

Ending legalised violence against children



Global Initiative to
End All Corporal Punishment
of Children

**Report for Europe & Central Asia Regional Consultation
– the UN Secretary General's Study on Violence against Children**

Ljubljana, Slovenia 2005

PUBLISHED BY THE

Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org

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 - + Azerbaijan NGO Alliance for Children's Rights
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Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This report reviews law and policy in relation to corporal punishment and deliberate humiliation of children in each state in Europe and Central Asia. It makes recommendations for law reform and other measures which it is hoped will be adopted at the Consultation and pursued at a national, regional and international level.

Foreword

Jaap E. Doek

Chairperson

United Nations Committee on the Rights of the Child

There is accelerating and welcome progress across Europe to prohibit corporal punishment explicitly in the family and all other settings. The Parliamentary Assembly of the Council of Europe has called for Europe to become a corporal-punishment-free-zone.

But it appears from this overview that there is still much to be done: less than a third of the children in this region have been accorded the same protection as adults from being hit. Everybody – adults and children alike – has an equal right to respect for their human dignity and physical and mental integrity. Hitting your employee, your spouse or your child is a violation of this fundamental right.

The Committee on the Rights of the Child, which monitors implementation of the Convention on the Rights of the Child, has recommended to governments across the world that they should systematically:

- Prohibit all forms of violence, including all corporal punishment however light, in the upbringing of children in their homes, in schools, in care institutions, penal systems and any other place;
- Undertake – at the same time – educational and awareness-raising campaigns to inform parents and others about children's right to protection and about non-violent methods of disciplining and raising children.

The European human rights mechanisms have been strong in condemning corporal punishment of children, echoing the jurisprudence of the Committee on the Rights of the Child.

Many citizens and politicians, in this and every region, express deep concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously and systematically address the use of violence against children. And nobody should suggest that a little bit of violence is acceptable. That applies equally for adults and children.

The Committee on the Rights of the Child strongly believes that the UN Secretary General's Study on Violence against Children will accelerate moves to prohibit and eliminate corporal punishment and any other form of violence against children as an unacceptable violation of human dignity and physical integrity. It is a vital stepping-stone to a violence-free society.

Jaap E. Doek
Chairperson
Committee on the Rights of the Child
June 2005

The human rights imperative to end all corporal punishment

Rights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights. The Convention also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19).

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights treaty bodies, both international and regional, and by high-level court judgments in a growing number of states.

States’ human rights obligations to end all currently legalised violence against children are clear and immediate; there can be no justification for delay. Humanity and logic suggest that children should be the first, not the last, members of human societies to be effectively protected from assault and deliberate humiliation.

The case against corporal punishment does not have to be proved. We do not look for evidence of harm to justify prohibition and other measures to end domestic violence against women or elderly people. The issue is one of fundamental rights. But in any case there is overwhelming research evidence to support the human rights imperative for eliminating corporal punishment. Hitting babies and children is dangerous. Harsh and humiliating forms of discipline are associated with the development of violent and anti-social attitudes and actions in childhood and later life and also with psychological difficulties for the victims.



Hitting children is a lesson in bad behaviour; it teaches them that adults who demand their respect believe that violence is a legitimate way to sort out conflicts or impose authority.

Some adults like to suggest that corporal punishment and child “abuse” are two quite separate phenomena. In fact, more or less all physical “abuse” is administered in a context of punishment or control – it is corporal punishment. There are different degrees of severity, but all corporal punishment breaches children’s right to respect for their human dignity and physical integrity. We do not try to draw lines and justify any level of violence against women or elderly people – so why children? Zero tolerance is generally accepted as a target for ending domestic violence between adults in the home – so why not for children?

Defenders of corporal punishment suggest that children are different. But their differences – their dependence, developmental state and fragility – certainly do not reduce their human rights or justify less protection from violence. Parents and other carers need to use physical actions to protect and restrain children, especially babies and young children. But such actions are clearly distinguishable from causing pain or humiliation as a form of discipline or control.

Human rights standards in the region

All states in the region have ratified the Convention on the Rights of the Child. None has entered any reservation to reduce its obligation to protect children from all forms of violence. The Committee on the Rights of the Child has expressed concern over the persisting legality of corporal punishment in the family and some other settings to many states in the region, and recommended prohibition and other educational measures.

Other UN human rights treaty bodies have echoed the Committee on the Rights of the Child in calling for prohibition of corporal punishment in the family, including the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.

COUNCIL OF EUROPE HUMAN RIGHTS MECHANISMS AND STANDARDS

The Council of Europe, which has 46 member states, was established to defend human rights, parliamentary democracy and the rule of law. The regional human rights mechanisms of the Council have been pursuing abolition of corporal punishment for three decades.

European Court of Human Rights

This process started with a series of judgments of the European Court of Human Rights, on first judicial and then school corporal punishment, all against the **United Kingdom**¹. It was these judgments which effectively forced the UK Government to introduce legislation, first to prohibit all corporal punishment in all state-supported education (coming into effect in 1987) and then in 1999 (for England and Wales; 2000 in Scotland; 2003 in Northern Ireland) to extend abolition to cover private schools.

It is not easy for children to challenge breaches of their rights by their parents. Nevertheless, an application by a young English boy led to a judgment by the European Court in 1998 – “A v UK” – on parental corporal punishment⁴. The boy had been beaten with a garden cane by his stepfather, who was prosecuted for assault, used the defence of “reasonable chastisement” in an English court and was acquitted. The European Court found



unanimously that the beating amounted to degrading punishment in breach of the European Human Rights Convention. The UK Government was responsible because its domestic law, allowing “reasonable chastisement”, did not provide adequate protection including effective deterrence.

