to administer “reasonable” punishment. In this way, case law – common law – has developed justification for some level of violent punishment of children. Defendants may then be found guilty or not guilty depending on whether or not the courts consider the degree and/or nature of the punishment inflicted is “reasonable” in the circumstances.

This common law defence can be removed, and prohibition achieved, by legislation which includes the following statement:

“Assault of a child cannot be justified in any proceedings on the grounds that it constituted reasonable punishment.”

In other states, the right of parents and other persons with lawful authority over a child to administer corporal punishment is explicitly recognised in legislation, for example in criminal law which states:

“Every parent of a child and every person in the place of the parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances ...”

This defence can be repealed, and prohibition achieved, by legislation which states:

“(1) The purpose of this Act is to amend the principal Act to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction.
(2) Section x is repealed.”

In some states, the right of parents to administer “reasonable chastisement” or similar is recognised in more than one law. It is important that all relevant laws are amended and all references to this right repealed.

Where there are no legal defences in either written law or case law, but simply a traditional assumption that violent and humiliating punishment of children is lawful, it will be necessary to insert into legislation an explicit statement prohibiting corporal punishment and other cruel or degrading forms of punishment (see examples in Box 5, pages 14 and 15).

The process of removing legal defences to achieve prohibition is summarised on page 13.

The only way to ensure clear, uncompromising prohibition of all corporal punishment is to use clear, uncompromising language in legislation – and to repeat it, for the benefit of all those living or working with or for children, in the legislation applying to the various settings of children’s lives, in family law, education law and so on. The first purpose of good law is educational, to prevent and deter crimes, not simply to punish crimes after the event. Clear language prohibiting corporal punishment has an educational purpose.

Box 2: Removal of defences, justifications and authorisations of corporal punishment: advice from the Committee on the Rights of the Child

“In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or ‘smack’ or ‘spank’ a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed ‘discipline’ or ‘reasonable correction’.

“Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation – e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law – clearly prohibits its use in the relevant settings.”

Committee on the Rights of the Child (2006), General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)”, paras. 34 and 35

When corporal punishment is prohibited in legislation applying to the family, schools, institutions and other settings (in family law, education law, employment law and so on), there is no real need to provide for sanctions for breach of the prohibition. This is because – as noted above – once all defences and authorisations of assaults on children have been removed, the criminal law on assault will apply equally to punitive assaults on children in the course of “discipline”. So if prosecution is necessary, it can be pursued under the criminal law on assault.

BOX 3: Examples of legal defences for using corporal punishment

The following examples of legal defences for the use of corporal punishment are taken from legislation in all regions. Legal reform to prohibit corporal punishment must include the removal of these provisions from law.

“Nothing in this Act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.”

“Parents are authorised to reprimand and adequately and moderately correct their children.”

“The law permits the types of discipline inflicted on children by their parents and teachers as sanctioned by general custom.”

“Parents and other legal representatives of the child may appropriately, according to their judgment, discipline the child, for avoiding to carry out his duties and for disciplinary infractions.”

“Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done: by a parent or guardian for the purpose of correcting his child or ward, such child or ward being under eighteen years of age.”

“It is lawful for a parent or a person in the place of a parent, or for a schoolmaster, or master, to use, by way of correction, towards a child, pupil or apprentice under his care such force as is reasonable under the circumstances.”

“Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.”

“Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein.”

“Nothing which is done in good faith for the benefit of a person under 12 years of age, or of unsound mind, by, or by consent of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person, provided that this exception shall not extend to the intentional causing of death, or to the attempting to cause death.”

Box 4: Authorisations of corporal punishment in penal and education law

The following examples of authorisations for the use of corporal punishment are taken from legislation relating to penal systems and schools in all regions. Removing them is an integral element of law reform to prohibit corporal punishment.

“Any child or young person charged with an indictable offence and tried by a juvenile court ... if the child or young person is a male, the court may, in its discretion, either in lieu of or in addition to any other punishment, order such child or young person to be privately whipped”

“No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a Reformatory and Industrial School or otherwise.”

