

Ending legalised violence against children



Global Initiative to
End All Corporal Punishment
of Children

Report for North America Regional Consultation
– the UN Secretary General's Study on Violence against Children

Toronto, Canada 2005

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- + BC Association of Social Workers, Canada
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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 Canada and the USA. 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

The North American Region is well known for its many efforts to prevent physical, sexual and other forms of abuse and neglect within the family and to protect children against these forms of violence (reporting laws, strengthening of the effectiveness of existing laws, various prevention and intervention programmes, awareness-raising and educational campaigns). There has also been significant progress towards prohibiting and eradicating corporal punishment of children outside the family home, in schools, other institutions and forms of care.

But this overview indicates that the task is incomplete and that corporal punishment of children in the family (by parents or other caretakers) is still considered to be an acceptable form of violence against children and is widely practiced. Everybody – adults and children alike – has the 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.

Many citizens and politicians 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 the best way to a violence-free society.

Jaap E. Doek
Chairperson
Committee on the Rights of the Child
May 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).

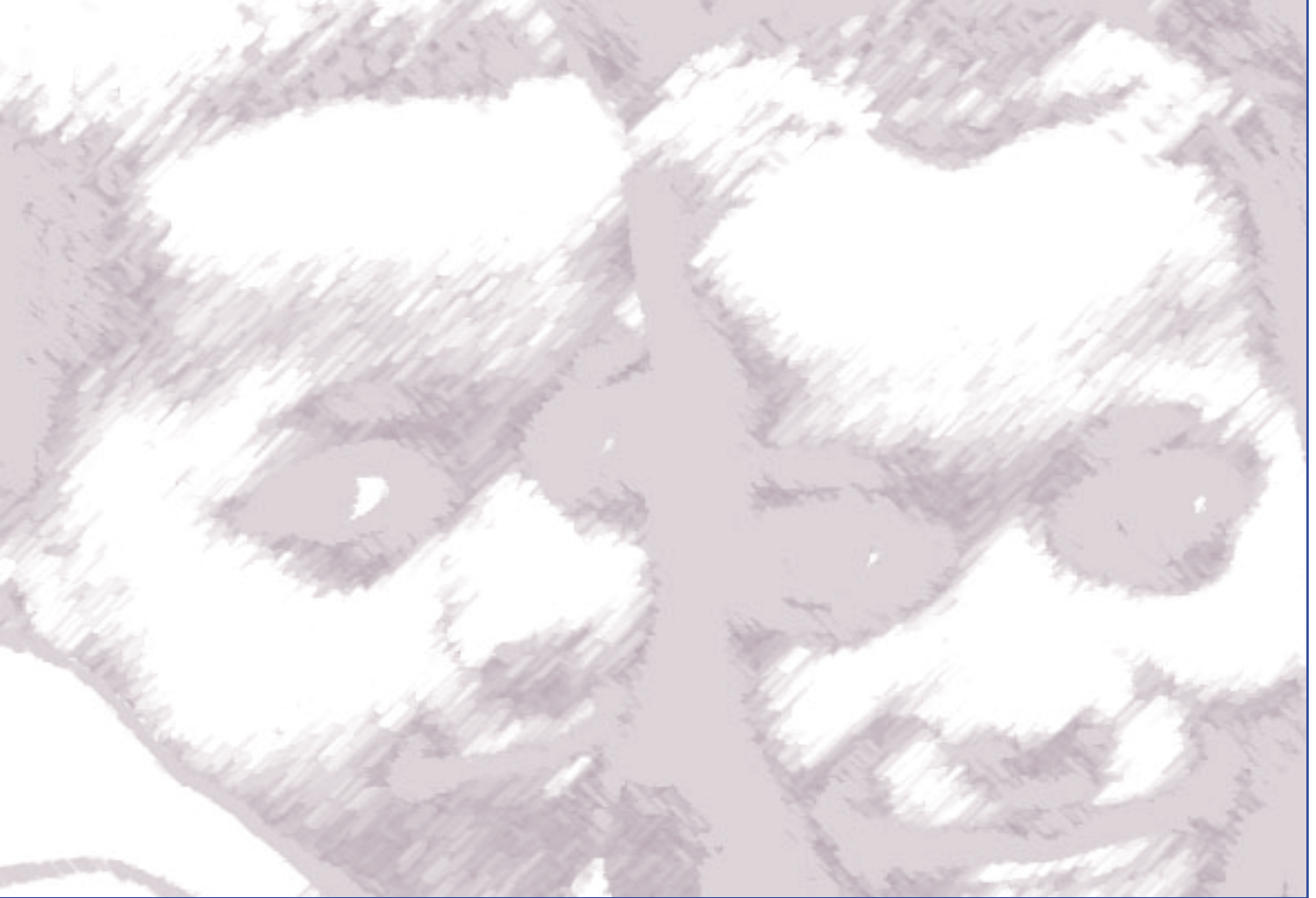
The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights 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.

