



Legal reform – online resources (pdf version, January 2008)

This document is a pdf version of the online resources area of the Global Initiative website, designed to accompany the Global Initiative handbook *Prohibiting corporal punishment of children: A guide to legal reform and other measures* (January 2008) – see www.endcorporalpunishment.org/reform. We welcome further information about other legal and other resources to support prohibition: please email info@endcorporalpunishment.org.

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Legislative measures to prohibit corporal punishment

Home, including removal of legal defences (“reasonable punishment”, etc)

Removal of legal defences available to parents/carers who use corporal punishment is an essential aspect of full prohibition of corporal punishment. This section includes examples of legislation and draft legislation which clearly state that legal defences for using “reasonable punishment”, force “by way of correction”, etc are no longer available to parents and guardians using corporal punishment in the name of discipline of children, and which explicitly prohibit corporal punishment in the home. Examples come from Canada (draft legislation, before Parliament 2007), Denmark, Finland, Netherlands, New Zealand, Romania, Sweden, Ukraine, United Kingdom (draft legislation, rejected by Parliament 2004), Uruguay and Venezuela.

Schools

Examples in this section show that in some states a comprehensive explicit prohibition is felt to be sufficient to make corporal punishment by teachers unlawful, while in others there is also a need to clarify the fact that while teachers may have the same authority as parents over students in their charge, this authority does not extend to any right to use corporal punishment, again illustrating the importance of removing legal defences (see above section). Examples come from Ecuador, Haiti, Lithuania, Philippines, Romania, South Africa, Tonga and United Kingdom.

Juvenile justice systems

Prohibiting corporal punishment of children and young people in conflict with the law means prohibiting its use as a sentence for crime, including crimes under religious or customary law, for example Islamic law, and prohibiting its use as a disciplinary measure in penal institutions. In the latter case, it is again important that any legal provision relating to a “right” of those with parental authority to use corporal punishment as a disciplinary measure is repealed, since in penitentiary and correctional institutions holding young people below the age of 18, staff are usually in the position of acting *in loco parentis*. The following examples cover prohibition of both judicial (sentencing) and disciplinary (institutional) corporal punishment, and come from Hong Kong, South Africa, Trinidad and Tobago, United States and Venezuela.

In many states judicial corporal punishment of children (and sometimes of adults as well) has been prohibited but there has been a significant delay in repealing or amending legislation allowing for such punishment. In such cases, corporal punishment may still be imposed on young people found guilty of criminal offence by some courts, either because of a lack of knowledge of the new prohibiting law or because the prohibiting law is not yet being implemented effectively in certain areas of the country. There are also states where there are laws clearly stipulating that children and young people below the age of 18 may not be sentenced to corporal punishment (e.g. whipping or flogging) but where exceptions are made in the case of *hudud* crimes under Islamic law where such punishments may be applied when puberty is reached. For states which adhere in whole or in part to *Sharia* law in criminal cases, we have been unable to obtain satisfactory examples of legal texts which prohibit the imposition of *hadd* punishments for all persons below the age of eighteen, regardless of the achievement of puberty.

Alternative care systems

Because of the wide range of settings and of providers that comprise alternative care systems (covering care institutions provided by the state and by voluntary or private bodies, foster care,

day care and so on), the most effective prohibition of corporal punishment of children in those settings is achieved by explicit prohibition of all corporal punishment, including in the family home. This ensures that children are protected wherever they are and whoever the perpetrator of violence and that there are no legal loopholes where a particular setting is not covered by law or legal justifications for using corporal punishment under a “right of correction” or similar. Since most carers of children in alternative care settings are acting *in loco parentis*, it is essential that any legal defences of a “right” to administer “reasonable punishment” are explicitly removed from law, whether they exist in statute, case law, custom or tradition.

The multitude of forms of alternative care in which children may find themselves, and the complexity of laws and regulations governing them, also highlight the need, as part of the process of legal reform, to undertake a systematic review of all legislation impacting on the settings concerned, to ensure that no stone is left unturned in the task of repealing/amending provisions which allow for corporal punishment to be administered.

The Global Initiative legal reform handbook discusses in detail the legal reform in relation to the removal of such defences and the establishment of equal legal protection from assault for adults and children which is necessary to prohibit all corporal punishment of children. In addition, given the wide range of settings which comprise alternative care systems, many of the examples given in the above sections are relevant to prohibition in alternative care contexts. Further examples are given here, from [Australia](#), [Costa Rica](#), [Iceland](#), [Jamaica](#), [Romania](#), [United Kingdom](#) and [Uruguay](#).

Other measures to support prohibition

As discussed in the legal reform handbook, and particularly with reference to General Comment No. 8 of the Committee on the Rights of the Child and article 19 of the UN Convention on the Rights of the Child, in addition to legislative measures, states are required to take administrative, social and educational measures to protect children from all forms of violence, including corporal punishment. These include public and professional awareness-raising on the negative effects of corporal punishment, promotion of positive, non-violent and participatory forms of discipline in childrearing and education.

This section includes examples of measures that have been introduced in various states to support the introduction of legislation prohibiting corporal punishment in the family home and in schools. Many of the examples given are relevant to the support of prohibition in other settings, and will be easily adapted for such use. For instance, the examples supporting prohibition in the home are readily applicable to supporting prohibition in home-based alternative care settings, and measures supporting prohibition in schools are clearly applicable to other institutional settings and professionals working with children.

There are also many resources available on the internet and/or in print that can be used to support implementation of prohibition, for example through the promotion of positive discipline (see “Internet and other resources to support prohibition” below).

Supporting prohibition in the home

Examples are given of awareness-raising and public education in [Denmark](#), [Finland](#) and [Sweden](#).

Supporting prohibition in schools

Examples are given of government and non-government initiatives in [South Africa](#) and the [United Kingdom](#).

Internet and other resources to support prohibition

For links to other resources to support legal reform, promoting positive discipline etc, see www.endcorporalpunishment.org/pages/resources/further.htm and see Useful publications available online (below).

Legislative measures to prohibit corporal punishment

Prohibition in the home, including removal of legal defences (“reasonable punishment”, etc)

Canada: Draft legislation under discussion, introduced to Parliament in October 2007, repeals section 43 of the Criminal Code, which provides for the use of “reasonable” force “by way of correction”. The draft Act to amend the Criminal Code (protection of children) (Bill S-209) states:

- (1) Section 43 of the Criminal Code is repealed.
- (2) This Act comes into force one year after the day on which it receives royal assent or on any earlier day that may be fixed by order of the Governor in Council

Denmark: The Custody and Care Act was amended in 1985 to state:

Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment.

However, further explicit prohibition was found to be necessary and in 1997, the Parental Custody and Care Act (1995) was amended to state:

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.

Finland: The Criminal Code was amended in 1969 to remove parents’ defence against prosecution for petty assault if committed during the exercise of their lawful “right” to chastise their child. In 1984 the Child Custody and Rights of Access Act (1983) came into force, prohibiting corporal punishment (article 1.3):

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.

Together with the law against physical punishment, the child’s rights to self-determination and to be heard were extended.

Netherlands: Corporal punishment is explicitly prohibited in the home in article 1:247 of the Civil Code, on parental authority, which was amended in 2007 to state (unofficial translation):

- (1) Parental authority includes the duty and the right of the parent to care for and raise his or her minor child.
- (2) Caring for and raising one’s child includes the care and the responsibility for the emotional and physical wellbeing of the child and for his or her safety as well as for the promotion of the development of his or her personality. In the care and upbringing of the child the parents will not use emotional or physical violence or any other humiliating treatment.

Article 1:248 applies article 1:247 to other persons acting *in loco parentis*.

New Zealand: The legal defence for the use of reasonable force “by way of correction” was removed from the 1961 Crimes Act in 2007 by the Crimes (Substituted Section 59) Amendment Act, which substitutes a new provision on parental authority. The new law allows the use of force for protection but explicitly prohibits its use for the purposes of correction. It also reaffirms standard police discretion, as for assault cases between adults, as to the decision to prosecute in light of the likely public interest in doing so. The new Section 59 states:

- (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of---

- (a) preventing or minimising harm to the child or another person; or
 - (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
 - (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
 - (d) performing the normal daily tasks that are incidental to good care and parenting.
- (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
- (3) Subsection (2) prevails over subsection (1).
- (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

Police guidelines on how to enforce the prohibition were also published (available at www.police.govt.nz/news/release/3149.html), confirming that parents who regularly smack their children despite warnings face prosecution; parents found to have used “minor, trivial or inconsequential” force and not charged will have their details recorded by police family violence coordinators. A provision in section 139A of the 1989 Education Act which recognised parents’ right to use force by way of correction was repealed.

Romania: Corporal punishment is explicitly prohibited in article 28 of the Law on Protection and Promotion of the Rights of the Child, (2004, in force 2005):

- (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.

Article 90 states of the same law states:

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.

Sweden: The legal defence for the use of corporal punishment by parents was removed from criminal law in 1957. In 1966, a provision allowing “reprimands” was removed from the Parenthood and Guardianship Code. The Code was amended in 1979 to explicitly prohibit corporal punishment (article 6.1):

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.

Ukraine: The law concerning the responsibilities of parents towards their children – the Family Code (2003, in force 2004) – prohibits corporal punishment and any other humiliating punishment or treatment (article 150). Article 150(7) states:

Physical punishment of the child by the parents, as well as other inhuman or degrading treatment or punishment are prohibited.

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 [sic]

The same law defines 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 honour and dignity.

United Kingdom: The following extract from a clause debated (but not accepted) in the UK Parliament illustrates how the law must make absolutely clear that the laws on assault and battery which apply to adults should apply equally to children. It also provides an example of provisions which may be necessary for establishing when reasonable use of force may be necessary.