“[The Court may] order the child, if a male, to be whipped with not more than ten strokes of a light cane – (i) within the Court premises; and (ii) in the presence, if he desires to be present, of the parent or guardian of the child.”

“Wherever a male person who in the opinion of the court has not attained seventeen years of age has been found guilty of any offence the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishments to which he is liable.”

“Except in cases where the punishment of whipping is provided for as hadd, the sentence of whipping provided under any law, rule, or regulation for the time being in force shall stand abolished.”

“(1) A Principal, or teacher to whom a principal delegates such authority, may, when all other courses of action have been exhausted, administer reasonable corporal punishment to a secondary school child and a primary school child as may from time to time be prescribed by regulation. (2) Corporal punishment may only be so administered for such offences as shall have been previously agreed to by the school principal and the school committee of that school.”

“Firm discipline shall be maintained and enforced in all schools, but all degrading and injurious punishments are prohibited, and no child shall receive corporal punishment of any form save as is hereinafter in this regulation provided.”

“When the chief of school educates pupils in accordance with the regulations specified ..., he/she shall employ such disciplinary or admonitory methods as not causing physical pain to pupils except in cases unavoidable for the purpose of education.”

Explicit prohibition

In states where there is no common law or legislative recognition of a “right to administer reasonable punishment” or similar, there is nevertheless often a traditional acceptance of the use of corporal punishment in childrearing. This means that while the assault laws appear to make no distinction between adults and children, it is tacitly assumed that it is not unlawful to hit children in the name of discipline.

In such states, prohibition can only be achieved through the introduction of an explicit statement of prohibition in law applying to the family, schools, penal systems for children and in the laws and regulations governing all alternative care settings, including institutions, foster care and day care.

Many states also have a comprehensive child protection or children’s rights law, which should include a provision recognising children’s right to protection from all forms of violence, including all corporal punishment, in all settings, including within the family.

Increasingly, states have specific laws on “domestic” or “family” violence. In some states these confirm the “right” of parents to use physical punishment. It is vital that such provisions are repealed (see page 7). Domestic violence law should include a provision reflecting the prohibition of all corporal punishment (see also page 29).