“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



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

CANADA

Canada ratified the Convention on the Rights of the Child in 1991, with no relevant reservations. The Committee on the Rights of the Child has examined Canada's initial and second reports under the Convention. In 1995 it concluded: "Further measures seem to be needed to effectively prevent and combat all forms of corporal punishment and ill-treatment of children in schools or in institutions where children may be placed. The Committee is also preoccupied by the existence of child abuse and violence within the family and the insufficient protection afforded by the existing legislation in that regard.

"The Committee suggests that the State party examine the possibility of reviewing the penal legislation allowing corporal punishment of children by parents, in schools and in institutions where children may be placed. In this regard and in the light of the provisions set out in articles 3 and 19 of the Convention, the Committee recommends that the physical punishment of children in families be prohibited. In connection with the child's right to physical integrity as recognized by the Convention, namely in its articles 19, 28 and 37, and in the light of the best interests of the child, the Committee further suggests that the State party consider the possibility of introducing new legislation and follow-up mechanisms to prevent violence within the family, and that educational campaigns be launched with a view to changing attitudes in society on the use of physical punishment in the family and fostering the acceptance of its legal prohibition." (20 June 1995, CRC/C/15/Add.37, paras. 14 and 25)

It followed these recommendations up in 2003, expressing "deep concern" at the lack of law reform to prohibit all forms of corporal punishment: "The Committee, while noting the implementation of some of the recommendations it made upon consideration of the State party's initial report, regrets that the rest have not been, or have been insufficiently, addressed, particularly those contained in: ... paragraph 25, suggesting a review of penal legislation that allows corporal punishment....

"The Committee urges the State party to make every effort to address those recommendations contained in the concluding observations on the initial report that have not yet been implemented....

“The Committee welcomes the efforts being made by the State party to discourage corporal punishment by promoting research on alternatives to corporal punishment of children, supporting studies on the incidence of abuse, promoting healthy parenting and improving understanding about child abuse and its consequences. However, the Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment.

“The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of ‘reasonable force’ in disciplining children and explicitly prohibit all forms of violence

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.

The ancient English common law defence of “reasonable chastisement” has been reflected in the law both in Canada and the USA. In the UK there is a strong campaign by more than 400 organisations to remove the defence and give children equal protection under the law. This is backed by the Methodist and United Reformed Churches, Roman Catholics, Quakers and a number of Anglican Bishops.

Churches' Network for Non-Violence (CNNV); Coordinator Chris Dodd
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against children, however light, within the family, in schools and in other institutions where children may be placed.

“The Committee recommends that the State party further improve the quality of education throughout the State party in order to achieve the goals of article 29, paragraph 1, of the Convention and the Committee’s general comment No.1 on the aims of education by, *inter alia*: adopting appropriate legislative measures to forbid the use of any form of corporal punishment in schools and encouraging child participation in discussions about disciplinary measures.” (27 October 2003, CRC/C/15/Add.215, paras 4, 5, 32, 33 and 45(d))

Canada Supreme Court decision: In January 2004, Canada’s Supreme Court rejected by a majority an application by the Canadian Foundation for Youth, Children and the Law that section 43 of Canada’s Criminal Code should be struck down as unconstitutional. The judgment, issued on January 30 2004, limits the legality of parental corporal punishment and rules out school corporal punishment.

Section 43 of the Code, under the heading “Protection of Persons in Authority” provides that: “Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.”

