

Progress towards prohibiting all corporal punishment of children in East and Southern Africa

This briefing highlights the human rights imperative to prohibit all violent punishment of children in all East and Southern African 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. Many East and Southern African states are currently reforming legislation related to children and families, creating key opportunities to prohibit corporal punishment. The adoption of commitments to end all violence against children, including specifically corporal punishment, in Africa's Agenda for Children 2040 and the global 2030 Agenda for Sustainable Development, provide additional and immediate contexts for focussing attention on fulfilling this most fundamental obligation under human rights law.

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. For children – the most vulnerable and dependent of citizens yet also the most susceptible to being assaulted – this right can be particularly difficult to enjoy. 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 seeing children as human beings in their own right – and due the protection of their human rights in the same way as adults are – means that corporal punishment and other violations of their physical integrity and human dignity cannot be justified.

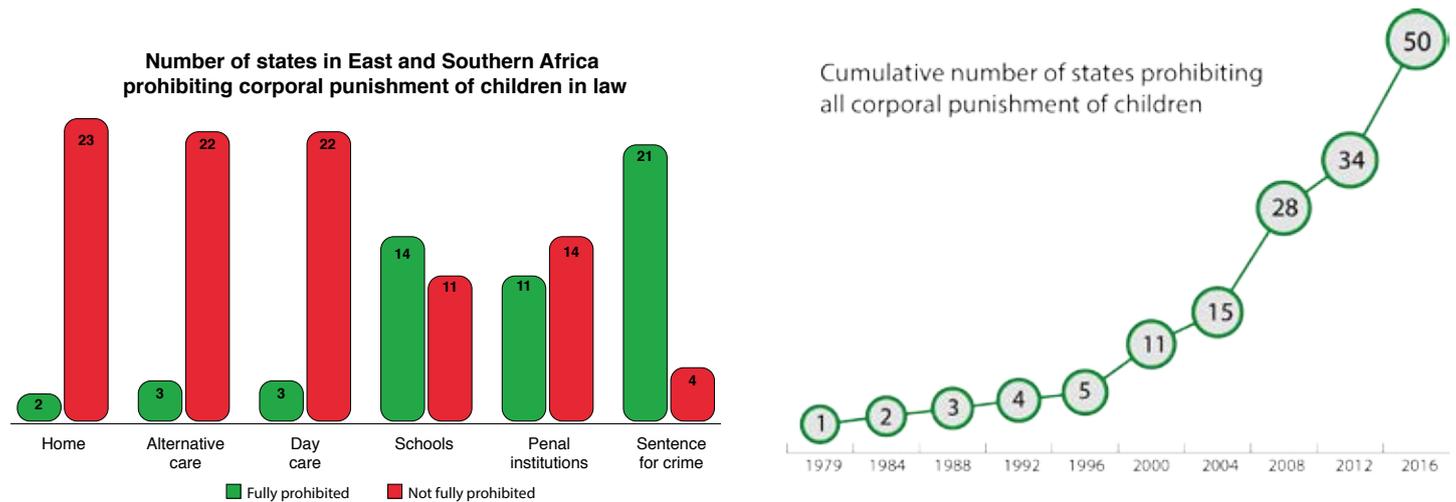
The African Committee on the Rights and Welfare of the Child (ACERWC), the UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised in the ACERWC examinations of eight East and Southern African states and UN treaty body examinations of every state in the region – in some cases repeatedly. 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 in fulfilling children's rights to health, development and education. Experience of corporal punishment as a child can be associated with poor mental health in childhood and adulthood, and has been 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, it teaches children that violence is an acceptable way to resolve conflict and makes it less likely they will learn to behave as adults want them to.

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Progress towards prohibition

Globally, progress towards prohibition is accelerating: 50 countries have prohibited all corporal punishment, including in the home, and a further 56 states are committed to achieving a complete legal ban. In East and Southern Africa, two states – Kenya and South Sudan – have achieved prohibition in all settings including the home, and another 11 states are publicly committed to enacting prohibiting legislation – Mozambique, Namibia and Seychelles were recently added to the list. Progress towards prohibition in settings outside the home is also gaining pace in East and Southern Africa: corporal punishment is now prohibited in schools in 14 states, in penal institutions in 11 states and as a sentence for crime in 21 states. Nevertheless, the law in only three East and Southern African states fully protects children from corporal punishment in day care and alternative care settings, and children in four states can still be subjected to corporal punishment as a sentence for crime.