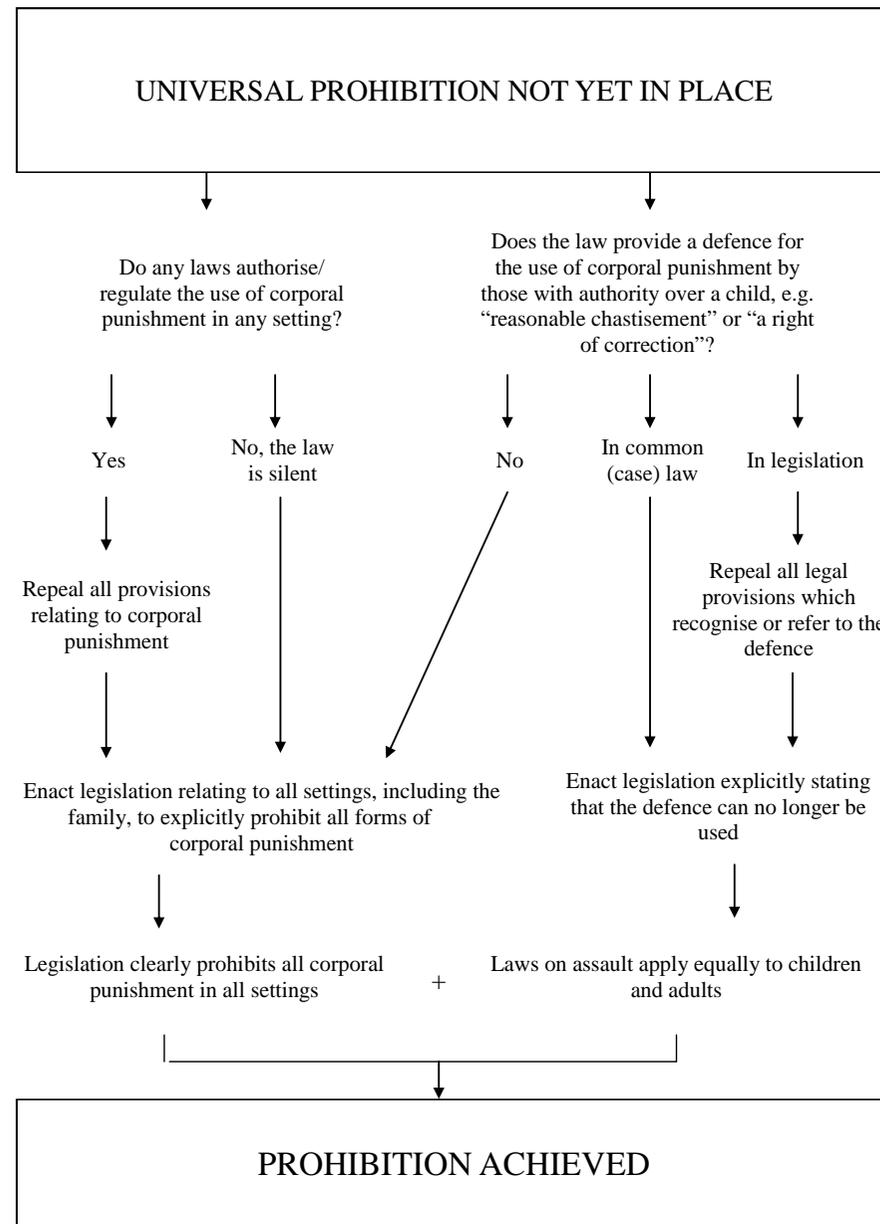
Model examples of legal provisions explicitly prohibiting corporal punishment of children are listed in Box 5 (pages 14 and 15). As noted above, even where all defences and authorisations of corporal punishment have been removed, explicit prohibition should be confirmed in the appropriate legislation.

It is also important to recognise that the prohibition should cover corporal punishment and all other cruel or degrading punishment. As the Committee on the Rights of the Child states:

“... corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention [on the Rights of the Child]. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”⁸

A number of the examples in Box 5 illustrate how this can be included in legislation.

Achieving prohibition – a summary



8 Committee on the Rights of the Child General Comment No. 8 (2006), para. 11

BOX 5: Examples of explicit prohibition

The following are extracts from legislation which explicitly prohibit corporal punishment. (Further details and examples, as well as examples of prohibition in laws relating to education, care and juvenile justice, are available at www.endcorporalpunishment.org/reform).

“Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.”

“A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted.”

“The child has the right to care and security. He or she shall be treated with respect as an individual and may not be subjected to corporal punishment or any other degrading treatment.”

“(1) The child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishment or to other humiliating or degrading treatment. (2) Disciplinary measures concerning the child can only be taken in accordance with the child’s dignity, and, under no circumstances are physical punishments allowed, or punishments which relate to the child’s physical and mental development or which may affect the child’s emotional status.”

“Nothing in [this provision] or in any rule of common law justifies the use of force for the purpose of correction.”

“Every child has the right ... to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions.”

“Parental authority confers the rights and imposes the duties to orient, educate, care, supervise and discipline children, which in no case authorises the use of corporal punishment or any other form of degrading treatment against children.”

“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 centres, that in no way represents

an authorisation of any sort to these parties for the use of corporal punishment or degrading treatment.”

“Parental authority confers rights and imposes the duty to educate, care, watch over and discipline children, excluding physical punishment or any other form of mistreatment or degrading treatment.”

“(1) All children and young people have a right to be treated well. This right includes a non-violent education and upbringing, based on love, affection, mutual understanding and respect, and solidarity. (2) Parents, representatives, guardians, relatives, and teachers should use non-violent methods of education and discipline to raise and educate their children. Consequently, all forms of physical and humiliating punishment are prohibited. The State, with the active participation of society, must ensure policies, programmes and protection measures are in place to abolish all forms of physical and humiliating punishment of children and young people. (3) Corporal punishment is defined as the use of force, in raising or educating children, with the intention of causing any degree of physical pain or discomfort to correct, control or change the behaviour of children and young people, provided that the act is not punishable. (4) Humiliating punishment can be understood as any form of offensive, denigrating, devaluing, stigmatising or mocking, treatment, carried out to raise or educate children and young people, with the aim of disciplining, controlling or changing their behaviour, provided that the act is not punishable.”