- (1) Battery of a child cannot be justified in any proceedings on the grounds that it constituted reasonable punishment.
- (2) Battery of a child is not unlawful if the act amounts to the use of reasonable force in order to –
 - (a) avert an immediate danger to the child or any other person;
 - (b) avert an immediate danger to property; or
 - (c) prevent the commission of a crime, or an act which would be a crime if the child had reached the age of criminal responsibility.
- (3) For the purpose of subsections (1) and (2) “child” means a person under the age of 18...

Uruguay: Corporal punishment is prohibited by repeal of the provisions in the Civil Code and the Children and Adolescents Code (2004) which had recognised the right of parents and others to administer “moderate/adequate correction”, and by a clear statement that corporal punishment is prohibited. The law, enacted in 2007, inserts the following article into the Children and Adolescents Code:

Article 12bis. Prohibition of physical punishment. It is prohibited for parents, guardians, and all other persons responsible for the care, treatment, education or supervision of children and adolescents, to use physical or any other kind of humiliating punishment as a form of correcting or disciplining children or adolescents.

Uruguay's Institute for Children and Adolescents, other State institutions and civil society are jointly responsible for:

- a) carrying out awareness raising and educational programmes for parents and all others responsible for the care, treatment, education or supervision of children and adolescents;
- b) promoting positive, participatory and non-violent forms of discipline as alternatives to physical punishment and other forms of humiliating treatment.

It also inserts the following provision into article 16 of the Code:

- f) Correct your children or protégés without the use of physical punishment or any other kind of humiliating treatment.

Venezuela: In 2007, article 32-A (“the right to good treatment”) was inserted into the Law for the Protection of Children and Adolescents which explicitly prohibits all corporal punishment and puts obligations on parents, other adults and the State to ensure implementation of the new law. Article 32-A states:

All children and young people have a right to be treated well. This right includes a non-violent education and upbringing, based on love, affection, mutual understanding and respect, and solidarity.

Parents, representatives, guardians, relatives, and teachers should use non-violent methods of education and discipline to raise and educate their children. Consequently, all forms of physical and humiliating punishment are prohibited. The State, with the active participation of society, must ensure policies, programmes and protection measures are in place to abolish all forms of physical and humiliating punishment of children and young people.

Corporal punishment is defined as the use of force, in raising or educating children, with the intention of causing any degree of physical pain or discomfort to correct, control or change the behaviour of children and young people, provided that the act is not punishable.

Humiliating punishment can be understood as any form of offensive, denigrating, devaluing, stigmatising or mocking, treatment, carried out to raise or educate children and young people, with the aim of disciplining, controlling or changing their behaviour, provided that the act is not punishable.

Article 358 of the Law for the Protection of Children and Adolescents is amended to re-emphasise that the duties and rights of parents in childrearing exclude the use of corporal punishment:

The responsibility for raising children includes the shared duty and right, which is equal and non-derogable, of the father and mother to love, raise, train, educate, and look after their children, sustain and assist them financially, morally and emotionally, using appropriate corrective measures that do not violate their dignity, rights, guarantees or overall development. Consequently, all forms of physical punishment, psychological violence and humiliating treatment, which harm children and young people, are prohibited.

Further details about countries with full prohibition, including in the home, are available at www.endcorporalpunishment.org.

Prohibition in schools

Ecuador: Corporal punishment is prohibited in legislation pertaining to child rights generally. Articles 40 and 41 of the Childhood and Adolescence Code (2003) address disciplinary methods and prohibited punishments in educational institutions:

40. Disciplinary measures.

Teaching methods and discipline in educational institutions shall respect the rights and guarantees of children and young persons and shall exclude all forms of abuse, ill-treatment and disrespect, and, accordingly, any form of cruel, inhuman or degrading punishment.

41. Prohibited punishments.

Educational institutions are:

(1) Prohibited from using corporal punishment;

(2) Prohibited from using psychological punishments that offend the dignity of children and young persons....

Haiti: Prohibition of school corporal punishment in Haiti is part of a more far reaching prohibition of corporal punishment which extends to most settings (though we have been unable to establish whether this includes the home). The Law prohibiting corporal punishment of children (2001) is reproduced here in its entirety (unofficial translation). It is notable for its definition of corporal punishment, which includes hitting or pushing, for mandating the establishment in a school (or other institution or organisation) of a discipline committee to oversee the implementation of a code of conduct, for providing for a variety of levels of redress when the prohibition is violated, including ministerial level.

1. The inhuman treatment of any nature comprising corporal punishment of a child is forbidden.
2. Inhuman treatment is defined by any action that causes a bodily or emotional shock to a child, such as hitting or pushing, or inflicting any punishment that causes damage to the child, using or without the intermediary of an object, weapon or abusive physical force.
3. Any person, organisation, school or children's home to whom this law confides the responsibility of the child as well as any other person entrusted to make decisions on the child's behalf by virtue of this law must, during their intervention, treat the child in a way that benefits his security and development.
4. Any disciplinary measure taken by an organisation, school or children's home must be in the interest of the child in accordance with internal regulations that are visibly displayed in the establishment.
5. The organisation, school or children's home must establish a code of conduct in which sanctions for indiscipline or violation of the rules are listed.
6. A discipline committee must be appointed to ensure the enforcement of a code of conduct that respects the child's dignity as a human being in accordance with this law. Social agents of the appropriate state institution will supervise the enforcement of the code.
7. The organisation, school or children's home must ensure that the rules of the code of conduct are explained to the child and his parents, if he has any. A copy of the internal rules must be given to the child, if he has the competence to understand them, and to his parents, if he has any.
8. The Ministry of National Education is the higher authority and has the final say in case of a dispute between parents, pupils and the school, recorded by letter or verbally to the Ministry, on the interpretation of the code of conduct.
9. The Minister of Social Affairs has the authority in a complaint that a child has not been punished in accordance with this law in an organisation or children's home. Any complaint must be recorded on a register at the Ministry.
10. In case of a serious fault committed by the director, teachers or any member of the school staff the Ministry of National Education will demand the removal of the person at fault from the school and can even, according to the seriousness of the case, close down the establishment.
11. In the case of an organisation or children's home the decision to remove the person at fault or, according to the seriousness of the case, close down the organisation or children's home rests with the Ministry of Social Affairs.
12. Each school, organisation or children's home must set up a control committee, led by the director or his delegate, responsible for checking any sanction that affect the well-being or physical safety of the child.

13. This control committee will report any deficiencies to the discipline committee at the Ministry of Education or at the Ministry of Social Affairs. The Ministries can request a civil tribunal from the government.

14. Any person, director, teacher or employee of a school, organisation or children's home who is found to have participated in or assisted an act that put the safety of a child in danger will be removed from their post and will be prosecuted according to the penal code.

15. The present law overrides any law or clause of a law, any decree or clause of a decree, any Order in Council or clause of Order in Council that is contrary to it and will be published and executed by the Ministries of Economy and Finance, of National Education, of Youth and Sport and of Social Affairs.

Lithuania: Prohibition of corporal punishment is in the form of a prohibition of torture, cruel behaviour and humiliation together with a list of permitted disciplinary measures in education settings which excludes corporal punishment. Thus article 49 of the Law on the Fundamentals of Protection of the Rights of the Child (1996, amended 2002) states:

(1) Parents and other legal representatives of the child may appropriately, according to their judgment, discipline the child, for avoiding to carry out his duties and for disciplinary infractions, with the exception of physical and mental torture, other cruel behaviour and the humiliation of the child's honour and dignity.

(2) Disciplinary and educative enforcement measures: criticism, reprimand, severe reprimand, appropriate evaluation of behaviour and other enforcement means, established by laws, may be applied to a child for violations of internal order regulations of teaching and educative (care) institutions.

Philippines: The Family Code (1987) states that the parental authority granted teachers and carers does not extend to a right to use corporal punishment. Article 233 states:

The person exercising substitute parental authority shall have the same authority over the person of the child as the parents. In no case shall the school administrator, teacher or individual engaged in child care exercising special parental authority inflict corporal punishment upon the child.

Romania: The prohibition of corporal punishment in schools that had been in force for a number of years was reasserted when legislation concerning the whole spectrum of children's rights was enacted. Corporal punishment in schools had been prohibited since 1948, and confirmed in the Education Law (article 157) and the Internal Regulations governing schools and care institutions (articles 5 and 9). In 2004, Law No. 272/2004 on the Protection and Promotion of the Rights of the Child was enacted, which prohibited corporal punishment in all settings and again confirmed that this applied to schools. Article 28 states:

(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 treatments.

(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....

Article 48 clarifies that this prohibition of physical punishment applies to the educational process:

(2) During the teaching and educational process, the child has the right to be treated with respect by the teachers, to be informed on his or her rights, as well as on the methods of exercising these rights. Physical punishments during the educational process are forbidden....

Article 90 emphasises the prohibition of physical punishment in all institutions, including educational settings:

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 institutions which ensures the protection, care and education of children.

South Africa: The prohibition of corporal punishment in schools is in primary legislation, and further details concerning school codes of conduct are given in guidance. The prohibition is found in article 10 of the South African Schools Act (1996, in force 1997), and leaves no doubt that the use of corporal punishment will be treated in law as assault:

- (1) No person may administer corporal punishment at a school to a learner;
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

The South African National Education Policy Act (1996) also contains the prohibition, stating in article 3 that “[n]o person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution”. Direction as to how schools should reflect the prohibition of corporal punishment in their codes of conduct in South Africa is produced in the form of guidance rather than in primary legislation. In 1998, Notice 776 pursuant to the Schools Act was published in the Government Gazette by the Department of Education, “Guidelines for the consideration of governing bodies in adopting a code of conduct for learners”, directing those responsible for its drafting that “[t]he main focus of the Code of Conduct must be positive discipline; it must not be punitive and punishment oriented but facilitate constructive learning” (para 1.4). The full Guidelines are available at www.education.gov.za/dynamic/dynamic.aspx?pageid=329&catid=12&category=Government%20Notes&legtype=4. The sections on discipline and punishment are reproduced below:

7. DISCIPLINE

7.1 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. Its goal is to teach and lead learners to self discipline.