Opportunities for achieving prohibition

Law reform to prohibit corporal punishment is achieved when legislation sends a clear message that corporal punishment, whatever level of severity and regardless of perceived impact in terms of “injury” or “harm”, is prohibited in all settings, including within the family 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 parents and others to impose “moderate” correction or “reasonable” punishment on children – provisions that typically constitute a legal defence against charges of assault. These defences must be explicitly repealed or amended so as to unequivocally rule out the use of corporal punishment as a “disciplinary” method.

The table opposite identifies the 23 East and Southern African states where children are not fully protected in law from all forms of corporal punishment. In 11 of these, Governments have expressed a commitment to prohibiting all corporal punishment of children by clearly accepting recommendations to do so made during the Universal Periodic Review of their overall human rights record and/or by expressing their commitment in other contexts. The table summarises the progress made towards prohibition in each state and what remains to be done. Crucially, it identifies immediate opportunities for drafting and introducing prohibiting legislation. We welcome information on opportunities for action, as well as comments and updates: email info@endcorporalpunishment.org.

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>
States committed to prohibition of all corporal punishment			
Angola 	home, alternative care, day care, schools, penal institutions	Government clearly accepted 2014 UPR recommendations to prohibit; 2010 law reform prohibits corporal punishment of some severity but not all without exception; the Penal Code and the Family Code are being revised.	Ensure the new Family Code includes clear prohibition of all corporal punishment and repeals provision for the concept of “justifiable correction” in the Child Law.
Comoros 	home, alternative care, day care, schools, penal system	Government clearly accepted 2014 UPR recommendations to prohibit and said the new Criminal Code under discussion “contains provisions to criminalise corporal punishment”.	Ensure the new Criminal Code clearly prohibits all corporal punishment, including under Shari’a law and in traditional customary justice systems, and repeals the “power to admonish” in the Family Code.
Mauritius 	home, alternative care, day care, penal institutions	Government clearly accepted 2013 UPR recommendations to prohibit and has confirmed the draft Children’s Bill includes prohibition in all settings; other relevant law reform is being discussed and a review of the Constitution is planned.	Ensure the new children’s law prohibits all corporal punishment without exception and is enacted at the earliest opportunity.
Mozambique 	home, alternative care, day care, schools	Government clearly accepted 2016 UPR recommendations to prohibit; previous law reform prohibits violence and abuse but not all corporal punishment; the Constitution and Penal Code are under review.	Draft and introduce legislation repealing provision for “justifiable discipline” and prohibiting all corporal punishment without exception; this could be achieved in the context of the Constitution review.
Namibia 	home, alternative care, day care	Government accepted 2016 UPR recommendations to prohibit; a new Child Care and Protection Act does not prohibit all corporal punishment; regulations under the new Act are being drafted.	Draft and introduce legislation prohibiting all corporal punishment without exception.
Rwanda 	home, alternative care, day care	Government accepted UPR recommendations to prohibit in 2011 and 2016; a new law governing persons and family does not include the “right of correction”; the Civil Code, Penal Code and child rights legislation are under review.	Draft and introduce legislation repealing provision for the “right of correction” in the Civil Code and prohibiting all corporal punishment without exception.
Seychelles 	home, alternative care, day care, schools, penal institutions	Government clearly accepted 2016 UPR recommendations to prohibit; a bill to prohibit corporal punishment is under discussion.	Enact legislation explicitly repealing the common law defence of “reasonable chastisement” and provisions for the right “to administer proper punishment” and prohibiting all corporal punishment without exception.