Using clear and explicit language

It is important that the language used in the process of reform makes absolutely clear that it refers to all forms of corporal punishment, including occasional as well as repeated punishments and including the full range of physical punishments, even those many consider “mild” (see Committee on the Rights of the Child’s broad descriptive definition above, page 3). The danger of enacting a provision which does not explicitly refer to “corporal punishment and other humiliating and degrading treatment” – instead, say, prohibiting “all forms of violence” – is that it leaves room for doubt as to whether a “light smack”, for example, would be considered lawful, even if it is the intention of parliament to categorically prohibit all forms of corporal punishment. Ultimately, it is the task of the courts to establish the meaning of written laws: the stated intentions of parliament in enacting those laws play a crucial role in such interpretation, but they are not the only factors that will be taken into account.⁹

There have been worrying examples in recent years of high level courts interpreting prohibition of “all forms of violence” as not including less severe forms of corporal punishment. This indicates how deeply ingrained traditional acceptance of punitive violence against children is in societies and underlines the need for explicit and clear language. (Information on high level court rulings is available online at www.endcorporalpunishment.org.)

Clear and explicit prohibition of corporal punishment leaves no room for confusion among the public and professionals working with families and children as to what are acceptable and lawful disciplinary measures for children. A clear prohibition provides a solid foundation for unequivocal public education and awareness-raising.

In the rare situations where a language does not have the exact words for “corporal punishment”, it is necessary to find a way to make explicitly clear that existing prohibitions of, for example, violence, assault and humiliation, apply in the context of disciplining or punishing children.

The only way to ensure clear, uncompromising prohibition of all corporal punishment is to use clear, uncompromising language in legislation.

⁹ For example, see Bennion, Francis (2001), *Understanding Common Law Legislation* (Oxford University Press)

Legitimate use of reasonable force – to protect children

Parents and other carers often need to use some degree of physical force to protect or restrain children, especially babies and young children. As the Committee on the Rights of the Child notes in its General Comment No. 8:

“The Committee recognizes that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. 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. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.”¹⁰

Although not strictly necessary, some states have found, when prohibiting all corporal punishment, that parents and others are reassured if the legislation also includes confirmation that reasonable force may be used for protective purposes.

The following are two examples of how the use of force for protective reasons may be provided for in legislation:

“Assault on a child is not unlawful if the act amounts to the use of reasonable force in order to –

- a. avert an immediate danger to the child or any other person;
- b. avert an immediate danger to property; or
- c. prevent the commission of a crime, or an act which would be a crime if the child had reached the age of criminal responsibility.”

¹⁰ Committee on the Rights of the Child General Comment No. 8 (2006), para. 14

“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. 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).”

In its General Comment, the Committee also comments on the use of reasonable force to restrain dangerous behaviour, for example in care or justice systems:

“The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.”¹¹

The online resources include examples of guidance for teachers and other professionals in the use of reasonable restraint and force (www.endcorporalpunishment.org/reform).

Ensuring that law reform is implemented in the best interests of children

In addition to enacting full prohibition, other key measures are necessary for effective abolition of corporal punishment. These include ensuring that the law allows for a range of appropriate responses, including prosecution when necessary and in the best interests of the child, for those who continue to use corporal punishment in the home and in other settings. There must also be clear direction to all providers of all services for children to support and enforce prohibition. These measures are discussed below.

