

Campaigning for law reform to prohibit corporal punishment: Reviewing current law

Summary Briefing 2 (June 2009)



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

The first step in campaigning for law reform to prohibit corporal punishment must be to research the relevant legal frameworks in detail to establish definitively whether or not corporal punishment is currently prohibited in all settings where there are children. This will inform the drafting of prohibiting legislation (see Briefing 3) and the targeting of relevant government departments (see Briefings 4 and 5).

Which laws to review

Analysis should be undertaken of all relevant laws and regulations, including the national constitution, applicable to:

- the **home**, in relation to parents and others with parental responsibility
- **schools and other education settings**, in relation to state schools, religious schools and private schools, pre-school, primary and secondary education, full and part time provision
- **alternative care settings**, in relation to day care, residential institutions, foster care, childminders, nurseries and crèches, covering care run by the state, religious organisations, privately, and informal arrangements. Where prohibition of corporal punishment is a condition of licensing, it is important to establish whether all providers of care must be licensed or only certain ones. Sometimes there are laws or regulations prohibiting corporal punishment by staff, but discipline policies allow parents to smack their own children on the premises
- the **penal system**, in relation to the sentencing of children to corporal punishment by the courts and under customary, traditional or informal systems of justice, and to the use of corporal punishment as a “disciplinary” measure in penal institutions (prisons, juvenile detention centres, approved schools, etc)
- **situations of child labour**, in relation to domestic labour, agricultural labour, factory work and all other employment
- **other institutions**, in relation to state or private institutions caring for or providing treatment for children, including health or mental health (psychiatric) institutions, etc.

It is also important to find out if there have been any significant challenges to corporal punishment in any of these settings, e.g. through government consultations, official reports recommending reform, parliamentary discussion, campaigns by NGOs or human rights institutions, legal challenges, etc.

In some states, governments have issued policies, guidance or circulars stating that corporal punishment must not be used. These are positive, and should be analysed in the review, but they do not amount to prohibition, which must be achieved through legislation which has been passed by Parliament and can be enforced.

What to look for

Most countries have assault laws which make it a crime to hit or otherwise assault another person. Many have child protection laws prohibiting cruelty to children, and constitutions which guarantee

protection from cruel, inhuman or degrading punishments. Many countries, when they ratify international human rights instruments like the Convention on the Rights of the Child, incorporate them into their law so that they take precedence over domestic law. This legislation is rarely interpreted so that it protects children from all corporal punishment by parents and other carers.

In many countries, the right of parents, teachers and others to use “reasonable” punishment (chastisement, correction, etc) exists in common (case) law, and in some this is confirmed in legislation. This constitutes a special defence, so that the law on assault does not apply to “disciplinary” assaults on children by parents, teachers or others: corporal punishment is considered to be “reasonable”.

In other countries, the law is silent – there is no reference to it in education law or family law. This does not mean that it is in reality prohibited.

How to record your findings

If corporal punishment is already prohibited:

- identify the precise legal reference (name of the law, number of the article(s))
- examine the exact wording of the relevant provisions. Remember, if the law does not clearly say that corporal punishment is prohibited, then it almost certainly is not.

If corporal punishment is not prohibited:

- identify the legal provisions which make it lawful, including:
 - laws which authorise the infliction of corporal punishment and/or regulate how it should be carried out, e.g. in schools or as a sentence of the courts
 - laws (including common law, or case law) which provide legal defences or justifications such as “reasonable chastisement”, “the use of force for purposes of correction”, “moderate correction”, etc
 - laws which are silent on the issue, e.g. education law which does not prohibit corporal punishment in schools.

National constitutions usually refer generally to the right not to be subjected to torture and other cruel treatment or the right to protection from violence and do not require reform because prohibition in national laws would be in line with this principle. In a very few cases they refer specifically to corporal punishment, in which case reform is necessary.

How to use the information

Based on the findings, compile a list of laws which need to be amended to achieve prohibition. This will ensure that campaigning for prohibition is based on a full understanding of the current legal situation and what needs to change. It will provide a reference point for drafting prohibiting legislation (see Briefing 3), and will help in identifying which government departments to lobby (see Briefings 4 and 5).

Other summary briefings available:

- 1: Understanding the need for prohibition; 3: Drafting prohibiting legislation*
- 4: Building a national strategy; 5: Working with Government and Parliament*
- 6: Using legal action and regional and international human rights mechanisms*
- 7: Key resources to support campaigning*

Further information at www.endcorporalpunishment.org, email info@endcorporalpunishment.org.