The majority judgment rules that section 43 only justifies “minor corrective force of a transitory and trifling nature”. It rules out “on the basis of current expert consensus”: corporal punishment of children under two or over 12, degrading, inhuman or harmful conduct, discipline using objects such as rulers or belts and blows or slaps to the head. Acts resulting from the caregiver’s frustration, loss of temper or abusive personality are not protected and “the gravity of the precipitating event is not relevant”. The assessment of reasonableness requires an objective test and “must be considered in context and in light of all the circumstances of the case.”

The judgment states that teachers cannot use corporal punishment, although they may use reasonable force to remove a child from a classroom or to secure compliance with instructions: “Substantial societal consensus, supported by expert evidence and Canada’s treaty obligations, indicates that corporal punishment by teachers is unreasonable”.

Two of the dissenting judges, Justices Louise Arbour and Marie Deschamps, state that section 43 should be struck down altogether. Louise Arbour states: “Striking down the provision is the most appropriate remedy, as Parliament is best equipped to reconsider this

vague and controversial provision. Striking down section 43 will not expose parents and persons standing in the place of parents to the blunt instrument of the criminal law for every minor instance of technical assault. The common law defences of necessity and *de minimis* adequately protect parents and teachers from excusable and/or trivial conduct.”

Justice Arbour states: “What is acceptable as punishment to a society will vary with the nature of that society, its degree of stability and its level of maturity. The punishments of lashing with the cat-o-nine tails and keel-hauling were accepted forms of punishment in the 19th century in the British navy. Both of those punishments could, and not infrequently, did result in death to the recipient. By the end of the 19th century, however, it was unthinkable that such penalties would be inflicted. A more sensitive society had made such penalties abhorrent.

“That s. 43 is rooted in an era where deploying ‘reasonable’ violence was an accepted technique in the maintenance of hierarchies in the family and in society is of little doubt. Children remain the only group of citizens who are deprived of the protection of the criminal law in relation to the use of force.”

Justice Marie Deschamps argues that “by permitting incursions on children’s bodies by their parents or teachers, section 43 appears to be a throwback to old notions of children as property. Section 43 reinforces and compounds children’s vulnerability and disadvantage by withdrawing the protection of the criminal law. Moreover, because the accused is the very person most often charged with the control and trusteeship of the child, being deprived of the legal protection to which everyone else is presumptively entitled exacerbates the already vulnerable position of children. The entitlement to protection is derived by virtue of our status as persons and the status of children as persons deserves equal recognition.”

A third judge, Justice Ian Binnie, states: “With all due respect to the majority of my colleagues, there can be few things that more effectively designate children as second-class citizens than stripping them of the ordinary protection of the assault provisions of the Criminal Code. Such stripping of protection is destructive of dignity from any perspective, including that of a child. Protection of physical integrity against the use of unlawful force is a fundamental value that is applicable to all.”

But he goes on to hold that while section 43 violates the equality rights of the Canadian Charter of Rights and Freedoms, the section is a reasonable limit on those rights which should be upheld in relation to parents and those who stand in the place of parents, but not teachers.

Full text of the judgment can be found at:

<http://www.lexum.umontreal.ca/csc-scc/en/index.html>

UNITED STATES OF AMERICA

The USA signed the Convention on the Rights of the Child in 1995. It and Somalia (which has also signed the Convention) are the only two states which have not as yet ratified the Convention, although in 2002 the USA did ratify both the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict.

The USA ratified the International Covenant on Civil and Political Rights in 1992. On ratifying, it made a reservation relating to article 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”): “That the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” The Constitution has not, as yet, been interpreted as requiring prohibition of corporal punishment of children in the home, school or other institutions. The US Supreme Court in 1977 found that the Eighth Amendment, which prohibits cruel and unusual punishment, applied to protect convicted criminals from corporal punishment, but not school students. It also ruled that teachers could punish children without parental permission (*Ingraham v. Wright*, 430 U.S. 651 (1977)).

The USA ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994, with a note to the effect that “nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States”.

The USA has signed but not ratified the American Convention on Human Rights.

Global progress towards ending all corporal punishment

Globally, less than 20 of the 190-plus states have as yet prohibited all corporal punishment, including in the family (for details see www.endcorporalpunishment.org). So 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 the USA, it is prohibited in public schools in 27 states and the District of Columbia; in only two states prohibition covers private schools. In Canada, corporal punishment in schools was ruled out by a Supreme Court judgment in 2004. It has been prohibited in legislation in nine of the 13 provinces and territories (although not, it appears, in private schools).