<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>
South Africa 	home	Government accepted 2012 UPR recommendation to prohibit; Department of Social Development supported calls to prohibit in the context of the review of the Children's Act; a bill to prohibit is being discussed but has not yet been tabled.	Enact legislation explicitly repealing the common law defence of "reasonable chastisement" and prohibiting all corporal punishment without exception.
Uganda 	home, alternative care, day care	The new Children Act prohibits corporal punishment in schools. A Government bill in 2015 would have prohibited corporal punishment in all settings including the home, but was withdrawn.	Draft and introduce legislation explicitly repealing the common law defence of "reasonable chastisement" and prohibiting all corporal punishment without exception.
Zambia 	home, alternative care, day care	Government clearly accepted 2012 UPR recommendation to prohibit; referendum to adopt a Bill of Rights which included prohibition was not successful; Child Justice Administration Bill is under discussion.	Enact legislation explicitly repealing provision for "lawful punishment" in the Juveniles Act and prohibiting all corporal punishment without exception.
Zimbabwe 	home, alternative care, day care, schools, penal system	Government clearly accepted 2011 UPR recommendation to prohibit; in context of the Children's Act review, Government recommended "to remove the endorsement of corporal punishment"; a bill to harmonise laws with the Constitution is under discussion.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all current defences for its use.
States without a clear commitment to law reform			
Botswana 	home, alternative care, day care, schools, penal system	Children's Act prohibits "unreasonable" correction of a child but explicitly states it does not prohibit corporal punishment; Government rejected UPR recommendations to prohibit in 2008 and 2013; Adoption Act is under review.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Burundi 	home, alternative care, day care, penal institutions, possibly schools	The Constitution incorporates the CRC into national legislation but there is no explicit prohibition of corporal punishment in domestic legislation; a draft Code on Child Protection is under discussion but does not include prohibition.	Ensure the Code on Child Protection explicitly prohibits all corporal punishment without exception and is enacted at the earliest opportunity.
Democratic Republic of Congo 	home, alternative care, day care, penal institutions	The Child Protection Code confirms the child's right to protection from all forms of violence but does not explicitly prohibit corporal punishment; the new law amending the Family Code is silent on corporal punishment.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Djibouti 	home, alternative care, day care, penal institutions, possibly schools	Provisions against violence and abuse in the Family and Criminal Codes and the Constitution are not interpreted as prohibiting corporal punishment; the Family Code is under review.	Ensure the new Family Code explicitly prohibits all corporal punishment without exception and is enacted at the earliest opportunity.

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>
Eritrea 	home, alternative care, day care, schools, possibly penal institutions	Government confirmed to the Committee on the Rights of the Child in 2015 that no progress had been made towards prohibiting corporal punishment; a new Constitution is being drafted but does not include prohibition.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Ethiopia 	home, alternative care, day care	Government reported to the Committee on the Rights of the Child in 2012 that education institutions and justice bodies are working towards abolishment of corporal punishment in homes and schools but there was no indication of law reform.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Lesotho 	home, alternative care, day care, penal institutions	Children's Protection and Welfare Act provides for "justifiable" discipline of children; Penal Code Act provides for "lawful and reasonable chastisement"; Domestic Violence Bill is under discussion.	Enact legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Madagascar 	home, alternative care, day care, penal institutions	Government reported to the ACERWC in 2015 that the Criminal Code is under review but indicated it is with a view to limiting, not fully prohibiting, corporal punishment.	Enact legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Malawi 	home, alternative care, day care, schools	A child care bill, a Penal Code amendment bill and an adoption bill are under discussion; domestic violence legislation is under review.	Enact legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Somalia 	home, alternative care, day care, schools, penal system	Government reported to the UPR in 2015 that a constitutional review would commence end of 2015, legislation would be reviewed and harmonised with the Constitution and international standards; Somaliland Family Code is being drafted.	Enact legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
Swaziland 	home, alternative care, day care, schools, penal institutions	The Constitution provides for "moderate chastisement" and the Children's Protection and Welfare Act provides for "justifiable" discipline.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.
United Republic of Tanzania 	home, alternative care, day care, schools, penal system	Government rejected 2011 and 2016 UPR recommendations to prohibit; Proposed Constitution includes children's right to protection from violence and harmful traditional practices but does not specifically prohibit corporal punishment; pathfinder country under the Global Partnership to End Violence Against Children.	Draft and introduce legislation explicitly prohibiting all corporal punishment without exception and repealing all provisions authorising its use.