Implementing prohibition of corporal punishment in the family

As noted above, removing all defences, justifications and authorisations of corporal punishment means that the criminal law on assault will apply equally to punitive assaults on children. But making children’s legal protection from assault equal to that of adults does not mean that every case of corporal punishment that comes to light should result in prosecution of parents. On the contrary, such a disruption to family life and relationships would seldom be in the best interests of the child concerned. Minor assaults on adults seldom get to court; many states recognise the *de minimis* principle – that the law does not concern itself with trivial matters (see Box 6, page 21).

The primary purpose of law reform is educative and preventive. Dealing constructively and effectively with parents who continue to use corporal punishment requires the establishment in child protection law of a range of responses, weighted towards supportive interventions and reserving criminal prosecution for the most serious cases. Guidance should also be prepared for all those involved in child protection on the need for interventions to emphasise the dangers and illegality of hitting children and to support positive, non-violent parenting, and setting out conditions and procedures for prosecution and other formal interventions should they become necessary.

When an assault on a child by a parent is reported or comes to light, the first response must be to ensure that the child is not at risk of significant harm, requiring immediate protective intervention. Wherever possible, the aim should be to seek to support the family – parents and children – through voluntary positive interventions which aim to stop violent and humiliating treatment of children, such as offers of advice, discussions with other parents, information on positive discipline, and so on. Prosecution of parents and other close family carers should only proceed when it appears

¹¹ Committee on the Rights of the Child General Comment No. 8 (2006), para. 15

to be the only way to provide the child with effective protection from significant harm and other supportive interventions have failed.

The question is often asked: “What is the point of the law if it is not enforced properly with prosecution?” It is very important to emphasise that the first purpose of all good law must be educational, including deterrence – in this case to deter and prevent violence against a child before it happens, rather than simply to punish the perpetrator after the event. And the likely direct and indirect effects on children, and on inevitably delicate family relationships, of prosecuting and possibly imprisoning a parent need to be understood. On the other hand, it must also be understood that the law on assault will be enforceable (just as enforceable as for assaults between adults), when this appears to be necessary to protect a child from significant harm and to be in the child’s best interests.

Formal interventions in the family to remove a parent perpetrator of violence or to remove the child should only proceed when they appear to be the only way to provide the child with effective protection from significant harm and other supportive interventions have failed. Any separation must conform to the principles laid down in the Convention on the Rights of the Child (article 9), with a court hearing, focusing on the best interests of the child, and with parents and the child represented. Exceptionally, it may be necessary – for the protection of the child – to immediately remove the child or the perpetrator from the home. Such measures should be temporary and only continued following a court hearing. Again, the best interests of the child should be paramount.

It is clear from the above that guidance should be developed and implemented which focuses on the need for interventions to emphasise the dangers and illegality of hitting children and to seek to provide appropriate support for positive, non-violent parenting. The guidance should set out conditions and procedures for prosecution and other formal interventions if they become necessary. Guidance is required for all those involved in child protection, including social workers, health workers, teachers, the police, prosecuting authorities and courts.

None of this must undermine the basic – and educational – message, that it is as unlawful to hit a child as to hit anyone else.

BOX 6: Implementing prohibition in the home/family: advice from the Committee on the Rights of the Child

“The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The de minimis principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

“Children’s dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children’s best interests. It is the Committee’s view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child’s views should be given due weight, according to his or her age and maturity.”

Committee on the Rights of the Child (2006), General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)”, paras. 40 and 41

Implementing prohibition of corporal punishment in settings outside the home

Following legal reform to repeal legal defences and authorisations for the use of corporal punishment, the criminal law on assault will apply equally to children, and can therefore be used in the prosecution of teachers, carers and others who inflict corporal punishment on children in settings outside, as well as within, the home.

A commitment to not using any form of corporal punishment or other cruel or degrading forms of punishment should be a condition of employment for staff working with children in schools and other settings outside the home, incorporating a system of formal warning, suspension and ultimately dismissal as deterrents. This can be accompanied, if it is felt necessary, by guidance as to when reasonable physical force may be used, for example for protection of the young person concerned or of others.

It is also necessary to establish independent inspection and monitoring of all education, care and justice settings, including talking to children in private, as well as child-friendly and accessible complaints procedures and protection against reprisals for those who report violence against children (see Box 7, next page).