In about 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 Canada, corporal punishment is prohibited throughout the penal system. In some states of the USA corporal punishment has still not been explicitly prohibited in law as a disciplinary measure within some institutions.

All this state-authorized deliberate and severe violence against children ironically co-exists in these countries with child protection systems. Corporal punishment is also reported in domestic and other situations of child labour.

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).

Prevalence of corporal punishment

CANADA

National surveys

Nationwide surveys have produced a variety of results. In a 1988 survey, 21% of parents reported that they use physical punishment (19% occasionally, 2% often or very often).¹ In a 2001 survey, 10% of parents reported that they use physical punishment when their children break the rules.² A 2002 survey found that 50% of parents reported that they or their spouse had “inflicted light corporal punishment, like a slap” on their children; 6% reported that they or their spouse had “inflicted painful corporal punishment”.³

In the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect, 69% of substantiated physical abuse incidents were identified as cases of physical punishment.⁴

Studies in provinces and territories

In a 2000 survey of university students in **British Columbia** and **Manitoba**, 75% reported having experienced parental physical punishment as children or adolescents. Of these, 37% reported being slapped on the head, 34% being hit with an object, and 18% being whipped.⁵

In a sample of mothers of preschoolers in **Manitoba**, 59% reported having used physical punishment in the previous two weeks.⁶ In a sample of mothers of preschoolers in **Manitoba** and **Ontario**, 70% reported having used physical punishment at some time; one-third of those who used it did so at least once per week.⁷ In a sample of **Ontario** parents, 85% reported having slapped or spanked their children and 20% reported having hit their children with objects.⁸

In a 1999 survey of **Quebec** mothers, 48% reported having physically punished their children in the 12 previous months by pinching, shaking or hitting the child on the buttocks.⁹ Acts of severe violence such as shaking an infant, hitting a child on the face or head, punching, kicking or slapping, or hitting with an object within the previous 12 months were reported by 7% of mothers in the sample.

UNITED STATES OF AMERICA

Anationally representative sample of 991 American parents, interviewed in the mid-1990s, examined six types of corporal punishment: slaps on the hand or leg, spanking on the buttocks, pinching, shaking, hitting on the buttocks with a belt or paddle and slapping in the face.¹⁰ The study found the overall percentage of parents using any of these types of corporal punishment during the previous year was 35% for infants and reached a peak of 94% at ages 3 and 4. Despite a rapid decline in use after the age of 5, just over half of American parents hit children at age 12, a third at age 14, and 13% at age 17. Further analysis found that parents who hit teenage children did so on average about six times during the year. Severity, as measured by hitting the child with a belt or paddle, was greatest for children aged 5–12 (28% of such children).

An ABC News telephone poll of a random national sample of 1,015 adults in 2002 found that overall 65% approve of spanking children, with 31% disapproving (72% of the sample thought teachers should not be permitted to spank children in school).¹¹

US school corporal punishment statistics

The most recent official data on corporal punishment in US public schools, for the 1999-2000 school year, released in February 2003, reported that overall 342,038 students were subjected to corporal punishment.¹² This is a drop of 7% from the previous survey two years earlier (taking enrolment increases into account), and continues a steady trend. Total US public school enrolment in 1999-2000 was 46,306,355. 27 states and the District of Columbia have prohibited all corporal punishment in public schools. 1999-2000 data for the remaining 23 states show that the highest rates for school corporal punishment were in Mississippi (48,627 or 9.8% of students); Arkansas (40,437 or 9.1% of students); Alabama (39,197 or 5.4% of students); and Tennessee (38,373 or 4.2% of students). Black students are hit at a rate that is more than twice their proportion in the population. Blacks comprise 17% of students, but suffer 39% of paddlings. Whites make up 62% of all students, but suffer 53% of the corporal punishment.

¹Decima Research Inc., (1988), *Report to the Institute for the Prevention of Child Abuse on a nation-wide survey of attitudes toward child rearing*. Toronto, ON: Decima Research Inc.

²Berger, E. (2001), *National Report on Inter-Generation Abuse*. Toronto, ON: Berger Population Health Monitor.

³Canadian Press and Leger Marketing (2002). *Child Abuse Report*. Montreal, PQ: Canadian Press and Leger Marketing.