The European Court has not as yet explicitly condemned all corporal punishment, but nor has it implied that any level of corporal punishment is permitted under the Convention. Traditionally, the Court limits its consideration to the particular circumstances of the case before it, and “A v UK” involved a severe beating with a cane. But the case was introduced more than 10 years ago, and it is clear that the jurisprudence of the Court, interpreting the Convention as a “living instrument”, develops over time.

In its 2004 report on this issue, the UK Parliamentary Committee on Human Rights notes that the European Court is increasingly referring to the standards of the Convention on the Rights of the Child in its judgments on issues involving children, and that it is likely that in any future case the Court will find that anything less than equal protection for children is in breach of the European Convention. The Joint Committee notes: “Children are vulnerable to exploitation and oppression in ways that adults are not. They need protection, including from themselves, but it is certainly not self-evident that such protection requires them to be deprived of the protection that the law offers to everyone else. We therefore think it likely that in a future case before the European Court of Human Rights, the UK will be required under article 14 [the anti-discrimination article in the European Human Rights Convention] to justify the less favourable treatment of children under the law of common assault”. In the UK, the law covering England and Wales allows parents to justify common assault as “reasonable punishment.”³ In Scotland, the concept of “justifiable assault” of children was introduced in the Criminal Justice (Scotland) Act 2003; the law defines hitting children with implements, blows to the head and shaking as unjustifiable.⁴

The Court has indeed begun to refer to the Convention on the Rights of the Child and use its standards in its judgments. In “A v UK” it refers, without elaboration, not only to article 37 (which, like article 3 of the European Convention on Human Rights, requires protection from inhuman or degrading punishment) but also to article 19, requiring protection from “all forms of physical or mental violence” while in the care of parents and others. In another judgment in 2003, against Germany, the Grand Chamber of the European Court stated: “The human rights of children and the standards to which all

governments must aspire in realising these rights for all children are set out in the Convention on the Rights of the Child. The Convention entered into force on 2 September 1990 and has been ratified by 191 countries, including Germany. The Convention spells out the basic human rights that children everywhere – without discrimination – have...”⁵

The European Commission and Court of Human Rights have also emphasised that prohibiting all corporal punishment does not breach other Convention rights (for example to family or private life or religious freedom). In 1982, the Commission rejected an application by Swedish parents who alleged that Sweden’s 1979 ban on parental physical punishment breached their right to respect for family life and religious freedom.⁶ In 2000, the Court declared inadmissible an application challenging the abolition of corporal punishment in private schools in the UK on grounds that it breached rights to family life and religious freedom.⁷

European Committee of Social Rights

A very clear and consistent challenge to all corporal punishment across the 46 member states of the Council is coming now from the European Committee of Social Rights. This Committee monitors states’ compliance with the European Social Charter and the Revised Social Charter which will eventually replace it; the Charters guarantee citizens’ economic, social and cultural rights and cover child protection. In a general observation issued in 2001, the Committee concludes that it considers “that article 17 requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.”⁵

In its observation, the Committee highlights the consistent abolitionist recommendations of the Committee on the Rights of the Child as well as the European Court judgment, “A v UK”. It pursues the need for equal protection for children: “The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.”

The Committee also states: “To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure



that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not.”⁸

Between 2003 and May 2005, the European Committee of Social Rights, having examined reports under article 17 of the Charters, concluded that **Poland, France, Hungary, Malta, Romania, Slovak Republic, Slovenia, Spain** and **Turkey** are not in conformity with the Charter because they have not effectively prohibited all corporal punishment in the family. Since the issue of the relevant conclusions, Romania and Hungary have gone ahead with prohibition and Slovenia and the Slovak Republic have indicated they will do so. In its conclusion on Portugal’s report, the Committee notes that Portugal’s Supreme Court, in a 1994 decision, interpreted Article 143 of the Criminal Code as prohibiting the use of any form of physical violence against children likely to pose a threat to their physical integrity, their personal dignity or their physical or psychological development. The Committee asked that Portugal’s next report should explain how the Supreme Court decision effectively prohibits the corporal punishment of children in the home. It also asks that the next report provide any information on whether and when this ruling has been confirmed in legislation. Further conclusions on other member states, including the UK, were due to be issued in June 2005.⁹

Also under the Charters, five “collective complaints” were submitted in 2003 against **Belgium, Greece, Ireland, Italy** and **Portugal** (five of the 13 member states which have so far accepted the Additional Protocol to the Charters establishing the collective complaints procedure). These allege that the states are in breach of article 17 of the Charters because they have failed to prohibit all corporal punishment effectively. In decisions that became public at the end of May 2005, the Committee found that Belgium, Ireland and Greece were not in compliance because their laws did not prohibit all violence against children.¹⁰

In the case of **Greece**, the Committee concluded that article 17 is violated because: there is no prohibition of all forms of violence against children within the family; while corporal punishment is explicitly prohibited in primary schools, there is no explicit prohibition in secondary schools; there is no clear prohibition of all forms of violence in other institutions and forms of care. The Greek Government has moved quickly to introduce legislation to prohibit corporal punishment in secondary schools and has established a Committee to draft legislation to prohibit all corporal punishment in the family and all other settings.

In its decision on **Ireland**, the Committee stated: “The Committee notes that the corporal punishment of children within the home is permitted by Ireland by virtue of the existence of the common law defence of reasonable chastisement. Although the criminal law will protect children from very serious violence within the home, the fact remains that certain forms of violence are permitted. The Committee therefore holds that the situation is in violation of Article 17 of the Revised Charter.”