BOX 7: Implementing prohibition outside the home: advice from the Committee on the Rights of the Child

“Where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home – in schools, other institutions and forms of alternative care, for example – prosecution may be a reasonable response. The threat to the perpetrator of other disciplinary action or dismissal should also act as a clear deterrent. It is essential that the prohibition of all corporal punishment and other cruel or degrading punishment, and the sanctions that may be imposed if it is inflicted, should be well disseminated to children and to all those working with or for children in all settings. Monitoring disciplinary systems and the treatment of children must be part of the sustained supervision of all institutions and placements which is required by the Convention. Children and their representatives in all such placements must have immediate and confidential access to child-sensitive advice, advocacy and complaints procedures and ultimately to the courts, with necessary legal and other assistance. In institutions, there should be a requirement to report and to review any violent incidents.”

Committee on the Rights of the Child (2006), General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)”, para. 43

Giving clear direction to all providers of all services for children to support and enforce prohibition

Governments should direct all providers of services for children – including public and private providers of schools, detention institutions, and other institutions and care settings (local authorities, social services, non-governmental and private bodies, religious organisations) – to have codes of conduct for all staff that confirm and reinforce the prohibition of corporal punishment and all other forms of cruel or degrading punishment. (This is discussed further in section 3.)

Other measures

Prohibition in law is insufficient on its own to eliminate corporal punishment. The following section considers other measures that are necessary to support prohibition, to ensure that children's protection from corporal punishment in legislation is matched by protection in practice, and to provide parents and others responsible for children with positive, participatory and non-violent methods of discipline.

3: Other measures to support prohibition

Law reform to prohibit all corporal punishment and other forms of humiliating punishment of children is essential for the realisation of children's rights. When accompanied by comprehensive and sustained awareness-raising, public education and promotion of positive, participatory and non-violent ways to approach parenting and discipline, law reform sends a strong educational signal, that it is no more legal or acceptable to hit or humiliate a child than anyone else. **But it cannot be emphasised enough that promotion of positive parenting without law reform is not sufficient to protect children from corporal punishment and realise their right to equal protection under law.**

A number of other measures should be introduced and maintained to support legal reform, including:

Awareness-raising on the law and children's right to protection

It is essential that the public, professionals working with and for children, and all children themselves are made aware of the prohibition of corporal punishment when it is achieved. It is likely that the process of legal reform itself will have generated substantial public and media debate, and this provides a ready vehicle for informing society about the new prohibition and how it will be implemented. Health centres, pre-school centres, schools, libraries, youth facilities and other places where children gather and learn are also important sites for providing information about the prohibition.

But it is important to recognise, too, that this awareness-raising is not a one-off activity to coincide with the introduction of prohibition. Rather, it requires a sustained process over a long period to ensure all members of society, children and adults, are aware of what the law says, of children's right to protection from all corporal punishment and other humiliating or degrading treatment, and of how to ensure the law is adhered to.

Promotion of positive parenting and non-violent discipline of children

As well as raising awareness of the prohibition, there needs to be active promotion of positive, non-violent and participatory approaches to discipline together with education about the negative effects of corporal punishment of children. This should occur formally and informally at all points of contact between families and professionals working with and for children, including pre- and post-natal healthcare settings, pre-school centres, schools and libraries, and through community/social services provision. Engaging religious leaders and faith communities in the process can have a significant impact on public attitudes towards non-violence in childrearing.

Training in positive disciplinary techniques and behaviour management should be built into training and development programmes for teachers and all staff in institutions, both through initial training programmes and in-service training provision. This should include the development of participatory ways to involve children and young people in discipline issues.

And both the public and professional education and awareness-raising should include information about the negative effects of corporal punishment of children, building on the increasing body of research on the issue and particularly building on research looking at children's own views and accounts of their experiences.

In states in all regions of the world, programmes and materials have been developed to promote positive discipline for parents, teachers and other carers. In some states, the government has taken the lead with public education. In others, non-governmental organisations, human rights institutions and private sector publishers and the media have taken initiatives. Specific examples of measures taken to support prohibition, including links to materials and programmes, are available on the website (www.endcorporalpunishment.org/reform).