7.2 The disciplinary process must be expeditious, fair, just, corrective, consistent and educative. Where possible the parent should be informed and involved in the correction of the learner’s behaviour. Learners should be protected from abuse by adults or other learners.

7.3 Restraint is the act of controlling the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators may use reasonable measures where necessary to prevent a learner from harming him/herself or others.

7.4 The South African Schools Act, 1996, empowers school authorities to discipline learners, but it is beyond the law to delegate this authority to fellow learners. Learners are partners with other members of the school and are not in charge of the school.

7.5 Every educator is responsible for discipline at all times at the school and at school related activities. Educators have full authority and responsibility to correct the behaviour of learners whenever such correction is necessary at the school. Serious misconduct must be referred to the principal of the school. However, a mechanism must be created at schools to handle disciplinary problems to reduce the load of the principal.

7.6 Any corrective measures or disciplinary action must be commensurate with the offence/infraction. Corrective measures may become more severe with subsequent repeated infractions. Suspension or expulsion may follow. Learners should not think that they cannot be suspended or expelled simply because it is their first offence or infraction of a rule or policy, but such decision should be taken by the right authority.

7.7 In cases where a learner cannot adjust to the school and where his/her behaviour is objectionable in that it violates the rights of others, he/she will be referred to the principal. Through consultation with his/her educators, and the site of learning based team in consultation with the parents or guardians every effort should be made to assist him/her to adjust. This will include referral to the education support services for treatment. If all these efforts fail, the principal will refer the matter to the governing body, which may make a decision in the best interest of the learner and the other learners at the school.

8. PUNISHMENT

8.1 Punishment is a corrective measure or a penalty inflicted on an offender who has to suffer the consequences of misconduct in order to maintain the orderly society of the school.

8.2 Corporal punishment shall not be administered.

Tonga: Prohibition of corporal punishment was introduced when new education legislation generally was being enacted. The Education Act (2002) prohibits corporal punishment in the context of

protecting students from harassment and injury by other students and by staff. It prescribes what should be included in a school's code of behaviour, not only in terms of what should be prohibited but also specifying what should be promoted (e.g. "non-violent and non-discriminatory language and practices"). It ensures that corporal punishment may not be inflicted by any staff, and staff may not order other students to inflict corporal punishment. It also provides for the course of action that should be taken when the prohibition of corporal punishment is violated. The full text of article 40 states:

- (1) The Ministry, non-government Managing Authorities and their personnel shall take reasonable steps to prevent: a) students injuring themselves; b) students harassing or injuring other students; c) students harassing or injuring others; d) staff harassing or injuring others; or e) members of public harassing staff or students on school property.
- (2) The principal teacher and staff in each school shall establish an agreed and written code of behaviour and of dress for the school staff and for the student. This code of behaviour shall: a) reflect the values of the local community as well as those of the wider national society; b) reinforce that all school students and staff will be safe and are valued; c) define, model and reinforce non-violent and non-discriminatory language and practices; and d) stipulate that suspension, exclusion and expulsion procedures are considered only when all other approaches have been exhausted.
- (3) Teachers shall endeavour to secure the good behaviour of students without recourse to physical, emotional, degrading and injurious punishments;
- (4) Under no circumstances shall a teacher inflict corporal punishment on any student;
- (5) Under no circumstances shall staff in any school direct a student to administer corporal punishment on another student;
- (6) Breaches by staff or students of the school behaviour code established under subregulation (2) shall be reported to the principal teacher. The principal teacher shall consider the circumstances and decide on the management strategy most appropriate for the situation.
- (7) Breaches of the principal teacher of the school behaviour code established under subregulation (2) shall be reported to the Director of the non-government Managing Authority who shall consider the circumstances and decide on the management strategy most appropriate for the situation.
- (8) Punishment shall not be inflicted on students for failure or inability to learn or for trivial breaches of school discipline;
- (9) A principal teacher who inflicts corporal punishment on any student or causes any student to inflict corporal punishment on another student shall be reported for action to the Director of their non-government Managing Authority. Details of the incident shall be entered in the school's staff discipline register.

United Kingdom: The following extract is taken from section 548 of the Education Act (1996) as amended by section 131 of the School Standards and Framework Act (1998), and again makes it clear that there is no "right" for a member of educational staff to administer corporal punishment to a child in any location, and that this applies to acts which would otherwise constitute "battery" (assault). It clarifies that this does not apply to acts aimed at protecting persons or property:

- (1) Corporal punishment given by, or on the authority of, a member of staff to a child – a) for whom education is provided at any school, or b) for whom education is provided, otherwise than at school, under any arrangements made by a local education authority, or c) for whom specified nursery education is provided otherwise than at school, cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.
- (2) Subsection (1) applies to corporal punishment so given to a child at any time, whether at the school or other place at which education is provided for the child, or elsewhere.
- (3) The following provisions have effect for the purposes of this section.
- (4) Any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery.
- (5) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting – a) an immediate danger of personal injury to, or b) an immediate danger to the property of, any person (including the child himself).

(6) “Member of staff”, in relation to the child concerned, means – a) any person who works as a teacher at the school or other place at which education is provided for the child, or b) any person who (whether in connection with the provision of education for the child or otherwise) – (i) works at that school or place, or (ii) otherwise provides his services there (whether or not for payment), and has lawful control or charge of the child.

(7) “Child” (except in subsection (8)) means a person under the age of 18.

(8) “Specified nursery education” means full-time or part-time education suitable for children who have not attained compulsory school age which is provided – a) by a local education authority; or b) by any other person – (i) who is (or is to be) in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of section 120(2)(a) of the School Standards and Framework Act 1998, or (ii) who is (or is to be) in receipt of grants under section 1 of the Nursery Education and Grant-Maintained Schools Act 1996; or c) (otherwise than as mentioned in paragraph (a) or (b)) in any educational institution which would fall within section 4(1) above (definition of “school”) but for the fact that it provides part-time, rather than full-time, primary education.

The UK government Department for Education and Skills produced guidance on the legal framework for school discipline which governing bodies must by law have regard to when establishing school discipline policies and advising head teachers

(www.dfes.gov.uk/behaviourandattendance/uploads/School%20Discipline.doc). In addition to reflecting the prohibition of corporal punishment, the school’s behaviour policy (para 2):

should make clear the boundaries of what is acceptable, the hierarchy of sanctions, arrangements for their consistent and fair application, and a linked system of rewards for good behaviour [and] promote respect for others, intolerance of bullying and harassment, the importance of self-discipline and the difference between “right” and “wrong”.

A checklist is available for use in creating and implementing the school behaviour policy ([www.dfes.gov.uk/ibis/uploads/Policy%20creation%20%20implementation%20checklist%20DP%20Behaviour%20\(text\).doc](http://www.dfes.gov.uk/ibis/uploads/Policy%20creation%20%20implementation%20checklist%20DP%20Behaviour%20(text).doc)). The Department also published guidance on dealing with signs of disaffection, which lists the sanctions for disruptive behaviour available in school (www.dfes.gov.uk/behaviourandattendance/uploads/Disaffection.doc):

15. Sanctions should be applied fairly and consistently to all pupils, taking account of all circumstances including the child’s age, and within a context of positive re-inforcement of good behaviour. Sanctions might include:

- Removal from the group (in class);
- Withdrawal of break or lunchtime privileges;
- Detention;
- Withholding participation in any school trips or sports events that are not an essential part of the curriculum;
- Withdrawal from, for example, a particular lesson or peer group;
- Completion of assigned work or extra written work; or
- Carrying out a useful task in the school.

16. Punishments that are humiliating or degrading should not be used.

A variety of documents relating to behaviour management in schools in England is provided by the General Teaching Council for England (www.gtce.org.uk/weblinks/behaviour_management/).

Prohibition in juvenile justice systems

Prohibition as a sentence for crime

South Africa: Judicial corporal punishment was prohibited following a 1995 Constitutional Court judgement (*The State v Williams et al, Constitutional Court*, 9 June 1995, 1995(3) SA 632 (CC)), when the Abolition of Corporal Punishment Act (1997) was enacted. It illustrates the need for both an explicit statement prohibiting corporal punishment and the need to repeal all existing laws providing for such punishment. It states:

Abolition of corporal punishment

1. Any law which authorises corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorises such punishment.

Amendment or repeal of laws

2. The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

Short title

3. This Act shall be called the Abolition of Corporal Punishment Act, 1997.

Schedule 2 of the Act lists the laws amended or repealed by section 2, namely the Black Administration Act (1927), the Magistrates' Courts Act (1944), the Witchcraft Suppression Act (1957), the Stock Theft Act (1959), the Animals Protection Act (1962), the Dangerous Weapons Act (1968), the National Parks Act (1976), and the Criminal Procedure Act (1977).

Trinidad and Tobago: As in South Africa, explicit prohibition of judicial corporal punishment was achieved through repeal of laws under which it was authorised, as exemplified by parts IV and V of the Miscellaneous Provisions (Children) Act No. 66 (2000), though in this case judicial corporal punishment of adult offenders was retained:

PART IV

THE CORPORAL PUNISHMENT (OFFENDERS NOT OVER SIXTEEN) ACT, CHAP. 13:03

6. In this Part, "the Act" means the Corporal Punishment (Offenders Not Over Sixteen) Act.

7. The Act is repealed.

PART V

THE CORPORAL PUNISHMENT (OFFENDERS OVER SIXTEEN) ACT, CHAP. 13:04

8. In this Part, "the Act" means the Corporal Punishment (Offenders Over Sixteen) Act.

9. The long title of the Act is amended by deleting the word "Sixteen" and substituting the word "Eighteen".

10. The short title of the Act is amended by deleting the word "Sixteen" and substituting the word "Eighteen".

11. Section 2 of the Act is amended by deleting the word "Sixteen" and substituting the word "Eighteen".

Prohibition in penal institutions

Hong Kong: Prohibition is achieved for the most part by omitting corporal punishment from permitted disciplinary measures. It is not included among permitted disciplinary measures in the Prison Rules (1954, amended 1997), the Reformatory School Rules (1959, amended 1990), the Detention Centre Regulations (1972, amended 1990) or the Rehabilitation Centres Regulation (2001). It is explicitly prohibited – and defined – in the Probation of Offenders Rules (rule 37):

(2) (a) No corporal punishment of any kind shall be inflicted on a probationer in an approved institution;

(b) For the purpose of this rule the term “corporal punishment” includes striking, cuffing or shaking or the intentional infliction of any form of physical pain as a means of punishment.

