

Progress towards prohibiting all corporal punishment of children in ASEAN member states

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This briefing highlights the human rights imperative to prohibit all violent punishment of children in all ASEAN member states. It summarises progress so far towards prohibition in each state and what remains to be done. Aiming to promote national action for prohibition, it emphasises the many immediate opportunities for working to fulfil children’s right to protection in law from all corporal punishment in all settings – in particular, where states are currently reforming legislation related to children, and in relation to the global 2030 Agenda for Sustainable Development and target 16.2 to end all violence against children.

Why prohibit corporal punishment?

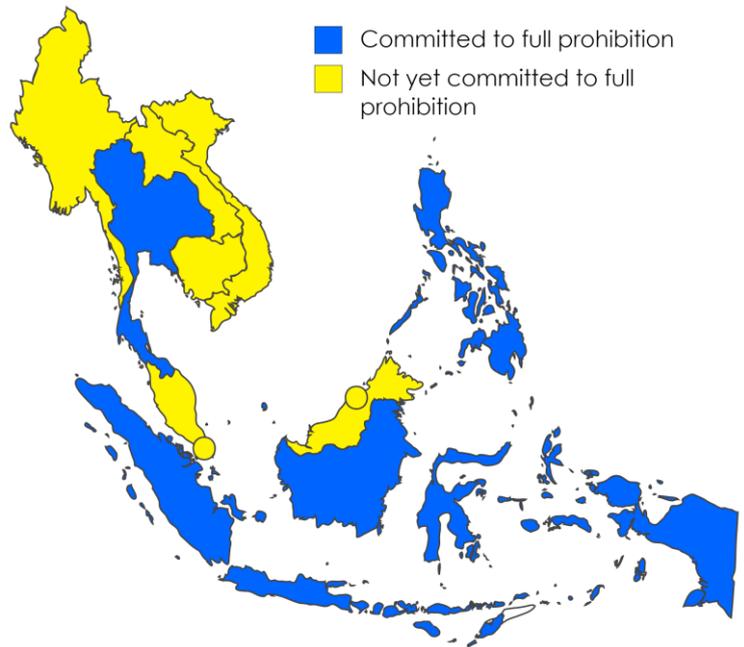
Everyone has a right to protection in law from being hit and hurt, regardless of where they are, who they are with or what the circumstances are. Children are particularly vulnerable to violence – and yet in so many states they are the last to receive this basic legal protection. In many societies, the belief that physical and other humiliating punishment is a necessary part of “disciplining” children is widely held. Some people view the use of violent punishment in childrearing and education as a religious imperative, but the right of freedom of religion does not justify violating a child’s right to respect for human dignity and physical and mental integrity. Corporal punishment of children is highly symbolic of children’s low status in society and it is incompatible with a view of children as human beings and holders of human rights.

The UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised – in many cases repeatedly – in UN treaty body examinations of every ASEAN member state. Most have also received recommendations to prohibit corporal punishment during the Universal Periodic Review of their overall human rights records.

Legal protection from all corporal punishment is a right in itself. But prohibition is also critical for fulfilling children’s rights to health, development and education. Experience of corporal punishment as a child is associated with poor mental health in childhood and adulthood. Physical punishment is linked to increased aggression and antisocial behaviour in children and an increased likelihood of perpetrating, experiencing and accepting violence as an adult. It damages family relationships and, far from teaching children how to behave well, it teaches children that violence is an acceptable way to resolve conflict.

Progress towards prohibition

Progress towards universal prohibition of corporal punishment is rapidly gaining pace. Globally, 52 states have prohibited all corporal punishment including in the home and another 55 have committed to full prohibition. No ASEAN member state has yet achieved prohibition in all settings, but reform is under way in some states, and governments in three states – the Philippines, Thailand and Indonesia – have publicly committed to enacting prohibiting legislation.



Legislation prohibiting all corporal punishment has been enacted comprehensively in alternative care settings in only one of the 10 ASEAN member states, in day care in one state, in all schools in five states and in all penal institutions in four states. In five states, the law does not allow for children convicted of a criminal offence to be sentenced to corporal punishment.