In relation to **Belgium**, the Committee concluded that none of the provisions in the Constitution, the Criminal Code or the Civil Code is adequate. In relation to the Civil Code, the Committee stated that “its general wording prevents it from amounting to a clear, precise duty on parents not to use corporal punishment for educational purposes. In this regard, the Committee takes note that a proposal to insert an explicit prohibition in the Civil Code is pending before the Senate.” The Committee considers that “none of the provisions, taken together or in isolation, is set out in sufficiently precise terms to suffice to enable parents and ‘other persons’ to model their conduct on Article 17 of the Charter and to attain the result required by that provision”. The Committee acknowledged – as did the Government – that awareness campaigns are useful – “but considers that they are not sufficient”.

In the cases of **Italy** and **Portugal**, the Committee decided that the existence of Supreme Court decisions in each country, interpreting the law as prohibiting all violence including all corporal punishment, was adequate for compliance, although the decisions have not as yet been reflected in legislation. The decision on Portugal stated that “the prohibition of all forms of violence has a legislative basis; it has the potential to reach all forms of violence regardless of where it occurs or to the identity of the alleged perpetrator and it is backed by adequate, dissuasive and proportionate sanctions”.

Parliamentary Assembly

In June 2004, the Parliamentary Assembly of the Council of Europe adopted a detailed recommendation, with overwhelming support, which states: “The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings....



“The Assembly therefore invites the Council of Europe’s Committee of Ministers to launch a co-ordinated and concerted campaign in all the member states for the total abolition of corporal punishment of children. The Assembly notes the success of the Council of Europe in abolishing the death penalty and the Assembly now calls on it to make Europe, as soon as possible, a corporal punishment-free zone for children.”¹¹

¹European Court of Human Rights, see in particular *Tyrer v UK*, 1978; *Campbell and Cosans v UK*, 1982; *Costello-Roberts v UK*, 1993. All judgments of the Court are available at <http://hudoc.echr.coe.int/hudoc/>

²European Court of Human Rights, 23 September 1998, *A v UK*.

³UK Parliamentary Joint Committee on Human Rights, 19th Report of 2003-4 Session, *Children Bill*, HL Paper 161, HC 537, 21 September 2004; available at <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/161/16102.htm>

⁴Children Act 2004, section 58; Criminal Justice (Scotland) Act 2003, section 51.

⁵European Court of Human Rights, Grand Chamber, 8 July 2003, *Sahin v Germany*, paras. 39 and 40.

⁶European Commission on Human Rights, *Seven Individuals v Sweden*, Admissibility Decision, 13 May 1982.

⁷European Court of Human Rights, *Philip Williamson and Others v UK*, Admissibility Decision, 7 September 2000.

⁸European Committee of Social Rights, general observation in General Introduction to Conclusions XV–2, Volume 1, p. 27.

⁹All conclusions of the European Committee of Social Rights can be found at http://www.coe.int/T/E/Human_Rights/Esc/

¹⁰Details of the collective complaints procedure and the decisions of the European Committee of Social Rights are at http://www.coe.int/T/E/Human_Rights/Esc/

¹¹Council of Europe Parliamentary Assembly Recommendation 1666/2004, “Europe-wide Ban on Corporal Punishment of Children”, 24 June 2004, paras. 5 and 7.



“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child...”

**UN Convention
on the Rights
of the Child,
article 19**

Global progress towards ending all corporal punishment

In Europe, at least 14 states have explicitly prohibited all corporal punishment, including in the home: Sweden (in force 1979); Finland (1983); Norway (1987); Austria (1989); Cyprus (1994); Denmark (1997); Latvia (1998); Croatia (1999); Germany (2000); Bulgaria (2000), Iceland (2003); Ukraine (2004); Romania (2005); Hungary (2005) (for details of legislation, see pages 16 and 17). In two other states, Italy and Portugal, supreme court decisions have declared all corporal punishment to be unlawful, but these decisions are not as yet reflected explicitly in legislation. Other states have committed themselves to prohibition in the near future. The process is accelerating fast, thanks to the strong human rights mechanisms of the Council of Europe.

But globally, only 52 million children out of the world's 2,195 million live in countries where the law gives them equal protection from being assaulted. In about 90 states worldwide, corporal punishment is still not prohibited in schools. In Europe and Central Asia, school corporal punishment appears in some states only to be prohibited as a matter of policy or by administrative direction, not by legislation; there are also concerns over enforcement of the prohibition in some states.

In almost 80 states globally, whipping or caning is still permitted as a sentence of the courts or as a punishment in penal institutions for young offenders. In this region, corporal punishment is prohibited throughout the penal system, although again there are some concerns over enforcement in certain states.

Promoting positive discipline

In states in all continents there are developed programmes and materials to promote positive, non-violent forms of discipline and child-rearing for parents, other carers and teachers. In some states, the government has taken a lead with public education. In others, non-governmental organisations, human rights institutions and private sector publishers and media have taken initiatives (for links to a variety of programmes and materials, see www.endcorporalpunishment.org).

Challenging the concept of “Biblical discipline”

In all regions of the world there are groups of Christians who defend corporal punishment of children as their parental duty. Texts from the book of Proverbs are frequently cited to support this form of punishment, which is often called “Biblical discipline”.

Christians look to the example of Jesus for the way to live their lives, so what did Jesus say about hitting children? Jesus was a teacher and Rabbi, and an expert in interpreting the scriptures. There is no evidence to suggest that he cited the scriptures to justify hitting children. Christians who apply the words of Proverbs 9:10 “The fear of the Lord is the beginning of wisdom,” and the shorthand version of Proverbs 13:24 “Spare the rod and spoil the child,” are suggesting that small, fragile children are deserving of such punishment and that the deliberate infliction of fear and pain is a necessary part of childhood experience.