United States: In the state of Colorado, the Department of Corrections published a Code of Penal Discipline (2004) which provides a list of sanctions available for use in the case of breaches of internal discipline. Paragraph 9 of section p states:

Under no circumstances should corporal punishment of any kind be administered to any offender.

In Florida, the rules of the Department of Corrections provides for a number of responses to staff who violate the prohibition of corporal punishment. Section 33-208.003 (“Range of Disciplinary Actions”) states (original emphasis):

Violations of the foregoing Rules of Conduct as well as other departmental, and institutional policies will result in disciplinary actions, which may be by oral reprimand, written reprimand, reassignment, transfer in excess of 50 miles, suspension, reduction in pay, demotion or dismissal.

Any employee who feels that unjust disciplinary action such as an oral or written reprimand has been given, has the right to submit a grievance as established by the grievance procedures of the Department of Corrections. For disciplinary actions involving reassignment, transfer in excess of 50 miles, suspension, reduction in pay, demotion, or dismissal, permanent Career Service employees have the right to appeal to the Career Service Commission. Violation of more than one rule shall be considered in the application of discipline and may result in greater discipline than specified for one offense alone.

Any questions regarding these rules and personnel procedures should be referred to the employee’s circuit administrator, warden or Personnel Manager.

The preceding section titled Rules of Conduct and the following list of offenses and work deficiencies with their ranges of disciplinary actions will be used by this Department in administering an effective disciplinary program.

THE SEVERITY OF PENALTIES MAY VARY DEPENDING UPON THE FREQUENCY AND NATURE OF A PARTICULAR OFFENSE AND THE CIRCUMSTANCES SURROUNDING EACH CASE. WHILE THE FOLLOWING GUIDELINES ARE NOT A SUBSTITUTE FOR IMPARTIAL SUPERVISION AND EFFECTIVE MANAGEMENT, AND DO NOT SET ABSOLUTE MINIMUM AND MAXIMUM PENALTIES, IT IS EXPECTED THAT ALL SUPERVISORS WILL CONSIDER THEM IN REACHING DISCIPLINARY DECISIONS.

...

(20) Use of Corporal Punishment, Verbal or Physical Abuse of an Inmate

First Occurrence ... Written Dismissal or Reprimand, up to 30 days of Suspension or Dismissal

Second Occurrence ... Dismissal.

In Idaho, the Rules of the Department of Juvenile Corrections, Secure Juvenile Detention Facilities (IDAPA 05-01-0) define corporal punishment as (para 10):

Any act of inflicting punishment directly on the body, causing pain or injury...

Section 255-01 states:

Written Policy and Procedures. The facility shall have written policy and procedure for maintaining discipline and regulating juveniles’ conduct. The following general principles shall apply:

...

f. Corporal or unusual punishment is prohibited, and care shall be taken to ensure juveniles’ freedom from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; ...

Venezuela: Article 631 of the Law for the Protection of Children and Adolescents states that a child deprived of liberty has the right to:

not be, in any case ... submitted to corporal punishment.

Article 638 states that the internal regulations of each detention centre must include as a minimum:

a strict regulation of sanctions that can be imposed on the adolescent, during the fulfilment of the measure. In no case can cruel, inhumane or degrading measures be applied, including corporal punishment....

Additionally, the Criminal Code (1964) states in article 441:

Anyone who, by abusing means of correction or discipline, causes harm to or endangers the health of a person who is under his or her authority, education, instruction, care, oversight or custody, or who is under his or her direction because of his or her art or profession, will be punished with one to twelve months in prison, depending on the severity of the harm.

Prohibition in alternative care settings

Australia: The complexity of ensuring that all corporal punishment of a child is prohibited is illustrated by legislation in New South Wales, Australia. Corporal punishment of children by staff in child care centres is prohibited under the Crime Act 1900 section 61AA (as amended 2002), and under the Centre Based and Mobile Child Care Regulation (No. 2) 1996 Code of Conduct Schedule 2 c9(2)(a) staff must not use physical, verbal or emotional punishment, including punishment that humiliates, frightens or threatens the child. However, a parent would be permitted to smack his/her child at a child care centre, as would a step-parent, de facto partner or relative of the parent if the parent has authorised physical punishment. In residential centres, corporal punishment by staff is also prohibited under the Crimes Act 1900 s61AA and Regulation but again a parent would be permitted to use physical punishment on his/her own child at a residential centre, as could a step-parent, de facto partner or relative of the parent if the parent has authorised physical punishment. A mandatory Code of Conduct states that children in residential care must not be subjected to or threatened with any form of corporal punishment, or any punishment that is intended to humiliate or frighten the child under the Children (Care and Protection) Regulation 1996 r37(c) and Schedule 2 c7(b)(i)&(iii). Foster parents are required by the same Regulation (r26(a)) to provide for the physical, social and emotional well-being of a ward or protected person in their care. A Code of Conduct states that a foster parent must ensure that a foster child in his or her care is not subjected to or threatened with any form of corporal punishment, or any punishment that is intended to humiliate or frighten the child (Children (Care and Protection) Regulation 1996 r55, r73 and Schedule 1 c8(b)(i)&(iii)). Under section 181(c) of the Children and Young Persons (Care and Protection) Act 1998, a Children's Guardian has a statutory responsibility to ensure that the rights of all children and young persons in out-of-home care are safeguarded and promoted. Since December 2002, a babysitter has no right to use physical punishment unless he/she is a relative by blood or marriage of a parent of the child and is authorised by the parent to do so (Crimes Act 1900 s61AA(6)(a)).

Costa Rica: The Draft Law on the Abolition of Corporal Punishment Against Minors under discussion (2007) clearly cover all alternative care settings, as the following extract illustrates. The issue of the duty of parents (and those *in loco parentis*) to discipline their children is dealt with by explicitly stating that this duty excludes the use of physical punishment.

ARTICLE 1 – Add a new Article 25B to the Childhood and Adolescence Code, Law N° 7739, 6 February 1998, the text of which shall say:

Article 25B – Prohibition of Corporal Punishment.

It is prohibited for the father, mother, legal representative or persons in charge of the custody, care, attention, treatment, education and vigilance of minors, to use corporal punishment as a corrective or disciplinary measure on children or adolescents.

The National Infancy Trust (*Patronato Nacional de la Infancia*), in coordination with other State institutions, will promote and carry out awareness-raising and education programmes aimed at parents and others responsible for the care of minors, on discipline and setting limits for their sons and daughters that do not involve corporal punishment.

ARTICLE 2 – Modify Article 143 of the Family Code, Law N° 5476 of 5 February 1974 and its modifications, so that it is now read in the following way:

Article 143 – Parental authority confers rights and imposes the duty to educate, care, watch over and discipline children, excluding physical punishment or any other form of mistreatment or degrading treatment. It empowers to ask the Court to authorize the adoption of necessary measures to contribute to the orientation of the minor, which could include their internment in a suitable establishment for a prudential period of time.

Iceland: Where corporal punishment has been prohibited in alternative care settings but not yet in the family home, it has in most cases been necessary to ensure that all laws and regulations relating to the many form of alternative care contain the prohibition of corporal punishment. For example, corporal

punishment was prohibited in alternative care settings in Iceland prior to its prohibition in the home (in 2002) in a number of laws. Regulations on day care in private homes No. 198 (1992) prohibit the use of mental or physical punishment on children. Regulations on services for disabled children and the families of the disabled No. 155 (1995) prohibit physical punishment. Rules on the rights of children and coercive measures taken in state treatment homes issued in 1999 explicitly prohibit corporal punishment, stating that:

application of physical punishment and solitary confinement, administration of drugs without medical consultation, and any application of restraints, such as ropes, adhesive tape, belts or other similar means of physical restraint, are prohibited, whether as a means of punishment or for the purpose of treatment or upbringing.

Other homes or institutions are governed by Rules No. 401/1998 which state that:

children may never be subjected to physical or psychological punishment in such homes.

Article 82 of the Child Protection Act prohibits in homes and institutions:

any physical or mental punishment upon the child [and] confinement, isolation and other comparable coercive measures or disciplinary penalties unless necessary.

Jamaica: Corporal punishment of children up to the age of 6 years in early childhood institutions (known as basic schools) is prohibited under the Act to Provide for the Regulation and Management of Early Childhood Institutions and for other Connected Matters (2005). It is prohibited in other institutions and forms of childcare in Part III (“Children in Care”) of the Child Care and Protection Act, section 62 of which states:

A child in a place of safety, children’s home or in the care of a fit person shall have the following rights: ...

(d) to be free from corporal punishment;

(e) to be informed of the standard of behaviour expected by the caregivers and of the consequences of not meeting that standard; ...

(l) to be informed of the child’s rights under this Act and the procedures available for enforcing those rights.

Section 88 states:

(1) A person commits an offence against this Act if that person – ...

(d) contravenes any of the provisions of Part III

Permitted disciplinary measure in children’s homes are prescribed by the Child Care and Protection (Children’s Homes) Regulations (No. 22 of 2005) and do not include corporal punishment.

Romania: The law in Romania exemplifies how an all encompassing prohibition of corporal punishment of children would be applicable in any setting, including in alternative care contexts. As article 28 of the Law on Protection and Promotion of the Rights of the Child (2004, in force 2005) states:

(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.