Prohibition of corporal punishment – a foundation for ending violence against children



As a key strategy in reducing and preventing violence in families and societies, prohibition of all violent punishment – the most common form of violence against children – is a critical step towards the achievement of target 16.2 of the 2030 Sustainable Development Agenda (end all violence against children) and is highly relevant to other targets, including those related to health and wellbeing, and to quality education.

Indicator 16.2.1 – one of three indicators adopted by the UN Statistical Commission to monitor progress towards target 16.2 – recognises the centrality of prohibiting and eliminating corporal punishment for ending all violence against children: “Percentage of children aged 1-17 who experienced any physical punishment and/or psychological aggression by caregivers in the past month”.

“We envisage a world of universal respect for human rights and human dignity.... A world ... in which every child grows up free from violence and exploitation.”

Transforming our World: the 2030 Agenda for Sustainable Development

The ASEAN Regional Plan of Action on the Elimination of Violence against Children

The ASEAN Regional Plan of Action on the Elimination of Violence against Children, adopted in November 2015, also recognises the primacy of corporal punishment among forms of violence experienced by children. Its definition of physical violence – which includes “all forms of corporal punishment” – is based on the definition of corporal punishment adopted by the UN Committee on the Rights of the Child in its General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”.

ASEAN Regional Plan of Action on the Elimination of Violence against Children: Action 3(a) Law Reform

21. *Prohibit in law and regulations all forms of violence against children in all settings...*
22. *Undertake a legislative review to ensure that legislation relevant to children’s protection from violence, are in full conformity with applicable international human rights standards, including but not limited to the CRC and its optional Protocols.*
23. *Encourage to enact legislation to promote the implementation of positive discipline for children and to prohibit violence against children, including corporal punishment within the family, schools, and other settings including in the juvenile justice system.*

The ASEAN Regional Plan of Action on the Elimination of Violence against Children recommends priority actions for ASEAN member states to focus on over the next five years. In the area of law reform, the recommended priority is to undertake a legislative review to ensure that relevant laws are in conformity with human rights standards (Action 3.22). **In order to fulfil their immediate obligations under human rights law, states must move quickly to enact the necessary reforms to prohibit all corporal punishment, including in the home.**

Other priority actions include, for example, the development of guidelines on non-violent ways to nurture and care for children in all settings (Action 1.1), raising awareness on the harmful effects of violence (Action 1.2) and improving protection and support for children affected by violence (Action 2.15). **The impact of these actions will be considerably weakened while laws in ASEAN member states still condone or even authorise violent punishment of children.**

“... eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties...”

Committee on the Rights of the Child, 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)”

Opportunities for achieving prohibition

Law reform to prohibit corporal punishment is achieved when legislation sends a clear message that all forms of corporal punishment, whatever their level of severity or their perceived impact in terms of “injury” or “harm”, are prohibited in all settings, including within the home. The law must be absolutely clear that discipline of children must never involve physical punishment.

The deeply held view that some degree of violent punishment is necessary or even a duty in childrearing means it is not perceived as an abusive or violent act unless it reaches some level of severity. This is reflected in laws that authorise “moderate” correction or “reasonable” punishment of children – provisions that typically constitute a legal defence against charges of assault. These defences must be explicitly repealed or amended to unequivocally rule out the use of corporal punishment as a “disciplinary” method. It is also vital to repeal all laws authorising or regulating corporal punishment in schools and other institutions, and in penal systems.

The table below summarises the progress made towards prohibition in each of the 10 ASEAN member states and what remains to be done. Crucially, it identifies some immediate opportunities for drafting and introducing prohibiting legislation. The Global Initiative is pleased to offer technical advice and support on all aspects of drafting prohibiting legislation, and we welcome information on opportunities for action: email info@endcorporalpunishment.org.