This attitude to children fails to match up to the approach taken by Jesus who always treated the vulnerable and defenceless with love and compassion. All the recorded encounters between children and Jesus were kind, gentle and respectful, and his reported words about those causing children to stumble, and the consequences for doing so (Matthew 18:6), are amongst the strongest in the New Testament. When he set a little child in the midst of the disciples and said “The kingdom of God belongs to such as these,” (Mark 10:14) he demonstrated enormous regard for children.

Christians who take these accounts seriously have a duty to challenge the harmful practice of hitting children, just as Jesus challenged so many of the cultural and social aspects of his own time. Positive non-violent parenting best models Christ’s teachings.

In the UK there is a strong campaign by more than 400 organisations to remove the “reasonable punishment” defence and give children equal protection under the law. This is backed by the Methodist and United Reformed Churches, Caritas Social Action (Catholic Church in England and Wales), Quakers and a number of Anglican Bishops.

Churches' Network for Non-Violence (CNNV); Coordinator Chris Dodd
info@churchesfornon-violence.org; www.churchesfornon-violence.org

1979
Sweden

“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.” (*Parenthood and Guardianship Code*, as amended 1979, article 6.1)

Note: In 1957, the legal defence for the use of corporal punishment by parents was removed from criminal law. In 1966, a provision allowing “reprimands” was removed from the *Parenthood and Guardianship Code*.

1983
Finland

“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.” (*Child Custody and Rights of Access Act*, 1983, in force 1984, article 1.3)

Note: In 1969, the Criminal Code was amended to remove parents’ defence against prosecution for petty assault if committed during the exercise of their lawful “right” to chastise their child.

1987
Norway

“The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.” (*Parent and Child Act*, as amended 1987)

Note: In 1972, parents’ “right” to use moderate physical punishment was removed from the Criminal Code provisions on assault. Physical restraint is permissible if the child is at risk of injury to him/herself or others.

1989
Austria

“The minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering are not permitted.” (*General Civil Code*, 1989, section 146a)

Note: In 1977, the defence of “reasonable” punishment was removed from the law on assault.

1994
Cyprus

Law prohibits “any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family”. (*Family (Prevention and Protection of Victims) Law*, 1994)

Note: It is also an offence for violence to occur in the presence of a child.

1997
Denmark

“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.” (*Parental Custody and Care Act*, amended 1997)

Note: In 1985, the Custody and Care Act was amended to state “Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment”, but further explicit prohibition was found to be necessary.

1998
Latvia

“A child cannot be treated cruelly, cannot be tormented and physically punished, and his/her dignity and honour cannot be offended.” (*Law on Protection of the Rights of the Child*, 1998, article 9.2)

The law criminalises “failure to discharge parental obligations ... the malicious usage of parental authority, the physical punishing of a child, as well as cruel behaviour against him/her” (*Law on Protection of the Rights of the Child*, 1998, article 24.4)

1998
Croatia

“Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse.” (*Family Act*, 1998, in force 1999, article 87)

Note: The Family Act also obliges parents to protect the child from degrading treatment and physical punishment administered by others (article 91).

“Children have the right to a non-violent upbringing. Corporal punishment, psychological injuries and other humiliating measures are prohibited.” (*Bürgerliches Gesetzbuch* [German civil law], as amended 2000, article 1631)

Local authorities have a duty to “promote ways in which families can resolve conflict without resort to force” (*Socialgesetzbuch* [German childcare law])

Note: In 1998, an amendment to the Civil Law prohibited “degrading methods of discipline including physical and psychological abuse”, but further explicit prohibition was found to be necessary.

“Every child has a right to protection against all methods of upbringing, that undermine his or her dignity, against physical, psychical or other types of violence; against all forms of influence, which go against his or her interests.” (*Child Protection Act*, 2000, article 11.2)

Note: The complexity of provisions relating to “trivial” bodily injury in the Penal Code seem to limit the protection available to children, and there has been little public education concerning the prohibition.

“It is the parents’ obligation to protect their child against any physical or mental violence and other degrading or humiliating behaviour.” (*Children’s Act*, 2003)

Parents have an obligation “to treat their children with care and consideration” and “to safeguard their welfare at all times”. (*Child Protection Act*, 2002)

The law concerning the responsibilities of parents towards their children prohibits corporal punishment and any other humiliating punishment or treatment (*Family Code*, 2003 in force 2004, article 150).

Note: The Prevention of Domestic Violence Act (2001, in force 2002) also outlaws violence against children in the home. It defines domestic violence as “any intentional action of one family against another family member if such action infringes Constitutional and civil rights and freedoms of a family member and injures his physical, mental and moral health, and as well as child’s development”, and physical domestic violence as “an intentional beating, body injuring of one family member by another as well as intentional limitation of freedom, place of residence, food, clothing and other normal life conditions, which may result in victim’s death or may cause disturbance of his physical and mental health or may harm his honor and dignity” (article 1).