BOX 8: Awareness-raising and the promotion of positive, non-violent forms of discipline and child-rearing: advice from the Committee on the Rights of the Child

“Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes and practice. Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

“In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.

“The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable,

members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that 'the best interests of the child will be their basic concern'. Under article 12, States are required to assure children the right to express their views freely 'in all matters affecting the child', with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children's participation rights. In its general comment No. 1 on 'The aims of education', the Committee has emphasized the importance of developing education that is 'child-centred, child-friendly and empowering'.

"The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others. These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems."

Committee on the Rights of the Child (2006), General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)", paras. 45, 46, 47 and 48

Integrating prohibition into professional codes of conduct and conditions of work

Professional bodies representing all those working with families – including health workers, teachers, social services personnel and child protection workers – should be encouraged to develop codes of conduct for their members which refer to the legal prohibition of corporal punishment and promote positive, non-violent parenting.

Similarly, the prohibition of corporal punishment and the promotion of positive and participatory disciplinary approaches should be reflected in the codes of conduct developed by professional bodies of those working with children in settings outside the home, including teachers and other staff in schools, lawyers and other law enforcement personnel, and staff in juvenile detention institutions and in all forms of alternative care.

Making a commitment to not using any form of corporal punishment or other cruel or degrading forms of punishment should be a contractual condition of employment.

Inclusion of strategies to eliminate corporal punishment within strategies addressing domestic violence

Most states will have developed programmes and services to combat "domestic" violence, violence between adults within the home/family. Reflecting the persisting legality of corporal punishment and other humiliating forms of punishment of children in the family, the definition of domestic or family violence often excludes direct punitive violence by adults against children. It is important to ensure that all such programmes and services are reviewed so that all forms of violence against all family members, including children, are appropriately addressed, and that national and local strategies to reduce and eliminate domestic violence incorporate measures to protect children from corporal punishment.

Monitoring and evaluation

An important element of implementing prohibition outside the family is the establishment of independent inspection and monitoring of all education, care, justice and employment settings, ensuring that inspectors routinely talk to children in private and invite them to share any concerns, the creation of child-sensitive and accessible complaints procedures, and protection from reprisals for those who report violence against children. It is important too to find out children's experiences within their family homes, through confidential interview research with children themselves and with their parents as well as through research into parental, professional and public attitudes towards corporal punishment. Such research requires sensitive preparation and implementation, building on the increasing body of research involving children themselves. Other sources of information include analysis of the use of support services and statistics relating to reporting of violence against children.

BOX 9: Monitoring and evaluation: advice from the Committee on the Rights of the Child

"The Committee, in its general comment No. 5 on 'General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)', emphasizes the need for systematic monitoring by States parties of the realization of children's rights, through the development of appropriate indicators and the collection of sufficient and reliable data.

"Therefore States parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment and thus realizing children's right to protection. Research using interviews with children, their parents and other carers, in conditions of confidentiality and with appropriate ethical safeguards, is essential in order to accurately assess the prevalence of these forms of violence within the family and attitudes to them. The Committee encourages every State to carry out/commission such research, as far as possible with groups representative of the whole population, to provide baseline information and then at regular intervals to measure progress. The results of this research can also provide valuable guidance for the development of universal and targeted awareness-raising campaigns and training for professionals working with or for children.

"The Committee also underlines in general comment No. 5 the importance of independent monitoring of implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see also the Committee's general comment No. 2 on 'The role of independent national human rights institutions in the protection and promotion of the rights of the child'). These could all play an important role in monitoring the realization of children's right to protection from all corporal punishment and other cruel or degrading forms of punishment."