⁴Troc  , N., MacLaurin, B., Fallon, B., Daciuk, J., Billingsley, D., Tourigny, M., Mayer, M., Wright, J., Barter, K., Burford, G., Hornick, J., Sullivan, R., & McKenzie, B. (2001). *Canadian Incidence Study of Reported Child Abuse and Neglect*. Ottawa, ON: National Clearinghouse on Family Violence.

⁵Ateah, C. & Parkin, C.M. (2002), Childhood experiences with and current attitudes toward corporal punishment, *Canadian Journal of Community Mental Health*, 21, 35-46.

⁶Ateah, C. & Durrant, J.E. (2005), Maternal use of physical punishment in response to child misbehavior: Implications for child abuse prevention. *Child Abuse & Neglect*, 29, 177-193.

⁷Durrant, J.E., Rose-Krasnor, L. & Broberg, A. (2003), "Maternal beliefs about physical punishment in Sweden and Canada", *Journal of Comparative Family Studies*, 34, 586-604.

⁸Lenton, R.L. (1990), "Techniques of child discipline and abuse by parents", *Canadian Review of Sociology & Anthropology*, 27, 157-184.

⁹Cl  ment, M.E., Bouchard, C., Jett  , M. & Laferri  re, S. (2000), *La violence familiale dans la vie des enfants du Qu  bec*, Qu  bec, PQ: Institut de la Statistique du Qu  bec.

¹⁰Straus, M.A. & Stewart, J.H. (1999), "Corporal Punishment by American Parents: National Data on Prevalence, Chronicity, Severity, and Duration, in Relation to Child and Family Characteristics", *Clinical Child and Family Psychology Review*, Volume 2, Number 2, June 1999, pages 55-70

¹¹ABC News poll conducted by telephone October 25 – 29 2002; fieldwork by ICR-International Communications Research of Media, Pa.

¹²US Department of Education, Office for Civil Rights, 2000 *Elementary and Secondary School Civil Rights Compliance Report*; analysis from Center for Effective Discipline: www.stophitting.com

CANADIAN ORGANISATIONS COMBINE TO CONDEMN CORPORAL PUNISHMENT AND SEEK LAW REFORM AND PUBLIC EDUCATION TO ELIMINATE IT

A **Joint Statement on Physical Punishment of Children and Youth** has been developed by a national coalition of organisations in Canada, facilitated by the Children's Hospital of Eastern Ontario. To date, it has been endorsed by more than 150 professional organisations. (For full text and list of supporting organisations, see <http://www.cheo.on.ca/english/1120.html>)

Based on an extensive review of research, the **Joint Statement** provides an overview of the developmental outcomes associated with the use of corporal punishment: "The evidence is clear and compelling – physical punishment of children and youth plays no useful role in their upbringing and poses only risks to their development. The conclusion is equally compelling – parents should be strongly encouraged to develop alternative and positive approaches to discipline."

The Executive Summary notes as key findings: "The research evidence now available permits us to move beyond the debate about whether physical punishment is harmful to children and youth or is even effective as discipline.

- There is no clear evidence of any benefit from the use of physical punishment on children.
- There is strong evidence that physical punishment places children at risk for physical injury, poorer mental health, impaired relationships with parents, weaker internalization of moral values, antisocial behaviour, poorer adult adjustment and tolerance of violence in adulthood.
- Few parents believe that physical punishment is effective, most believe it is unnecessary and harmful, and a majority think the most common outcome is parental guilt or regret.
- Parents are more likely to use physical punishment if they approve of it, experienced it themselves as children, feel anger in response to their children's behaviour, are subject to depression, or are burdened by particular forms of stress."

The recommendations for action in Canada include:

- delivery of public awareness messages to inform all Canadians that physical punishment is harmful to children's development and is ineffective as discipline;
- development of universal parenting education; and
- provision of the same protection of children from physical assault as is given to Canadian adults and to children in a growing number of countries.

RECOMMENDATIONS

THE GLOBAL INITIATIVE URGES THE NORTH AMERICA 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.

LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN IN CANADA AND USA

The Global Initiative acknowledges with many thanks the information provided for these tables by the Center for Effective Discipline, Columbus, Ohio (www.stop hitting.com) and the Repeal 43 Committee in Canada (www.repeal43.org), as well as other organisations and individuals. Any errors are the responsibility of the Global Initiative; please contact us with corrections or additional information: info@endcorporalpunishment.org
Detailed reports on the legal status of corporal punishment in every country worldwide will be published and updated on the website of the Global Initiative: www.endcorporalpunishment.org

CANADA

NOTES ON TABLE

Home: The 2004 Supreme Court of Canada judgment limits the legality of corporal punishment by parents and other care-givers (see page 9).

Schools: The 2004 Supreme Court of Canada judgment rules out corporal punishment by teachers in all schools (see page 9). This has not as yet been reflected in federal legislation. However, as noted in the table, some provinces and territories have prohibited corporal punishment in their schools by law (and in others, school boards do not allow corporal punishment as a matter of policy). Unless noted otherwise, this legislation does not apply to private schools.

Alternative care settings: It is unclear whether prohibition, where it exists, applies to all forms of alternative care, including for example home day care and to provision which is not state provided or licensed.

Province/territory	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	Child care	Foster care
Alberta	NO	NO	YES	YES	YES	YES
British Columbia	NO	YES	YES	YES	YES	YES
Manitoba	NO	NO ¹	YES	YES	YES	YES
New Brunswick	NO	YES	YES	YES	NO	NO
Newfoundland	NO	YES	YES	YES	YES	NO
Northwest Territories	NO	YES	YES	YES	YES	NO
Nova Scotia	NO	YES	YES	YES	YES	NO
Nunavut	NO	YES	YES	YES	YES	NO
Ontario	NO	NO ²	YES	YES	YES ³	YES ⁴
Prince Edward Island	NO	YES	YES	YES	YES	NO
Quebec	NO ⁵	YES	YES	YES	YES ⁶	YES ⁷
Saskatchewan	NO	NO ⁸	YES	YES	YES	NO
Yukon	NO	YES	YES	YES	YES	NO

¹But prohibited by policy by many school boards

²But prohibited by policy by many school boards

³Prohibited in provincially-licensed childcare programmes and foster homes, and for all children receiving services from a child protection agency or other service provider licensed or approved by the province

⁴See note 3

⁵Reference to a "right of correction" was removed from the Civil Code in 1994; a number of rulings have stated that the right of correction is no longer recognised in Quebec's civil law. But the federal Criminal Code and section 43 (see page 9) apply nevertheless.

⁶As with parents, carers have no right of correction under the Civil Code. But the Federal Criminal Code and section 43 (see page 9) apply nevertheless.

⁷See note 6

⁸A Bill to amend education legislation to prohibit corporal punishment is before Legislative Assembly, May 2005. Already prohibited by policy by many school boards