<i>State</i>	<i>Corporal punishment not fully prohibited</i>	<i>Opportunities for law reform and progress towards prohibition</i>	<i>Immediate action required to achieve full prohibition</i>
Brunei Darussalam	Home, alternative care, day care, schools, penal system	No known current opportunities or moves towards drafting prohibiting legislation; Government rejected 2014 UPR recommendations to prohibit.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all defences/authorisations for its use.
Cambodia	Home, alternative care, day care	Law on Child Protection being drafted; no known proposals for prohibition of corporal punishment.	Ensure draft Law on Child Protection includes clear prohibition of corporal punishment and repeal of parental authority to discipline.
Indonesia	Home, alternative care, day care, schools, penal system	Government accepted 2017 UPR recommendations to prohibit and committed as a Pathfinder under the Global Partnership to End Violence Against Children, but draft Criminal Code authorises corporal punishment and new Aceh Criminal Code provides for judicial corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting all corporal punishment of children and repealing all laws and bylaws authorising it, including under Shari’a law in Aceh province.

State	<i>Corporal punishment not fully prohibited</i>	<i>Opportunities for law reform and progress towards prohibition</i>	<i>Immediate action required to achieve full prohibition</i>
Lao PDR	Home, alternative care, day care, penal institutions	Constitution and Penal Code being amended; no known proposals to prohibit corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment.
Malaysia	Home, alternative care, day care, schools, penal system	No known moves towards drafting prohibiting legislation; at 2009 UPR Government stated intention to abolish judicial corporal punishment for children, but rejected 2013 UPR recommendations to prohibit.	Drafting and introduction of legislation prohibiting corporal punishment, repeal of legal defences for its use in childrearing and of all provisions authorising caning/whipping.
Myanmar	Home, alternative care, day care, schools, penal system	Child Law under review; Government/UNICEF analysis highlighted need for prohibition of corporal punishment and removal of provision for “admonition” of child; Government rejected 2011 UPR recommendation to prohibit.	Ensure revised Child Law includes clear prohibition of all corporal punishment and repeal of all legal defences for its use in childrearing and of provisions for whipping in penal system.
Philippines	Home	Government indicated commitment to prohibition by accepting 2012 UPR recommendation; Anti-Corporal Punishment Bill, Positive Discipline Bill and other Bills which would prohibit are under discussion.	Ensure draft legislation clearly prohibits all corporal punishment and repeals all legal defences for its use in childrearing, and expedite its passage through Parliament.
Singapore	Home, alternative care, day care, schools, penal system	No known current opportunities; law reform in 2010/2011 specifically authorised caning in children’s homes, penal institutions and as a sentence for crime; Government rejected 2016 UPR recommendations to prohibit and defended the use of corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all legal defences and authorisations for corporal punishment.
Thailand	Home, alternative care, day care	Government accepted 2016 UPR recommendations to prohibit; Child Protection Act under review.	Ensure revised Child Protection Act prohibits all corporal punishment and repeals right to administer “reasonable” punishment and provisions authorising flogging.
Viet Nam	Home, alternative care, day care	Criminal Code and Criminal Procedure Code under review; no known proposals for prohibition of corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment.

Taking action for children

Research in many ASEAN states attests to the widespread infliction of physical and other humiliating punishment on children in the guise of “discipline”. We know that reforming legislation to prohibit corporal punishment provides a firm foundation for eliminating its use and transforming the lives of children. Many opportunities for prohibition exist in ASEAN states right now – and they should not be missed! It is vital to propose that prohibition of corporal punishment – including the repeal of all legal defences/authorisations for its use – is included in the laws and retained as the legislation passes through parliament.

Moving swiftly from discussion to action is key. National attention to corporal punishment (for example through government consultations, new research, media reports, etc) can be used to promote prohibition: proposals for law reform must be made and followed through. Given children’s clear and immediate human right to protection, it is not necessary to consult on the issue, nor is it justifiable to wait for public attitudes to change before reforming the law.

By prohibiting corporal punishment, governments and parliaments can lead the way. All over the world there is some opposition to prohibition, but the experiences of states which have achieved prohibition show that on this issue those in power must lead rather than follow public opinion. Prohibition, accompanied by appropriate measures to raise awareness of and implement the law, together with promotion of positive, non-violent forms of discipline, is the most efficient way to change attitudes and the only way to fulfil children’s right to protection in law and practice.

“Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.”

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



Global Initiative to
End All Corporal Punishment
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