Article 90 explicitly includes care institutions in the prohibition:

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.

United Kingdom: In Wales, section 10 of the Child Minding and Day Care (Wales) Regulations (2002) provides for “Behaviour management, discipline and restraint”, including the prohibition of corporal punishment:

- (1) No measure of control, restraint or discipline which is excessive, unreasonable or contrary to paragraph (5) shall be used at any time on relevant children.
- (2) The registered person shall, in accordance with this regulation, draw up and implement a written behaviour management policy setting out –
 - (a) the measures of control, restraint and discipline which may be used on the relevant premises; and
 - (b) the means whereby appropriate behaviour is to be promoted on those premises.
- (3) Subject to paragraphs (6) and (7) of this regulation, only such measures of control, restraint and discipline as are provided for in the said behaviour management policy shall be used on relevant children.
- (4) The registered person shall keep under review and where appropriate revise the behaviour management policy and notify the appropriate office of the National Assembly of any such revision within 28 days.
- (5) Subject to paragraph (6), neither the following measures nor a threat to use one or more of them shall be used on relevant children –
 - (a) any form of corporal punishment;
 - (b) (subject to the provision of any court order relating to contact between the child and any person) any restriction on a child’s contact or communication with his or her parents;
 - (c) any punishment relating to the consumption or deprivation of food or drink;
 - (d) any requirement that a child wear distinctive or inappropriate clothes;
 - (e) the use or withholding of medication or medical or dental treatment as a disciplinary measure;
 - (f) the intentional deprivation of sleep;
 - (g) any intimate physical examination of a child;
 - (h) the withholding of any aids or equipment needed by a disabled child;
 - (i) any measure which involves –
 - (i) any child in the imposition of any measure against any other child; or
 - (ii) the punishment of a group of children for the behaviour of an individual child.
- (6) Nothing in this regulation shall prohibit –
 - (a) the taking of any action by, or in accordance with the instructions of, a registered medical or dental practitioner which is necessary to protect the health of a child;
 - (b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property.

Uruguay: The legislation introduced in 2007 provides another examples of a wide-ranging prohibition which is applicable to all settings in which children find themselves, including all alternative care settings. The provisions in the Civil Code and the Children and Adolescents Code (2004) which had recognised the right of parents and others to administer “moderate/adequate correction” were repealed and a new article inserted into the Children and Adolescents Code which states:

Article 12bis. Prohibition of physical punishment. It is prohibited for parents, guardians, and all other persons responsible for the care, treatment, education or supervision of children and adolescents, to use physical or any other kind of humiliating punishment as a form of correcting or disciplining children or adolescents.

Uruguay’s Institute for Children and Adolescents, other State institutions and civil society are jointly responsible for:

- a) carrying out awareness raising and educational programmes for parents and all others responsible for the care, treatment, education or supervision of children and adolescents;
- b) promoting positive, participatory and non-violent forms of discipline as alternatives to physical punishment and other forms of humiliating treatment.

Other measures to support prohibition

Supporting prohibition in the home

Denmark: Law reform in 1997 was accompanied by an information campaign developed by the National Council for Children and partly funded by the Ministries of Justice and Social Affairs. The campaign aimed to raise awareness about the new law and “to give inspiration to a more open, accepting and humane practice in the upbringing of children”.¹ It included the distribution by teachers, health visitors and day-care centre staff to parents of children aged under 10 years of a pamphlet – entitled *When I have children I will not smack them* – giving advice on how to educate their children without using corporal punishment, together with details of where to turn for support. Another pamphlet was produced for ethnic minority parents, translated into Turkish, Arabic, Yugoslav and English. A popular-style magazine was produced for parents, to be given to them by professionals concerned about the routine use of corporal punishment. A television programme featuring an interview with a mother, a family therapist, and children giving their opinions, was aired twice in autumn 1998 and is available as a video for use in parenting education. Posters featuring a “no slapping” logo were distributed to all primary schools, and postcards carrying the same logo were distributed in cafes.

Finland: The Ministry of Justice and the National Board of Social Affairs published a leaflet on parent-child relationships called *What is Good Upbringing?*, which was distributed in health clinics and social welfare offices. In 1981, leaflets entitled *When you can't cope, seek help, don't hit the child* were distributed in an education campaign organised by the Central Union for Child Welfare, and prime-time television slots promoted the use of discussion and reasoning techniques in parenting.

Sweden: When corporal punishment was explicitly prohibited in 1979, a large scale campaign was mounted to raise awareness of the new law and why it was enacted and to give advice on ways of parenting children without using corporal punishment. A 16-page colour educational pamphlet (*Can you bring up children successfully without smacking and spanking?*) was sent to every household with children and to agencies working with families, and was made available in 10 minority languages. Here are extracts from the pamphlet:

Why forbid all forms of physical punishment?

“Psychologists, psychiatrists and other people whose work gives them insights into the parent-child relationship are practically unanimous in agreeing that all forms of physical punishment are highly objectionable as a method of bringing up children. A parent who strikes his or her child is not going to gain anything positive in the way of child education by this act – rather, the child runs the risk of suffering some form of mental harm.

The law therefore now forbids all forms of physical punishment of children, including smacking, etc., although it goes without saying that you can still snatch a child away from a hot stove or open window if there is a risk of its injuring itself.

Should physical punishment meted out to a child cause bodily injury or pain which is of more than very temporary duration it is classified as assault and is an offence punishable under the Criminal Code. In theory at least, this was also true before the new bill came into force, although it was not generally known. However, the advent of the new law has now swept all doubt aside, although as before trivial offences will remain unpunished, either because they cannot be classified as assault or because an action is not brought. But while the purpose of the new legislation is indeed to make it quite clear that spanking and beating are no longer allowed, it does not aim at having more parents punished than hitherto.

¹ Ingvarsen, Bente (1999), “Denmark: Backing a clear ban on physical punishment with promotion of positive discipline”, *Journal of Child Centred Practice*, 7 (2), pp. 79-85, p. 82. Cited in Boyson, Rowan (2002), *Equal protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: National Society for the Prevention of Cruelty to Children (NSPCC)

Many psychological punishments are at least as detrimental to a child's development as beating. Threatening, scaring or ostracizing a child, locking it up or making it feel ridiculous can only be considered as injurious and humiliating treatment and are therefore forbidden."

Setting limits and sticking to them

"Setting limits is absolutely necessary. However, before doing so parents should have a clear idea of exactly where they need to be set in view of the child's age and state of development. And furthermore, parents must be prepared to ask themselves why they consider these particular limits to be of importance. Limits felt to be justified should be closely observed and stuck to consistently – but it is still important that parents be aware of their own motives in setting them and that restrictions be made only after consideration of what is best for the child and its family.

Children need support and clearly defined bounds since this gives them a sense of security. Parents are endowed with a natural authority over their children since they have lived longer and have more experience. However, this is in no way the same as brandishing authority and making all the decisions without listening to the opinions of others. On the contrary, a relationship based on a continuous interplay with affectionate parents or guardians will gradually develop an inner voice within the child telling it what is allowed and what is not. This voice must not be weakened by the use of punishments."

Can one show anger?

"Some people seem to make self-control and patience into a sort of code of honour; but if you have to strain yourself to bottle up your anger, disappointment or irritation you will also be running a great risk of keeping back feelings of genuine warmth and affection. Feelings don't all come out of separate taps, they come in a mixture. Parents obviously love their children a great deal but still get angry with them on occasions, so if you can admit to yourself your right to be angry it will be that much easier to avoid using bad methods such as physical punishments. Showing your distress and fear is much better."

Why was the law passed?

"Because it is a natural historical development. We have already done away with the right to beat one's wife and servants. We have done away with the right to strike children at school.

Because our democratic community needs children taught to think for themselves, who are used to making their own choices and to shouldering responsibility. It is impossible to beat a child into obedience and at the same time expect it to be able to think for itself.

Because bringing up a child is much easier if you do not resort to beating. Children want to like you so very much it is a pity to destroy a feeling of kinship and mutual understanding by beating if it can be avoided. You don't go round hitting your friends, do you? Why should you hit your children, then?"

The new law was reported extensively in the media and promoted in parent education classes and child health clinics. In schools, the law was (and is) used to teach children about the process of law-making and, in doing so, about the content of the new law, and it is discussed in parenting and family life classes at school. For two months, information about the new law, in the form of a cartoon of a young girl saying "I'll never ever hit my own children", was printed on milk cartons. According to one report, by two years after its introduction, 99% of the population was aware of the law Ziegert (1983), "The Swedish Prohibition of Corporal Punishment: A Preliminary Report", *Journal of Marriage and the Family*, November, pp. 917-926. Cited in Boyson, Rowan (2002), *Equal protection for children: An overview of the experience of countries that accord children full legal protection from physical punishment*, London: National Society for the Prevention of Cruelty to Children (NSPCC).

In 2001/2002, the Swedish Parliamentary Committee on Child Abuse undertook three campaigns targeted at parents/guardians, children and professionals. The Committee published a pocket-sized book for parents entitled *A Book for Parents (Föräldraboken)* which contained six scenarios of corporal punishment in the family, including a mother hitting her little boy out of exasperation, and a teenager being locked in his room during a mealtime. The book then offered advice "to anyone who finds it difficult being a parent sometimes". The book was distributed via pharmacies, child health centres and post offices, and was used in schools and social services in discussions and parenting courses. It has been supported by a video and other teaching materials, and translated into Arabic, English, Kurdish, Persian, Somali, Spanish, Turkish, and simplified English.

The children's campaign ("Get a Grip") was a collaborative initiative involving the Swedish government and a number of NGOs, aimed at children aged 10-13 years of age, with the objective of

strengthening their self-esteem and giving information on how to seek support if in distress or at risk of harm. A rap song on the theme of children's rights was distributed to schools with teaching materials, and an accompanying music video was shown in cinemas across the country.