“(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.” (*Law on Protection and Promotion of the Rights of the Child*, 2004, in force 2005, article 28)

“It is forbidden to enforce physical punishment of any kind or to deprive the child of his or her rights, which may result in endangerment of the life, the physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child, both within the family, as well as in any institution which ensures the protection, care and education of children.” (*Law on Protection and Promotion of the Rights of the Child*, 2004 in force 2005, article 90)

“The child has the right to be respected his/her human dignity, to be protected against abuse – physical, sexual and mental violence –, failure to provide care and injury caused by any information. The child shall not be subjected to torture, corporal punishment and any cruel, inhuman or degrading punishment or treatment.” (*Act on the Protection of Children and Guardianship Administration*, 1997, as amended 2004, in force 2005, article 6.5)

2000
Germany

2000
Bulgaria

2003
Iceland

2003
Ukraine

2004
Romania

2004
Hungary

RECOMMENDATIONS

THE GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN URGES THE EUROPE AND CENTRAL ASIA REGIONAL CONSULTATION TO ADOPT AND PROMOTE THE FOLLOWING RECOMMENDATIONS FOR IMMEDIATE ACTION IN ALL STATES IN THE REGION. THE AIM SHOULD BE TO ADOPT THE DEADLINE OF THE CONCLUSION OF THE UN SECRETARY GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN IN 2006 FOR IMPLEMENTATION OF LAW REFORM AND PUBLIC EDUCATION TO ELIMINATE CORPORAL PUNISHMENT.

1 Explicitly prohibit all violence against children, including all corporal punishment, in the family and in all other settings. This requires repeal of any existing defences that can be used to justify violent punishment and of any laws that authorise corporal punishment in any setting. Explicit prohibition in sectoral laws applying within the family and to alternative care, schools and the penal system is required to send a clear message.

This action, taken to date by less than 20 countries worldwide, sends a clear signal that children have an equal right to respect for their human dignity and physical integrity. The extent to which the law is respected and effectively and appropriately enforced may vary between states. But no state will make significant progress towards preventing and eliminating violence against children until it has a clear and well-publicised legal framework prohibiting all violence. All states have criminal laws against assault; some have constitutions outlawing inhuman or degrading treatment; most have laws prohibiting "abuse" or cruelty; many have incorporated the Convention on the Rights of the Child and other international instruments into their domestic law. But none of this is adequate to challenge the traditional acceptance of violent and humiliating punishment of children.

2

Ensure that awareness-raising of children's right to protection, promotion of non-violent child-rearing and education and the principles of non-violent conflict resolution are built into all the points of contact with future parents and parents and into the training of all those working with or for children and families. Encourage political, community and faith leaders and educators to support this awareness-raising and public education.

Promoting non-violence does not have to be a separate and expensive process. All those in contact with future parents and parents can build messages into their programmes and activities, from ante-natal classes, through birth registration, immunisation, health surveillance and treatment, pre-school and school and so on. There is no shortage of models of programmes and materials which can be adapted for all states and cultures.

3

Review the extent of violent victimisation of children, including in the family, through interview studies with children themselves, parents and other carers.

Making the true extent of violence against children visible is an essential step towards gaining public support and political priority for its elimination. The methodology exists for such studies, involving confidential interviews with parents and with children, with appropriate ethical safeguards. Studies can be quite small-scale, but must cover children of all ages and children in institutions and other forms of care, as well as children living and/or working on the street and in other situations of child labour.

4

Review safeguards to protect children from all forms of violence in the full range of residential institutions and other forms of alternative care, state and private, and implement any necessary improvements.

Studies in states in all continents suggest that children in institutions and alternative care have suffered physical, mental and sexual violence on a huge scale and remain at risk unless a range of safeguards are implemented. These include effective training and vetting of all staff, regular, confidential reviews of all children's placement and treatment, independent inspection including interviewing of children and staff in private and protection of whistle-blowers.

What is the purpose of law reform against corporal punishment and how will it be implemented?

Children's rights to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Equal protection for children **does** mean that any assault of a child that would be considered a criminal assault if directed at an adult should be considered and dealt with under the criminal law as a crime. All countries have laws which define and prohibit criminal assault and this definition should include all corporal punishment as a form of assault.

But this principle of equal protection for both adults and children in cases of assault **does not** necessarily mean that cases involving corporal punishment should result in prosecution of parents. This is very seldom in the interests of children, because of children's dependent status, and should only be used as an intervention of last resort.

In every case in which corporal punishment in the family comes to light, the aim must be first to seek to help parents and children through voluntary positive interventions – offers of advice, discussions with other parents and so on – which aim to stop violent and humiliating treatment of children.

In extreme cases of serious and continuing abuse, separating children from their parents may be the only way to protect them. And in those cases, according to the Convention on the Rights of the Child (article 9), there must be a court hearing, focusing on the best interests of the child and with the parents and child represented. In exceptional cases, where it is believed the child is at risk of severe violence, it may be necessary immediately to remove the child or the perpetrator to protect the child. But such measures should be temporary and only continued following a court hearing.

Equal protection under the law

Efforts to reform the law to prohibit all corporal punishment as a form of assault often meet with strong opposition. One of the fears expressed is that it will lead to thousands of parents being prosecuted and put in prison, or children will be taken away and put in institutions; it will turn children against their parents, and so on. But in the growing number of states in which the law has been changed, this has not been the experience. The first aim of these reforms, linked to awareness-raising and public education, is to raise awareness of the right of the child to equal protection. Changing the law and linking this to awareness-raising is likely to change attitudes and reduce violence against children. Adults' sensitivity to violence against children is likely to increase and this may lead to more reporting of such violence.

Controlling prosecution policy in relation to parental corporal punishment

In most countries, there is a code or advice to decide when prosecution for a crime should go ahead. This usually requires certain tests to be satisfied. For example:

- that there is sufficient evidence to make conviction likely;
- that the prosecution is in the public interest.

The prosecution of parents and other close family carers should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. It is important that guidelines are developed and implemented which set out conditions for prosecution in these cases. In addition, detailed guidance is required for all those involved in child protection, including for example social workers, health workers, teachers and police. This should focus 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.

In advocating law reform, it can be emphasised that minor assaults on adults by adults, while clearly unlawful, very seldom get to court (in many states, the *de minimis* principle is recognised: that the law does not concern itself with trivial matters).