The reality of corporal punishment of children ...

“There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning state sponsored torture under the Charter [on Human and People’s Rights] and contrary to the very nature of this human rights treaty.”

African Commission on Human and People’s Rights, (2003), Curtis Francis Doeber v Sudan, 236/2000, 33rd Ordinary Session, Niger

Corporal punishment includes children being hit with hands and objects, kicked, shaken and forced to maintain uncomfortable positions as well as a wide range of other humiliating and degrading treatment. Across East and Southern Africa, it is a near-universal childhood experience. The message from research in the region is clear and consistent: nearly all studies in the past ten years have found large numbers of children experiencing corporal punishment in the home and other settings of their lives. For example, studies conducted as part of UNICEF’s Multiple Indicator Cluster Survey (MICS) programme have found high rates of “violent discipline” (psychological aggression and/or physical punishment) of 1- or 2-14 year olds in Democratic Republic of Congo (92%), Djibouti (72%), Malawi (72%), Madagascar (84%), Somalia (75% in the Northeast Zone, 78% in Somaliland), Swaziland (89%) and Zimbabwe (63%).

... and growing support for its prohibition

There is considerable – and growing – support for prohibition and elimination of corporal punishment across the region. The African Committee on the Rights and Welfare of the Child has stated that notions which accept, tolerate and encourage violence against children, including the acceptance of corporal punishment, should be publicly condemned and eliminated and that it is necessary to incorporate the provisions of the Convention on the Rights of the Child into the domestic laws of each country, particularly in relation to corporal punishment of children (Statement on Violence Against Children 2011). The Committee increasingly examines states on their progress towards prohibiting and eliminating corporal punishment and has thus far recommended its prohibition in all settings, including the home, to seven East and Southern African states and has recommended implementation of prohibition in Kenya (see table below).

Many organisations and prominent individuals in the region have indicated their support for total prohibition of corporal punishment. At least 11 East and Southern African states have committed to achieving law reform and the efforts underway in some states to draft prohibiting legislation are building momentum. In endorsing Africa’s Agenda for Children 2040: Fostering an Africa Fit for Children, states would commit to ensuring “Every child is protected against violence, exploitation, neglect and abuse” including that by 2040, no child is subjected to corporal punishment (aspiration 7). In adopting the global 2030 Agenda for Sustainable Development, states have committed to work to “End abuse, exploitation, trafficking and all forms of violence against and torture of children” (target 16.2). One of the indicators which will be used to monitor progress towards this target 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” (indicator 16.2.1).

“Creating an Africa fit for children cannot be achieved in an environment where some of our laws and practices condone violence against children.”

Benyam Dawit Mezmur, Chairperson
African Committee of Experts on
the Rights and Welfare of the Child,
Chairperson UN Committee on the
Rights of the Child

Extracts from recommendations of the African Committee of Experts on the Rights and Welfare of the Child to prohibit all corporal punishment