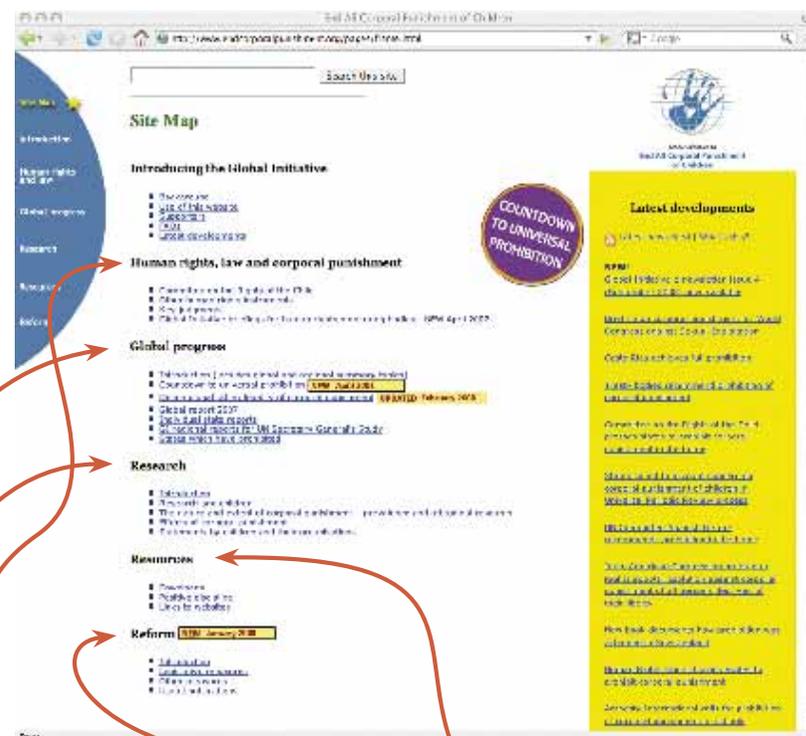
Committee on the Rights of the Child (2006), General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)", paras. 50, 51 and 52

Global Initiative website: www.endcorporalpunishment.org

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

BOX 10: Summary – key measures to support law reform and its implementation

- awareness-raising on the law and children's right to protection
- promotion of positive, non-violent relationships between adults and children
- integration of prohibition into professional codes of conduct and conditions of work
- inclusion of strategies to eliminate corporal punishment within strategies addressing domestic violence
- monitoring and evaluation of children's experiences of corporal punishment and the effectiveness of the prohibition



Human rights, law and corporal punishment including the work of the Committee on the Rights of the Child and other human rights treaty monitoring bodies, and information on national high level court judgments

Global progress
including regional and global reports and individual reports on each state and territory, on the legality of corporal punishment in the home, schools, penal systems and alternative care settings; information on each state which has achieved full prohibition

Research
prevalence research, research into children's own views and experiences, and research into the effects of corporal punishment

Resources
a range of internet and other resources to support the promotion of positive, non-violent relationships with children, for teachers, parents and other carers; information on campaigns against corporal punishment worldwide, and downloads of GI reports

NEW for 2008

Reform
online resources to support this publication, including examples of legislation and other measures supporting prohibition from states which have achieved full prohibition, and information on national and international campaigns

The Global Initiative to End All Corporal Punishment of Children

The Global Initiative promotes and supports action by states worldwide to fulfil children's right to protection from corporal punishment in all settings – the family home, schools, juvenile justice systems, alternative care and situations of employment. It 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. Ending all corporal punishment is fundamental to improving the status of children and realising their rights to respect for their human dignity and physical integrity and to equal protection under the law.

The aims of the Global Initiative are to:

- forge a strong alliance of human rights agencies, key individuals and international and national non-governmental organisations against corporal punishment;
- make corporal punishment of children visible by building a global map of its prevalence and legal status, ensuring that children's views are heard and charting progress towards ending it;
- lobby governments systematically to ban all forms of violence including corporal punishment and to develop public education programmes;
- promote awareness-raising of children's rights to protection and public education on positive, non-violent forms of discipline for children;
- provide detailed technical assistance to support states with these reforms.

An area of the website has been developed as an online resource to specifically support this legal reform handbook:

www.endcorporalpunishment.org/reform.