Some opponents of law reform will then respond: “But what is the point of a law if it is unenforceable?” The first answer is that the real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is always a sign of the failure of the law effectively to deter and prevent a child being assaulted.

The law will be as enforceable as the law on assault between adults, if the necessary evidence exists – but there will need to be consideration to determine whether prosecution is in the best interests of the victim child as well as in the public interest. In the few cases in which prosecution is considered necessary to protect a child, and in the child’s best interests, it will be easier to pursue if parents can no longer defend assault before the courts as “reasonable punishment”.

In order to deter parents from using corporal punishment in the privacy of their homes, the law needs to send a very clear message. That is the real purpose of explicit law reform. Having clear law that prohibits all corporal punishment enables all those working with and for families and children to promote this clear message.

Enforcing prohibition of corporal punishment outside the family

Corporal punishment in schools, other institutions and forms of care and places of employment must be prohibited explicitly in legislation. Prohibition through administrative circular or guidance is not adequate. Implementation and enforcement of prohibition requires proper administrative measures including awareness-raising of the law among adults and children; building knowledge of the prohibition into training, both initial and in-service, for teachers and other school personnel; rigorous inspection by trained inspectors independent of the institution (including interviews in private with children and adults); and access to advice, advocacy and independent complaints procedures for children and parents and ultimately access to the courts.

Respecting the law will or should become a contractual condition, so that teachers and others who continue to use corporal punishment risk losing their jobs. This in itself will act as a strong deterrent. In cases in which teachers and others, after warning, continue to use corporal punishment, prosecution is a legitimate and necessary response.



“As for corporal punishment, few countries have clear laws on this question. Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to call attention to the contradictions in our attitudes and cultures.”

**Concluding statement to Committee on the Rights of the Child
General Discussion on Children’s Rights in the Family, October 1994**

**SUMMARY TABLE
LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN IN EUROPE
AND CENTRAL ASIA**

	Prohibited in the home ¹	Prohibited in schools	Prohibited in the penal system		Prohibited in alternative care
			As a sentence for crime	As a disciplinary measure in penal institutions	
Albania	NO	YES	YES	YES	NO
Andorra	NO	YES ²	YES	YES	NO
Armenia	NO ³	YES	YES	YES	NO
Austria	YES	YES	YES	YES	YES
Azerbaijan	NO	YES	YES	YES	NO
Belarus	NO ⁴	YES	YES	YES	NO
Belgium	NO ⁵	YES	YES	YES	YES
Bosnia and Herzegovina	NO	YES ⁶	YES	YES	NO
Bulgaria	YES	YES	YES	YES	YES
Croatia	YES	YES	YES	YES	YES
Cyprus	YES	YES	YES	YES	YES
Czech Republic	NO	YES	YES	YES	YES
Denmark	YES	YES	YES	YES	YES
Estonia	NO	YES	YES	YES	NO
Finland	YES	YES	YES	YES	YES
France	NO	YES ⁷	YES	YES	NO
Georgia	NO	YES	YES	YES	NO
Germany	YES	YES	YES	YES	YES
Greece	NO	YES	YES	YES	NO ⁸
Hungary	YES	YES	YES	YES	YES
Iceland	YES	YES	YES	YES	YES
Ireland	NO	YES	YES	YES	SOME ⁹
Italy	YES ¹⁰	YES	YES	YES	YES
Kazakhstan	NO	NO	YES	YES	SOME ¹¹
Kyrgyzstan	NO	YES	YES	YES	SOME ¹²
Latvia	YES	YES	YES	YES	YES
Liechtenstein	NO	YES	YES	YES	YES
Lithuania	NO	YES	YES	YES	YES
Luxembourg	NO	YES	YES	YES	SOME ¹³
Malta	NO	YES	YES	YES	NO
Monaco	NO	YES	YES	YES	NO
Netherlands	NO ¹⁴	YES	YES	YES	SOME ¹⁵
Norway	YES	YES	YES	YES	YES
Poland	NO ¹⁶	YES	YES	YES	YES
Portugal	YES ¹⁷	YES	YES	YES	YES
Republic of Moldova	NO	YES	YES	YES	NO
Romania	YES	YES	YES	YES	YES
Russian Federation	NO	YES	YES	YES	NO
San Marino	NO ¹⁸	YES	YES	YES	NO
Serbia and Montenegro	NO	YES	YES	YES	NO
Slovakia	NO	YES	YES	YES	YES
Slovenia	NO	YES	YES	YES	SOME ¹⁹
Spain	NO	YES	YES	YES	YES
Sweden	YES	YES	YES	YES	YES
Switzerland	NO ²⁰	YES ²¹	YES	YES	YES
Tajikstan	NO	NO	YES	NO	NO
The Former Yugoslav Republic of Macedonia	NO ²²	YES	YES	YES	YES
Turkey	NO	YES	YES	YES	NO
Turkmenistan	NO	?	?	?	?
Ukraine	YES	YES	YES	YES	YES
United Kingdom of Great Britain and Northern Ireland	NO ²³	YES	YES	YES	YES
Uzbekistan	NO	YES	YES ²⁴	YES	NO

SUMMARY TABLE LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN IN DEPENDENT TERRITORIES ETC OF EUROPEAN AND CENTRAL ASIAN STATES