State	Recommendation
Ethiopia [December 2014], Concluding observations on initial report, para. 23	"The Committee is concerned that there are some forms of corporal punishment not prohibited by the law... the Committee encourages the State Party to prohibit corporal punishment within the family, school and other alternative care institutions. The Committee encourages the Government to explicitly outlaw corporal punishment in the Criminal Code..."
Madagascar [August 2015], Concluding observations on initial report, paras. 25 and 26	"...the Committee has a strong stand that corporal punishment should be banned in all settings taking its negative impact on the physical, mental and psychological wellbeing of the child into consideration; and that State Parties should introduce positive disciplining mechanisms at home. Therefore, the Committee recommends that the State Party legally prescribes corporal punishment and promote positive disciplining without physically or verbally harming the child."
Mozambique [December 2014], Concluding observations on initial report, para. 29	"The Committee appreciates the prohibition of corporal punishment as a sentence and recommends the State Party to explicitly ban corporal punishment in all settings including in school, the home and in alternative care centres. The State Party should ensure the respect of children's right to be protected from violence..."
Namibia [October 2015], Concluding observations on initial report, para. 25	"The Committee commends the State Party for prohibiting corporal punishment in schools under the Namibian Constitution and the Education Act... As part of the continuous effort to protect children from abuse and torture, the Committee recommends the State Party to abolish corporal punishment and to promote positive disciplining measures in all settings including at home."
Rwanda [July 2015], Concluding observations on second/ third report, paras. 19 and 20	"The Committee notes with satisfaction the adoption of the Integrated Child Rights Policy which prohibits corporal punishment in all settings... the Committee urges the State Party to fortify its efforts in sensitizing the society in eliminating corporal punishment as well as take measures to repeal all laws and practices that are in contradiction with the Integrated Child Rights Policy..."
South Africa [October 2014], Concluding observations on initial report, paras. 34 and 35	"The Committee appreciates the measures undertaken by the State Party to prohibit corporal punishment in all spheres of the public life of the child... The Committee recommends that the State Party expedite the process of amending the Children's Act to explicitly ban corporal punishment in all settings including in the home... Moreover, the Committee advises the Government of South Africa to harmonize its national laws such as the common law which entitle parents to reasonably punish their children."
Zimbabwe [October 2015], Concluding observations on initial report, para. 26	"While appreciating the State Party for taking various legislative and administrative measures to protect children from abuse and torture, the Committee is concerned of the fact that children could still be sentenced by courts for whipping. The Committee, therefore, recommends the State Party to expedite the adoption of the General Amendment Bill as it has the effect of prohibiting child whipping and to abolish corporal punishment in all settings and to promote alternative positive disciplining measures."

Recommendation of the African Committee of Experts on the Rights and Welfare of the Child to implement prohibition of all corporal punishment

State	Recommendation
Kenya [December 2014], Concluding observations on initial report, para. 23	"The Committee notes with appreciation the prohibition of corporal punishment under the Constitution, but recommends that it be implemented. The Committee encourages the State Party to raise awareness and give training on a continuous basis on alternative disciplinary measures."

Taking action for children

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 across the region. Whenever relevant laws (e.g. on children, domestic violence, juvenile justice, education) are introduced or reviewed, the opportunities afforded to prohibit corporal punishment should not be missed. When these opportunities arise, it is vital to propose that prohibition – including the repeal of all legal defences/authorisations for the use of corporal punishment – is included in the laws and retained as the legislation passes through parliament. Every opportunity to prohibit represents a chance to fulfil children’s right to legal protection, stopping children from being hit and hurt by their parents and others.

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

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. The ultimate goal is to transform attitudes and behaviour so that physical and other forms of punishment are no longer seen as acceptable in childrearing and education. In order to ensure effective elimination of the use of corporal punishment, prohibition in law must be accompanied by appropriate measures to raise awareness of the law and promote positive, non-violent forms of discipline. Proven to be effective in changing attitudes and social norms around physical punishment in childrearing, this two-pronged approach is the only way to fulfil children’s right to protection in law and practice.

“Progress towards abolishing corporal punishment is being made, but millions of the world’s children still suffer from humiliating acts of violence and these violations of their rights as human beings can have serious lifelong effects. Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery.... If we really want a peaceful and compassionate world, we need to build communities of trust where children are respected, where home and school are safe places to be and where discipline is taught by example.”

Archbishop Emeritus Desmond Tutu, 2006

The Global Initiative to End All Corporal Punishment of Children works with governments and others towards universal prohibition and elimination of corporal punishment. www.endcorporalpunishment.org



Global Initiative to
End All Corporal Punishment
of Children

The Sonke Children’s Rights and Positive Parenting portfolio works with parents, children and duty-bearers to achieve gender- equal care giving and a violence free society where children’s rights are realised and respected. The elimination of all forms of physical and humiliating punishment of children is an important part of this work to prevent violence. www.genderjustice.org.za



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Save the Children is committed to ending all forms of violence against children including physical/corporal and humiliating punishment, and works for its universal prohibition and elimination. www.savethechildren.net



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