Finally, a campaign ("Suspecting Child Abuse") undertaken with the Swedish Trade Union Confederation, the Confederation of Professional Associations and the Central Organisation of Salaried Employees in Sweden, was targeted at professionals working with children below the age of 10 years, informing them about signs of abuse and their reporting obligations. Packs which included dramatisations of situations causing professional suspicion together with booklets on "Signs of Child Abuse and Neglect" and "Helping Children at Risk" were distributed.

In 2001, the Swedish government published a summary of its legal and other measures to prohibit all corporal punishment of children, available at www.endcorporalpunishment.org/pages/pdfs/ending.pdf.

Supporting prohibition in schools

South Africa

Government initiatives in South Africa

The South African government has taken a number of non-legislative measures to implement the prohibition of corporal punishment in schools. Staff members have been appointed at the national and provincial Departments of Education to ensure adherence to the prohibition within the educational system. Training of a number of teachers as trainers of their peers on alternatives to corporal punishment has been initiated. The national department has also published a manual for teachers on alternatives to corporal punishment, which has been distributed widely together with a guide for persons facilitating training on the manual (see Box 5 for details).

One of the key publications supporting prohibition in schools was published by the South African Department in 2000, entitled *Alternatives to Corporal Punishment: The Learning Experience* (full report available at

www.education.gov.za/dynamic/dynamic.aspx?pageid=329&catid=10&category=Reports&legtype=full). The following extract is from the preface:

There is no doubt about the need for alternatives to corporal punishment. This we attempt to do in this report. The reality of the situation is that many educators face daily struggles in their school environment with issues of discipline. Many educators have found themselves in a position of not knowing what to do in the absence of corporal punishment. These educators are not alone in their struggle; even those educators who are committed to this change sometimes find themselves in a difficult situation.

If we are to have a positive culture of learning and teaching in our schools, the learning environment must be safe, orderly and conducive to learning. This document offers a response to the discipline dilemma. It deals with the legislation and the rationale for the banning of corporal punishment. It provides ideas on how the void can be filled through proactive and constructive alternatives that ultimately contribute to the growth of well-balanced children who are able to interact with each other and their world in a respectful, tolerant and responsible manner.

We begin by exploring the new legislation and reflect on the idea that the growth of a culture of democracy and peace in society demands that its citizens are able to uphold the values of justice, equality, freedom and tolerance. Corporal punishment is by its very nature, anti-human and ultimately an abusive practice that entrenches the idea that violence provides a solution to every problem in the classroom. The removal of corporal punishment and the elimination of other dehumanising practices in our schools are necessary steps towards the development of a culture of human rights in our country. Of course, rights must be exercised responsibly.

It is important to make a distinction between discipline and punishment. Punishment is based on the belief that if children are made to suffer for doing wrong, they will not repeat their inappropriate behaviour. This approach has done untold damage to countless children, often resulting in feelings of alienation, entrenched patterns of anti-social behaviour and even acts of violence. The second part of this document considers the distinct differences between punishment as a punitive measure and discipline as an educative and corrective practice.

Educators are given the opportunity to reflect on their own approaches to discipline in order to identify what they are getting right and where they perceive they still need to develop their approach. Educators are not expected to follow the same approach and to adopt the identical measures. There is room within the practice of positive discipline for individuality and creativity. There are many alternatives to corporal punishment, and it is through practice that they will be developed by learners, educators and parents.

The report is presented in three sections: (1) Why corporal punishment is banned; (2) Alternatives to corporal punishment in the classroom; (3) Disciplinary measures and procedures.

Following an explanation of the reasons for prohibiting corporal punishment and of the distinction between discipline – “which we have already stated relies on constructive, corrective, rights based, educative practices” – and punishment – “which is perceived as punitive, destructive and anti-educational” – the reader is invited to reflect on how what has been said so far relates to him/her, with the aid of a tickbox exercise to identify his/her disciplinary approach up to now. Then a section on establishing discipline in the classroom outlines the means of creating a positive culture of learning and teaching:

- Adopt a whole school approach and make sure that your classroom discipline reflects the school's policies
- Establish ground rules
- Be serious and consistent about the implementation of the rules
- Know your learners and focus on relationship building
- Manage the learning process and the learning environment enthusiastically and professionally
- Learning materials and methodology – include things like conflict management, problem solving, tolerance, anti-racism, gender sensitivity etc
- Be inclusive
- Give learners the opportunity to succeed
- Allow learners to take responsibility
- Give attention seekers what they want (attention!)
- Use professional assistance.

Readers are invited to answer questions which will help them to identify their own disciplinary style – the democrat, the community builder, the behaviourist, the empathiser. For each, practical strategies for discipline are given which do not include corporal punishment. The point is that using alternatives to corporal punishment does not mean that every teacher must approach discipline in the same way. It is about working with individual styles, building on what is positive and expanding the repertoire of non-violent techniques.

The third part of the report – Disciplinary measures and procedures – looks at the importance of the school Code of Conduct, gives guidelines for what should be included, and the outline of a process a school can take in developing their school code of conduct. Included is a table which gives concrete examples alongside the principles that should be included, taken from real schools. The following extract is illustrative:

Area – 5. The rights of learners. Examples:

Every learner has the right:

To be treated fairly and the responsibility to show respect to others

To be taught in a safe and disciplined school environment and the responsibility to uphold school security and be co-operative

To be treated with respect by the school community regardless of personal, cultural, racial, religious or other differences and the responsibility to be tolerant and considerate of others and their beliefs ...

Area – 6. The rights and responsibilities of educators with regard to learners. Examples:

Conduct themselves in a professional and responsible way

Not use abusive language or behave in an abusive way

Be punctual and report regularly for school and classes

Be well-prepared for teaching their classes

Mark homework and assignments within a reasonable time frame

Respect all people and property

Encourage an atmosphere of effective learning and teaching

Plan flexible lessons that address the varied and special needs of learners

Follow the rules, procedures and codes of conduct of the school, government and South African Council of Educators ...

Area – 8. School Rules, Regulations and Provisions. Examples:

Discipline and punishment. The purpose of discipline and punishment should be constructive and not destructive; educative rather than punitive. The aim of discipline should be to educate and nurture values of tolerance, respect and self-discipline in the learner rather than to victimise, seek revenge or belittle him/her.

There follow examples of dealing with misconduct at various levels: (1) misconduct inside the classroom; (2) misconduct by breaking school rules; (3) serious misconduct or serious violation of school codes; (4) very serious misconduct or very serious violations of school codes; and (5) criminal acts which not only violate school codes but which breach the law.

A five-step process is given for establishing a disciplinary code in a school:

Step 1: Think about the general purpose of education and what your school's overall aims and outcomes are. Develop a vision for your school which supports the achievement of these aims.

Step 2: Once the vision and the mission of your school are in place, you are ready to plan a disciplinary code by setting goals and developing ways to meet those goals. Make sure your disciplinary policy is in line with the overall vision and mission of the school.

Step 3: The implementation of a disciplinary policy needs to be supported by school structures and procedures. Decide which structures these should be and what role they should play in dealing with discipline, i.e. how will decisions be made, who will be accountable to whom, what responsibilities the structures will have, what communication procedures will be used, how activities will be co-ordinated and what rules will govern these activities.

Step 4: Does the school have the physical resources it needs to implement the disciplinary policy effectively? For example, if one part of your policy is to keep in touch with parents, are there ways of getting in touch with parents, do you have up to date records, are there ways that parents can reach the relevant people, do you send home regular communications?

Step 5: Implementation and evaluation – all the planning has been done, you are now at the stage where you can implement (activate) your disciplinary procedure. It is essential that you keep evaluating its effectiveness by checking the responses of learners, parents and teachers and of course, monitoring its impact. You might find that you have to revisit step 1 or make some minor adjustments if it is not working well. Evaluation should be an ongoing part of your disciplinary code and procedure, as that which works well for a time, can always be improved.

Each step is accompanied by a set of questions to guide the process.

Non-government initiatives in South Africa

Non-government bodies have also supported prohibition. Every four months the Children's Rights Project at the Community Law Centre, University of Western Cape publishes the journal *Article 19* which seeks to promote positive forms of discipline and the abolition of corporal punishment and other forms of humiliating and degrading punishment of children throughout Southern Africa (see www.communitylawcentre.org.za/Childrens-Rights). For example, it includes reports on national progress towards legal reform, articles promoting positive discipline in schools and at home and explaining the negative effects of using corporal punishment, interviews with key people, and information about campaigns, conferences and resources.

The organisation RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect), based in Cape Town, is implementing a programme on positive discipline. RAPCAN organises workshops for teachers on children's rights and positive forms of discipline, followed by visits to schools to assist teachers to implement what they have learned from the workshops in practice. In the future, the organisation will also meet with the management of schools to discuss the ways in which they can play a supportive role to the teachers. In 2006, RAPCAN will finalise a toolkit to be used in training sessions on positive forms of discipline. The toolkit will consist of a training manual and a "Tips for Teachers" booklet as well as a storybook for children with ideas for classroom activities to reinforce messages linked to positive forms of discipline (for further information see www.rapcan.org.za).

The Wits Education Policy Unit in collaboration with the South African Human Rights Commission and the British Council in 2001 published a guidebook for teachers promoting the use of positive discipline techniques at the class and whole school level (*Alternative to Corporal Punishment: Growing discipline and respect in our classrooms* by KimberleyPorteus, Salim Vally and Ruth Tamar). The guidebook takes a non-condemnatory but non-compromising approach, acknowledging the difficulties teachers may face and not pretending that change is easy but nevertheless emphasising

that only non-violent and positive disciplinary approaches are acceptable. The book aims to provide “information and practical ideas on how to build discipline and respect in your classroom and school”, to “increase the number of teachers who are passionately committed to finding effective alternatives to corporal punishment” and to “provide some seeds for thought – lessons and ideas that have proved to be useful in the search for effective alternatives to corporal punishment in other contexts” (pp.1-2).