UNITED STATES OF AMERICA

LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN

State	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	
Alabama	NO	NO	YES	NO ¹	SOME ²
Alaska	NO	YES	YES	YES	YES
Arizona	NO	NO	YES	NO ³	YES
Arkansas	NO	NO	YES	NO ⁴	SOME ⁵
California	NO	YES	YES	YES	YES
Colorado	NO	NO	YES	YES	YES
Connecticut	NO	YES	YES	NO ⁶	SOME ⁷
Delaware	NO	YES	YES	YES	SOME ⁸
District of Columbia	NO	YES	YES	NO ⁹	SOME ¹⁰
Florida	NO	NO	YES	YES	SOME ¹¹
Georgia	NO	NO	YES	YES	YES
Hawaii	NO	YES	YES	YES ¹²	YES
Idaho	NO	NO	YES	YES	SOME ¹³
Illinois	NO	YES	YES	NO ¹⁴	SOME ¹⁵
Indiana	NO	NO	YES	NO ¹⁶	SOME ¹⁷
Iowa	NO	YES ¹⁸	YES	YES	YES
Kansas	NO	NO	YES	YES ¹⁹	YES
Kentucky	NO	NO	YES	YES	YES
Louisiana	NO	NO	YES	YES	SOME ²⁰
Maine	NO	YES	YES	YES	YES
Maryland	NO	YES	YES	NO ²¹	SOME ²²
Massachusetts	NO	YES	YES	NO ²³	SOME ²⁴
Michigan	NO	YES	YES	YES	YES
Minnesota	? ²⁵	YES	YES	NO ²⁶	YES
Mississippi	NO	NO	YES	NO ²⁷	SOME ²⁸
Missouri	NO	NO ²⁹	YES	NO ³⁰	SOME ³¹
Montana	NO	YES	YES	YES	SOME ³²
Nebraska	NO	YES	YES	YES	YES
Nevada	NO	YES	YES	YES	YES
New Hampshire	NO	YES	YES	NO ³³	YES
New Jersey	NO	YES ³⁴	YES	NO ³⁵	YES
New Mexico	NO	NO	YES	NO ³⁶	YES
New York	NO	YES	YES	YES	YES
North Carolina	NO	NO ³⁷	YES	NO ³⁸	SOME ³⁹
North Dakota	NO	YES	YES	NO ⁴⁰	YES
Ohio	NO	NO	YES	YES	YES
Oklahoma	NO	NO	YES	YES	YES
Oregon	NO	YES	YES	NO ⁴¹	YES
Pennsylvania	NO	NO ⁴²	YES	YES	YES
Rhode Island	NO	NO ⁴³	YES	?	YES
South Carolina	NO	NO	YES	? ⁴⁴	SOME ⁴⁵
South Dakota	NO	YES	YES	YES ⁴⁶	YES
Tennessee	NO	NO	YES	NO ⁴⁷	SOME ⁴⁸
Texas	NO	NO ⁴⁹	YES	YES	SOME ⁵⁰
Utah	NO	YES	YES	NO ⁵¹	SOME ⁵²
Vermont	NO	YES	YES	? ⁵³	YES
Virginia	NO	YES	YES	YES	SOME ⁵⁴
Washington	NO	YES	YES	? ⁵⁵	YES
West Virginia	NO	YES	YES	YES	YES
Wisconsin	NO	YES	YES	YES	YES
Wyoming	NO	NO	YES	NO ⁵⁶	YES

NOTES ON TABLE (opposite)

Schools: (i) Unless noted otherwise, in states in which there is no state level prohibition of corporal punishment, such punishment is permitted unless banned by local boards. In most of these states, it is up to local boards and schools to establish policies regulating the use of corporal punishment. (ii) Unless noted otherwise, state level prohibitions apply only to public schools.

Penal system: Corporal punishment as a sentence for crime has been ruled unconstitutional by the Supreme Court, and no federal or state laws permit its use as an element of criminal sentencing. We have identified 23, possibly 26, states which prohibit in law corporal punishment as a disciplinary measure in juvenile detention centres, together with some which prohibit its use as a matter of policy. In others we have been unable to locate an explicit prohibition in state laws available on the world wide web, but have not had access to all subsidiary regulations or policies. The American Correctional Association's standards for juvenile detention facilities call for "written policy, procedure, and practice [that] protect juveniles from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment". The comment to the standard notes: "In situations where physical force or disciplinary detention is required, only the least drastic means necessary to secure order or control should be used." The National Juvenile Detention Association has passed a resolution which "opposes any policy or related procedure which advocates, promotes, or authorizes the use of offensive physical intervention techniques that allows staff to hit, kick, or strike juveniles".

¹But prohibited as a matter of policy

²Prohibited in all settings, but preschool programmes operated by churches or religious non-profit schools exempt from licensing

³But prohibited in 1999 Operational Guidelines for juvenile detention services

⁴Prohibited for adult prisoners but permitted for juveniles

⁵Prohibited by licensing requirements in family day care and in day care centres, and in group homes/institutions and foster care homes licensed by the Arkansas Department of Human Services; not prohibited in private group homes/institutions licensed by the Arkansas Child Welfare Agency Review Board; child care facilities operated by churches possibly exempt from licensing requirements

⁶Information unconfirmed

⁷Prohibited in all settings, but some religious based arrangements exempt from child care licensing

⁸Prohibited in family day care and in day care centres; prohibited in foster care by agency policy only, but new regulations carrying explicit prohibition are being promulgated

⁹But prohibited by policy

¹⁰Prohibited in group homes/institutions and home foster care; prohibited in day care centres by policy only but regulations carrying explicit prohibition are being promulgated; not prohibited in family day care, but prohibition proposed

¹¹Prohibited in all settings, but child care facilities in church or parochial schools exempt from licensing regulations