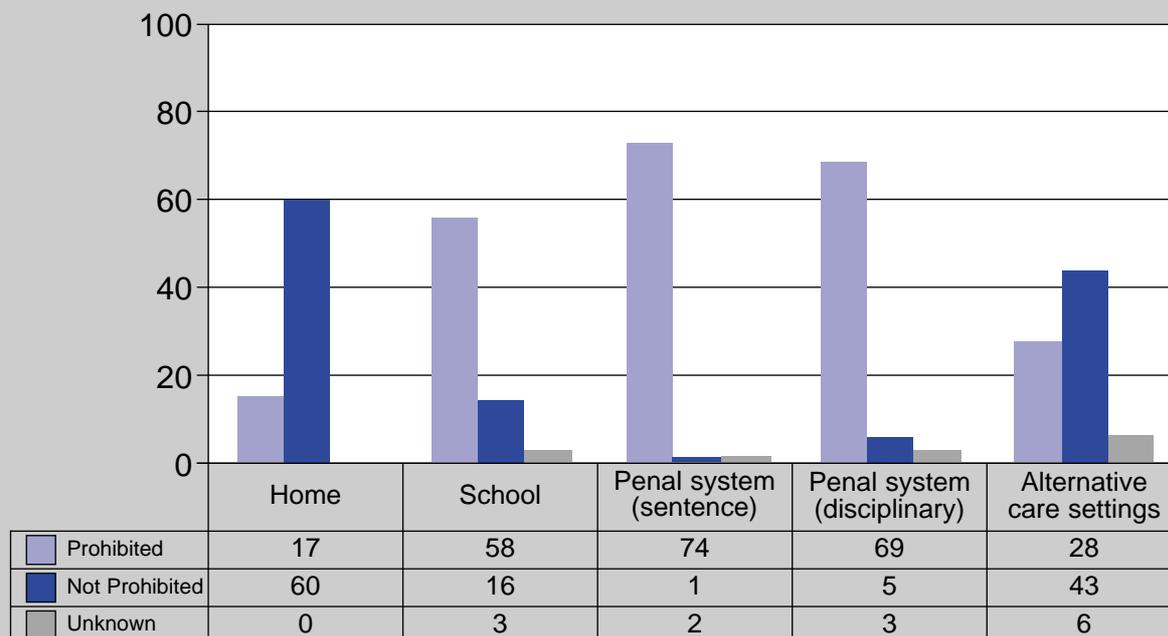
	Prohibited in the home	Prohibited in schools	Prohibited in the penal system		Prohibited in alternative care
			As a sentence for crime	As a disciplinary measure in penal institutions	
Denmark - Faroe Islands	NO	NO ¹	YES	NO	NO
Denmark - Greenland	NO	?	YES	YES	?
France - French Guiana	NO	YES ²	YES	YES ³	NO
France - French Polynesia	NO	YES ⁴	YES	YES ⁵	NO
France - Guadeloupe	NO	YES ⁶	YES	YES	NO
France - Martinique	NO	YES ⁷	YES	YES ⁸	NO
France - New Caledonia	NO	YES ⁹	YES	YES ¹⁰	NO
France - Réunion	NO	YES ¹¹	YES	YES ¹²	NO
France - Wallis and Futuna Islands	NO	YES ¹³	YES	YES ¹⁴	NO
Netherlands - Aruba	NO	NO	YES	NO	NO
Netherlands Antilles	NO	NO ¹⁵	YES	YES	YES
Norway - Spitzbergen	NO	?	?	?	?
UK - Anguilla	NO	NO	YES	YES	?
UK - Bermuda	NO	NO	YES	YES	NO
UK - British Virgin Islands	NO	NO	YES	YES	?
UK - Cayman Islands	NO	NO	YES	YES	NO
UK - Falkland Islands	NO	YES	YES	YES ¹⁶	NO
UK - Gibraltar	NO	NO	YES	?	NO
UK - Guernsey	NO	NO ¹⁷	NO ¹⁸	YES	NO ¹⁹
UK - Isle of Man	NO	NO ²⁰	YES	NO ²¹	NO ²²
UK - Jersey	NO	NO ²³	YES	YES	NO ²⁴
UK - Montserrat	NO	NO	YES	NO	?
UK - Pitcairn Islands	YES ²⁵	YES	YES	YES	YES
UK - Saint Helena	NO	NO ²⁶	YES	YES	SOME
UK - Turks and Caicos Islands	NO	NO	YES	YES	NO

¹Prohibited by government circular. ²No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ³Information unconfirmed. ⁴No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ⁵Information unconfirmed. ⁶No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ⁷No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ⁸Information unconfirmed. ⁹No explicit prohibition in law but "light correction" tolerated as for parents; information unconfirmed. ¹⁰Information unconfirmed. ¹¹No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ¹²Information unconfirmed. ¹³No explicit prohibition in law and "light correction" tolerated as for parents; information unconfirmed. ¹⁴Information unconfirmed. ¹⁵Prohibited by policy. ¹⁶But as at April 2005, regulations still to be amended. ¹⁷Prohibited in state schools by government directive; possibly lawful in private schools. ¹⁸As at March 2005, Corporal Punishment (Guernsey) Law (1957) yet to be repealed. ¹⁹Prohibited in care institutions and foster care as a matter of policy; as at March 2005, consideration was being given to explicit prohibition in all alternative care settings in draft legislation. ²⁰Prohibited by law in state schools but only by policy in the private school. ²¹Prohibited by law as a disciplinary measure against young persons aged 17 but only by policy for younger persons. ²²Prohibited in care institutions and in foster care as a matter of policy. ²³Prohibited by government guidance. ²⁴Prohibited in care institutions and foster care as a matter of policy. ²⁵Prohibited in 2003 Children Ordinance. ²⁶Corporal punishment not authorised by education rules but no explicit prohibition.