The guidebook is presented in three sections, the first explaining the reasons for prohibiting corporal punishment, the second providing practical ideas on how to build respect and discipline in the classroom, and the third providing ideas for building respect and discipline in the school as a whole. Readers are encouraged to use the guidebook individually, as a resource for school support groups, and in training seminars, including those involving school governing bodies.

The guidebook contains exercises (e.g. on thinking about the purpose of education, what children might be learning from corporal punishment), identifies the characteristics of an effective educator and addresses common arguments in favour of corporal punishment. Then there are almost 60 pages of practical advice, ideas and exercises looking at the need for change at a personal and classroom level. At a personal level are practical ways teachers can support themselves through the process of change (e.g. through keeping a journal, forming a support group). It also warns against the use of strategies of humiliation and neglect in place of corporal punishment, which are also unacceptable. It looks at change at the classroom level from the perspectives of four schools of thought: (i) behaviour modification techniques; (ii) understanding barriers to learning and social challenges which prompt a child’s problem behaviour; (iii) the democratic discipline approach (involving pupils themselves in decision making); and (iv) community building (emphasising the building of a commitment to respect and dignity rather than discipline and compliance).

Finally, the approaches to discipline discussed so far are contextualised as part of a whole school approach. The following concrete ideas for developing a whole school approach are discussed: educator support group, school code of conduct, support service network, identify fun and privileges, forum for resolution, violence prevention programmes, “pastoral” teachers, community mentors, spiritual reflection, peer counselling, students as counsellors, involving parent figures, building a community-orientated school, participatory action research, and building a learning organisation.

The guidebook finishes with a set of appendices containing: (a) lessons from international research on the behaviour and discipline strategies; (b) guidelines for schools; (c) guidelines to be considered by governing bodies in drafting a code of conduct for learners; and (d) contact details for non-governmental support organisations.

United Kingdom

Promoting positive discipline in schools

Behaviour in Schools: Framework for Intervention (1998, 2003), published by the “New Outlooks” Study of Emotional and Behavioural problems for Birmingham City Council Education Department in the UK, describes an approach to managing behaviour in classrooms which draws on a number of sources which are adapted to the local context within the context of UK legislation. It is a preventative approach to managing pupil behaviour that focuses on the school teaching environment as key to positive teacher-pupil relations. The website contains a number of documents available for download and suggests a number of professional courses ranging from behaviour theory to behaviour during playtimes and lunchtimes (<http://atschool.eduweb.co.uk/outlooks/>). The original document describing the Framework in detail gives practical advice and examples for behaviour management at the whole schools, classroom and individual levels, based on a set of “Principles for Action”:

Underlying philosophy:

1. Children’s behaviour is central to the learning process and is an intrinsic element of education
2. Problems in behaviour in educational settings are usually a product of a complex interaction between the individual, school, family, community and wider society

3. Social interaction based on mutual respect is a fundamental basis of an optimal educational environment

Practical principles:

1. Equal opportunity and maximum inclusion

1a. An individual's difficulties and needs can vary over time and in different settings. Thus, organisations and individuals should avoid 'labelling' children and young people

1b. All children should have maximum access to the mainstream curriculum and children should be educated, as far as possible, with their mainstream peer group

1c. Policy, planning and action in the field of behaviour management should be anti-discriminatory and conform to equal opportunity policy

2. Respect for all

2a. Children and their teachers have the right to have difficulties in behaviour in educational situations addressed without prejudice

2b All persons involved in difficulties in behaviour have a right to have their views and feelings taken into account at all times

2c Policy and practice should actively promote mutual respect for schools, parents, teachers and children

3. Positive approaches to behaviour

3a. In all circumstances positive approaches to behaviour should be preferred

3b. Interventions in response to unwanted behaviour should be the least necessary and least intrusive

3c. The 'behavioural environment' should be evaluated at the starting point of all interventions and work to improve the context should always be accorded high priority

4. Organisational consistency and improvement

4a. Organisations should recognise the importance of having clearly stated and shared values and beliefs which underpin expected standards of behaviour and quality of relationships

4b. All involved in the organisation (including children, taking into account their age and understanding), should be included in the process of determining and reviewing values and beliefs

5. Working with children and parents

5a. The views and wishes of the child (as taken in the light of her age and understanding) are of prime importance and must be heard and taken into account

5b. Working with behavioural difficulties should be done in partnership with parents/carers wherever commensurate with the welfare of the children

6. Appropriate and effective agencies

6a. Provision for emotional and behavioural difficulties should be made by the most appropriate agency, in most cases the mainstream school working in partnership with parents

6b. In the best interests of the child, there must be close cooperation and agreement in working practices between agencies.

The full report is available at <http://atschool.eduweb.co.uk/outlooks/FfI.pdf>; an introduction to the *Framework* is available at <http://atschool.eduweb.co.uk/outlooks/FFIIntro.pdf>.

Also in the UK, the "Improving Behaviour in Schools" website (www.dfes.gov.uk/ibis/index.cfm) contains the government's official policies on promoting positive classroom behaviour in schools, as well as documents, leaflets, checklists and contacts on many aspects of pupil behaviour and bullying, including case studies of schools that are tackling behaviour problems. There are also a number of pupil referral forms that teachers may find useful. The "Teachernet" website offers practical tips and guidance on a range of common behavioural issues, including abusive language, bullying, homophobia and truancy, compiled by the government (www.teachernet.gov.uk/wholeschool/behaviour/). It includes commissioned articles by experts, detailed factsheets, and school case studies.

In May 2005, the government established the Practitioners' Group on School Behaviour and Discipline to give independent advice to the government on how behaviour in schools could be improved. The final report identifies aspects of good practice that create the right conditions for good behaviour and gives practical examples, and concludes with 84 recommendations to government. The report, *Learning Behaviour: Report On the Practitioners' Group on School Behaviour and Discipline*, is available at <http://publications.teachernet.gov.uk/eOrderingDownload/STEER-FINAL.pdf>.

Guidance for school inspectors

The Office for Standards in Education in the UK has published guidance for inspectors monitoring behaviour and discipline management in primary and secondary schools and in special schools and pupil referral units. Extracts from this guidance (effective from September 2003) are reproduced below.

From the *Handbook for inspecting nursery and primary schools* (p.67):

Do teachers make effective use of time and insist on high standards of behaviour?"

Assess whether the teacher establishes a productive climate for learning in which pupils and children feel secure. This is likely where adults focus on learning rather than on behaviour, and where pupils' contributions are valued. Features that reduce inappropriate behaviour include:

- clear and efficient organisation of activities and groups;
- fair and clear exercise of authority;
- effective support for pupils by the teacher or other adults;
- mutual respect and properly established work habits;
- an emphasis on self-discipline and mature behaviour;
- the consistent implementation by all adults of a behaviour management policy.

While classroom management is important, be careful that its evaluation does not overshadow judgements about how effectively pupils learn.

Occasionally, the misbehaviour of one pupil or a small group defies all reasonable strategies for managing it. This will affect judgements about learning and requires analysis of the school's strategies for supporting the teacher and all pupils in such circumstances."

From the *Handbook for inspecting secondary schools* (pp.65, 80):

To what extent does the school set high expectations of pupils' conduct and successfully implement policies to achieve them?

Schools must have a written behaviour policy. It should set out underlying values and principles, a code of conduct, how good behaviour is promoted, the sanctions that apply to poor behaviour, the arrangements for supporting staff and pupils, and the way in which the application of the policy is monitored and reviewed.

Does the policy have the general support of the whole school community? Is it applied with rigour and care, so that staff, parents and pupils see it as fair and effective? Does it link well with action on harassment and bullying? Is it reinforced by the assembly and tutorial programme and by the school's work on personal, social and health education, and citizenship?

Are pupils clear about the conduct expected of them in, for example, classrooms, laboratories, workshops, corridors and playground and social areas? How do staff act on the policies in their contact with pupils? Are different pupils and situations dealt with in a consistent way? Indicators of consistency may be found in records of referrals and sanctions such as detention. Inspectors should establish how well the school's expectations are known and how consistently pupils live up to them.

Where schools are involved in particular projects to improve behaviour, inspectors should evaluate their success. Look for evidence of how behaviour has improved over time, what is being done to tackle the causes of misbehaviour and consolidate improvements. Where strategies to promote high standards of behaviour are particularly successful, these should be described in the report.

Do teachers make effective use of time and insist on high standards of behaviour?

Assess whether teachers establish a productive climate for learning. This is likely where the focus is on learning rather than controlling behaviour, and where pupils' contributions are valued. Features that reduce the incidence of inappropriate behaviour include:

- a prompt and stimulating start to the lesson;
- clear and efficient organisation of activities and groups;
- fair and clear exercise of authority;
- effective support for pupils by the teacher or other adults;
- mutual respect and properly established work habits;
- relevant activities that engage the interest of the pupils;
- an emphasis on self-discipline and mature behaviour;
- consistent and effective implementation of behaviour management plans.

While classroom management is important, be careful that evaluation of it does not overshadow judgements about how effectively pupils are learning.

Occasionally, the misbehaviour of one pupil or a small group of pupils in a class defies all reasonable strategies for managing it. This will affect judgements about learning and requires investigation of the school's strategies for supporting teachers and pupils in such circumstances. Even teaching of high quality can sometimes be subverted by disruptive pupils who do not want to learn. Provided the teacher has done everything possible to engage such pupils, the quality of teaching should not be penalised unfairly.

From the *Handbook for inspecting special schools and pupil referral units* (pp.57-58, 72, 103):

To what extent does the school set high expectations of pupils' conduct and successfully implement policies to achieve them?