¹²Information unconfirmed

¹³Prohibited in group homes/institutions and home foster care; not prohibited in family day care and day care centres

¹⁴Information unconfirmed. Law prohibits "excessive corporal punishment"

¹⁵Prohibited in all settings except church-sponsored part-day child care programmes for children over 3 years of age

¹⁶Information unconfirmed

¹⁷Prohibited in day care centres and home foster care; not prohibited in group homes/institutions, but strongly discouraged through training and legal interpretation; prohibited in family day care by agency policy, but a rule is being promulgated (2005) which will include prohibition; possibly not prohibited in unlicensed child care programmes with religious affiliation

¹⁸Prohibited in public and private schools

¹⁹Information unconfirmed

²⁰Prohibited in home foster care, Class A (federally funded) day care and residential centres and emergency shelters; not prohibited in family day care, Class B day care and residential centres

²¹But possibly prohibited by policy

²²Prohibited in all state-regulated child care facilities but possibly lawful in private facilities; nursery schools and child care centres operated by tax-exempt religious organisations exempt from licensing standards

²³Information unconfirmed

²⁴Prohibited in family day care, day care centres and group homes/institutions; prohibited in home foster care through training and legal interpretation but not in law

²⁵Examination of several laws of Minnesota has led some legal experts to conclude that corporal punishment is not permitted, but according to the legislation, a parent/legal guardian/caretaker can use reasonable force to restrain or correct a child (Sec. 609.379.[Cr.]

²⁶Information unconfirmed

²⁷But possibly prohibited by policy

²⁸Prohibited in family day care, day care centres, home foster care and licensed group homes/institutions; not prohibited in unlicensed group homes/institutions

²⁹But prohibition proposed in House Bill 289

³⁰Information unconfirmed

³¹Prohibited in all settings, but child care facilities of religious organisations exempt from licensing

³²Prohibited in family and group day care centres; in home foster care prohibited in agency policy and law states that foster parents may not use "unusual, severe, cruel, capricious, humiliating or unnecessary punishment" and foster parents must show evidence of being able to care "without recourse to physical punishment", but a regulation carrying a more explicit prohibition is being promulgated

³³Information unconfirmed

³⁴Prohibited in public and private schools

³⁵Information unconfirmed. Law prohibits "unnecessarily severe" and "excessive" corporal punishment

³⁶But possibly prohibited by policy

³⁷House Bill 1462 would require the state board of education to conduct a study to find out if teachers require training on alternatives to paddling

³⁸But prohibited in Youth Development Center policies and procedures

³⁹Prohibited in family day care, group homes/institutions, home foster care and in licensed day care centres; permitted in religious-sponsored day care centres; religious child care facilities, including summer day camps, exempt from licensing

⁴⁰But law prohibits "excessive corporal punishment"

⁴¹Information unconfirmed

⁴²But prohibited in proposed new regulation

⁴³But possibly banned by administrative policies or board policies in all districts

⁴⁴Law prohibits "excessive corporal punishment"

⁴⁵Prohibited in home foster care, day care centres and in group homes/institutions for children in state custody or placed by public agencies; permitted in family day care; bible schools and child care programmes of churches and other religious organisations not publicly funded exempt from prohibition in licensing requirements

⁴⁶Information unconfirmed

⁴⁷But prohibited in Department of Children's Services policies and procedures for youths held in state custody

⁴⁸Prohibited in family day care, day care centres, child welfare licensed group homes/institutions and foster care; permitted in Residential Child Care Agencies group homes/institutions, but proposed new standards would include prohibition; child care centres run by religious schools exempt

⁴⁹But prohibition proposed in House Bill 2413

⁵⁰Prohibited in family day care and in day care centres; permitted in group homes/institutions and home foster care

⁵¹Prohibited by policy

⁵²Prohibited in all settings, but parochial institutions providing educational care exempt from licensing

⁵³Prohibited by law for adult inmates, but possibly only by policy for juveniles

⁵⁴Prohibited in family day care, day care centres and home foster care; permitted by law in seven licensed group homes/institutions, though prohibited by policy in all seven

⁵⁵Prohibited by law for adult inmates, but possibly only by policy for juveniles

⁵⁶Information unconfirmed. Law prohibits "excessive or unreasonable" corporal punishment

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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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