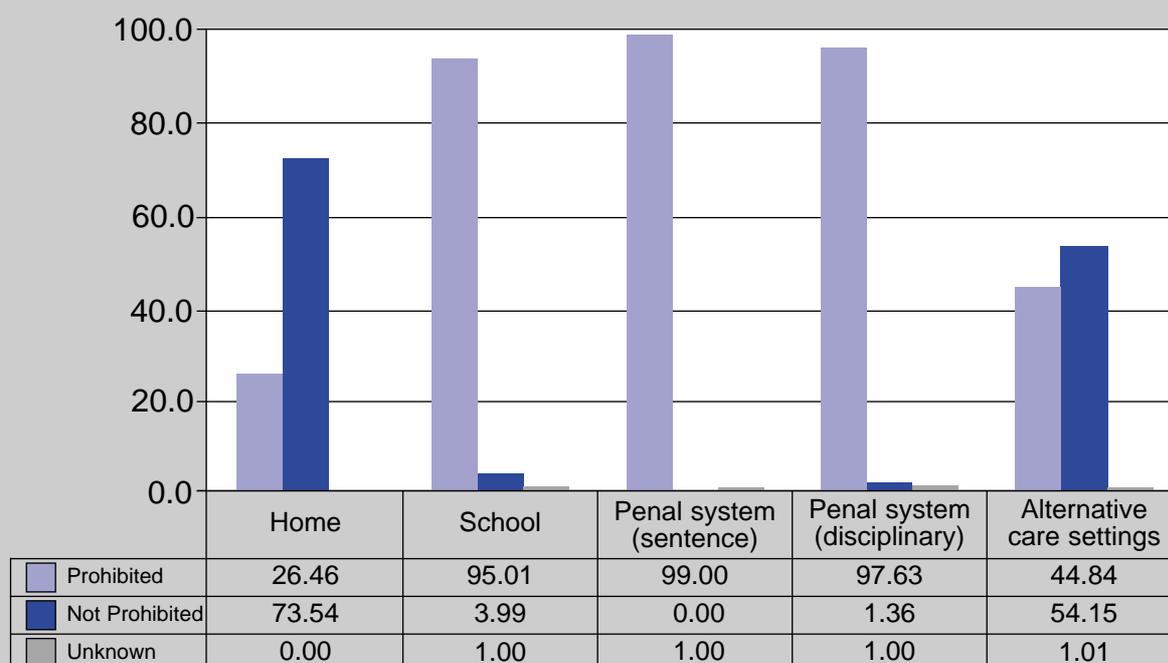
← NOTES ON TABLE OPPOSITE

¹For details of laws in states which have explicit prohibition, see box on page 16 and 17. ²No explicit prohibition, but education law and regulations recognise the dignity of the child. ³1996 Rights of the Child Act states right to protection from any form of violence but no explicit prohibition of corporal punishment. ⁴Rights of the Child Act prohibits "all forms of exploitation, physical or mental violence, cruel, harsh, or negligent treatment ... including on the part of parents, persons acting in loco parentis or relatives" but no evidence that this applies to all corporal punishment in the home. ⁵2000 Constitutional change respects children's physical integrity; proposed amendment to Civil Code pending before the Senate (2005). ⁶No explicit prohibition, but unlawful under child protection laws. ⁷No explicit prohibition in law; 1889 High Court ruling allowed "right to correction" for teachers, but 2000 ruling stated habitual and non-educational corporal punishment not covered by this. ⁸Prohibited in operating manuals for residential and day care institutions. ⁹Prohibited in pre-school settings except for childminders caring for children of relatives, children of the same family or up to three children from different families; prohibited in foster care and residential care services by guidance. ¹⁰Supreme Court judgement in 1996 outlawed all violence in child rearing; not yet confirmed in legislation. ¹¹Prohibited in health care institutions for children under 3 years of age, education institutions for children aged 3-18 and institutions for children in need of special support. ¹²Prohibited in residential institutions. ¹³Information unconfirmed. ¹⁴But in February 2005 the Cabinet agreed to proceed with prohibition in the home. ¹⁵Prohibited in residential care institutions. ¹⁶1997 Constitution prohibits corporal punishment but is not confirmed in family law and corporal punishment socially accepted. ¹⁷1994 Supreme Court judgement stated parents do not have the right to use physical aggression in raising children. ¹⁸Prohibited in the Penal Code but not clear whether this applies to parental corporal punishment in the home. ¹⁹Prohibited in day care centres and residential schools. ²⁰2003 Federal Court judgement ruled that repeated and habitual corporal punishment is unacceptable but did not rule out the right of parents to use corporal punishment. ²¹Prohibited by federal law; 1991 Federal Court ruled it permissible in certain circumstances but this is considered impossible under current (2005) legislation. ²²2000 Law on Protection of Children prohibits corporal maltreatment, punishment and other inhuman treatment and abuse, but not interpreted as prohibiting parental corporal punishment. ²³But following European Court of Human Rights judgement "A v UK" the government has accepted that current law with its defence of "reasonable chastisement" does not provide adequate protection for children, and has consulted on changes 2000. ²⁴Except possibly as a sentence under mahallay system.

Number of states and territories prohibiting corporal punishment of children



Percentage of child population legally protected from corporal punishment



Note: Source of population figures <http://esa.un.org/unpp/> (World Population Prospects: The 2002 Revision), for 2005, medium variant, and UNICEF. No figures available for Faroe Islands, Greenland, Reunion, Wallis and Futuna Islands, Netherlands Aruba, Isle of Man, Jersey, St Helena, Pitcairn Islands, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Tokelau.



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

This report is one in a series prepared by the Global Initiative for submission to each of the nine regional consultations being held in connection with the UN Secretary General's Study on Violence against Children.

The Global Initiative was launched during the Commission on Human Rights 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. We believe 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.



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

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.

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