Schools should make clear to pupils the conduct they expect. In schools and units where pupils have emotional or behavioural problems, much of the school's success flows from how well this is done and how clearly the school sets out what will happen if rules or everyday routines are transgressed. Look for consistency in the application of rewards and sanctions; they should be fair, age appropriate and, above all, effective in reducing inappropriate or unacceptable behaviour. If inspectors have concerns, they should check the policy on behaviour to see if the expectations are explicit. Make sure that sanctions are appropriate and do not conflict with principles underlying the Children Act related to welfare, safety and the rights of children. If 'time out' is used, make sure that pupils are never locked in, that there is adequate supervision and that there is no abuse of this sanction. If restraint is used, check that separate accessible records are maintained and monitored, and that all staff are appropriately trained to use practices that are consistent with local and national guidelines.

Do teachers make effective use of time and insist on high standards of behaviour?

Assess whether the teacher establishes a productive climate for learning in which pupils feel secure. This is likely where there is a focus on learning and the management of behaviour is interwoven through the lesson rather than dominant. It is also likely to be where pupils' contributions are valued and a strong spirit of mutual respect and trust, for example about personal and confidential matters, is shown. Expect to see plenty of evidence of concern for pupils' welfare, dignity and entitlement to fair treatment, even where behaviour is unacceptable or potentially harmful to others. Staff should demonstrate their understanding of the pupils' emotional needs, for example, a reluctance to communicate or a need to express anger.

In schools where pupils have emotional, social and behavioural difficulties, regular and prompt reminders about individual targets for improving behaviour will be threaded throughout the teaching and behaviour reviewed and perhaps rewarded (or not) at the end of a lesson.

Features that reduce the incidents of inappropriate behaviour and lead to improvement include:

- clear and efficient organisation of activities in groups, with sessions which are well timed and well spaced;
- consistent implementation of the behaviour management policy and individual targets by all staff;
- mutual respect and well-established work habits through effective teamwork and clear routines;
- timely intervention by staff to prevent escalating poor behaviour;

- where necessary, constant monitoring of pupils' welfare, comfort and positioning to maximise involvement and reduce disruption;
- regular feedback to individual pupils about their learning and behaviour to maintain concentration and keep them on track;
- self-discipline and self-awareness leading to greater maturity and more independence because good behaviour is stressed;
- well-judged interventions when behaviour is unacceptable.

Establishing complaints mechanisms

In 2005, the Welsh Assembly Government published a consultation document on complaints procedures involving pupils. The outcome of the consultation is not yet available, but the document provides useful indicators for the development of complaints mechanisms as a way of ensuring that school discipline is carried out in accordance with the principles of positive discipline and that pupils are enabled to draw attention to breaches of this approach (available at www.childrenfirst.wales.gov.uk/content/advocacy-services/complaints-involving-pupils-consultation-e.pdf). The document suggests that the content of the pupil element of a complaints procedure should include:

- any additional or specific principles underpinning this element of the complaints procedure
- roles and responsibilities of all those involved
- procedures for dealing with pupil complaints of various types
- timescales for dealing with pupil complaints
- procedures for recording and monitoring pupil complaints
- procedures for implementing any actions arising from the resolution of pupil complaints or from monitoring trends.

In developing or amending school complaints procedures to include complaints involving pupils, it is suggested that the governing body may need to:

- consider and as necessary amend existing procedures in the light of this guidance
- ensure the procedure is in a format and uses language that is accessible to pupils
- consult staff, parents and pupils
- formally adopt and implement any new procedures
- consider guidance or training requirements for pupils, staff or governors
- ensure by publicising the procedure that all parties are made aware of it
- consider providing advocacy support for pupils
- consider providing guidance for adults in the school on collating evidence
- consider pupil involvement in complaint resolution.

In addition, pupils may need guidance with regard to:

- the complaints procedure and how to use it
- the need to be truthful and honest
- the role of the school council in considering complaints through representation
- how those who make false or malicious complaints will be dealt with – bearing in mind that false allegations may arise from difficulties the pupil has in coping with school or outside school and action instead of or in conjunction with disciplinary action may be necessary.

Pupils should be given a copy of the complaints procedure in appropriate and accessible language, and the procedure should be published for example on notice boards, posters, inclusion in the school

newsletter, inclusion in the home-school agreement or inclusion in homework diaries. There should be a single procedure suitable for use by both adults and pupils. All complaints, and action taken, should be recorded.

The consultation document states under “equality of rights”:

Schools need to ensure fair hearing and fair treatment for everyone using the complaints procedure, treating pupils and adults as having equal rights.

However, young people’s knowledge, understanding, experience and skills in selfexpression may place them at a disadvantage alongside adults. Advocacy arrangements are intended to redress this by balancing support for pupils with the entitlement of staff and other adults to be supported during the investigation of any complaint in which they are mentioned ... The complaints procedure will need to address the issue of how pupils should be supported.

The rights of adults are not to take precedence over the rights of any pupil involved. No one should be subject to any reprisal, or less favourable treatment than others, because they have made a complaint.

The document suggests that when handling complaints by pupils, the follow principles should be followed:

When making a complaint a pupil needs:

- to be listened to
- to have the problem accepted as important
- to be offered a solution or explanation
- to have any distress acknowledged
- to understand the process by which the complaint will be handled
- to be assured that steps will be taken to try to ensure that the same thing will not happen again.

The effective hearing and resolution of complaints is a participatory process. It is essential that the pupil is able to fully discuss his or her concerns, is given time to be heard fully and fairly and, where appropriate, is offered the support of an advocate.

Where complaints concern an existing school policy, such as pupil behaviour and discipline:

Resolution should be sought using the remedies set out in these policies. Where these remedies are not adequate or appropriate the governing body complaints procedure may need to be used.

Useful publications available online

- Alexandreu, Gabriela et al. (2005), *Ending Physical and Humiliating Punishment of Children: Making it Happen, Part 1 and Part 2 Annexes*, International Save the Children Alliance (www.rb.se/eng/Programme/Exploitationandabuse/Corporalpunishment/1415+Publications.htm)
- Children's Rights Project, Community Law Centre, University of Western Cape, *Article 19* [journal] (www.communitylawcentre.org.za/Childrens-Rights)
- Committee on the Rights of the Child (2006), General Comment No.8 on "The right to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)" (www2.ohchr.org/english/bodies/crc/comments.htm)
- Committee on the Rights of the Child (2001), General Comment No.1 on "The aims of education" (www2.ohchr.org/english/bodies/crc/comments.htm)
- Council of Europe (2008), *Eliminating Corporal Punishment: A human rights imperative for Europe's children*, 2nd edition, Strasbourg: Council of Europe Publishing (www.coe.int/t/transversalprojects/children/publications/EliminatingRevised_en.asp)
- Council of Europe (2007), *Abolishing corporal punishment of children: Questions and answers*, Strasbourg: Council of Europe Publishing (www.coe.int/t/transversalprojects/children/pdf/QuestionAnswer_en.pdf)
- Council of Europe (2007), *Parenting in contemporary Europe: A positive approach*, Strasbourg: Council of Europe Publishing (www.coe.int/t/transversalprojects/children/publications/ParentingContemporary_en.asp)
- Council of Europe (2007), *Views on positive parenting and non-violent upbringing*, Strasbourg: Council of Europe Publishing (www.coe.int/t/transversalprojects/children/publications/ViewsPositiveParenting_en.asp)
- Council of Europe (2007), Resources for awareness raising on the need for, and implementation of, prohibition (www.coe.int/t/transversalprojects/children/violence/corporalPunishmentMini_en.asp)
- Council of Europe Committee of Ministers (2006), *Recommendation Rec (2006) 19 on policy to support positive parenting*, Strasbourg: Council of Europe (<https://wcd.coe.int/com.intranet.InstraServlet?Index=no&Command=com.intranet.CmdBlobGet&DocId=1048180&SecMode=1&Admin=0&Usage=4&IntranetImage=135036>)
- Durrant, J. E. (2007), *Positive Discipline: What it is and how to do it*, Save the Children Sweden Southeast Asia and the Pacific (contact scs@seap.savethechildren.se)
- Durrant, J. E. (2000), *A Generation without Smacking: The impact of Sweden's ban on physical punishment*, London: Save the Children (www.endcorporalpunishment.org/pages/pdfs/GenerationwithoutSmacking.pdf)
- Early Childhood Matters (2006), *Violence against young children: A painful issue*, June 2006, No.106 (www.bernardvanleer.org/publication_store/publication_store_publications/violence_against_young_children_a_painful_issue/file)
- Global Initiative to End All Corporal Punishment of Children (2008), *Prohibiting corporal punishment of children: A guide to legal reform and other measures* (www.endcorporalpunishment.org)
- Global Initiative to End All Corporal Punishment of Children (2007), *Ending legalised violence against children: Global report 2007* (www.endcorporalpunishment.org/pages/pdfs/reports/GlobalReport2007.pdf)

- Martin, Florence & Parry-Williams, John (2006), *The Right Not to Lose Hope: Children in conflict with the law – a policy analysis and examples of good practice*, Save the Children (http://www.savethechildren.org.uk/en/54_2172.htm)
- South African Department of Education (2000), “Alternatives to Corporal Punishment: The Learning Experience” (www.education.gov.za/dynamic/dynamic.aspx?pageid=329&catid=10&category=Reports&lectype=null)
- South African Law Commission (2000), *Juvenile Justice Report* (www.doj.gov.za/salrc/reports/r_prj106_juvjus_2000%20jul.pdf)
- Swedish Ministry of Health and Social Affairs/Ministry for Foreign Affairs (2001), *Ending Corporal Punishment – Swedish Experience of Efforts to Prevent All Forms of Violence against Children – and the Results*, Stockholm: Ministry of Health and Social Affairs/Ministry for Foreign Affairs (www.endcorporalpunishment.org/pages/pdfs/ending.pdf)
- UNICEF (n.d.), *Justice for Children: Detention as a Last Resort – Innovative initiatives in the East Asia and Pacific Regions* (www.unicef.org/protection/files/Justice_for_Children_Detention.pdf)