



BRIEFING

for national human rights institutions and other children's rights advocates

CHALLENGING CORPORAL PUNISHMENT OF CHILDREN



Prohibiting all corporal punishment of children – a human rights imperative

The human rights imperative for prohibiting and eliminating all corporal punishment of children is clear: corporal punishment, whether administered by parents, other carers, teachers, employers, or by police or others in the penal system, breaches children's fundamental right to respect for their human dignity and physical integrity. The existence of special defences in the law in many countries, which parents, teachers and others can use to justify assaulting children in the name of discipline, breaches the right to equal protection under the law; they result in children having less legal protection from assault than adults. Corporal punishment is always humiliating, sometimes causes death and frequently amounts to inhuman or degrading treatment.

The Committee on the Rights of the Child, monitoring states' compliance with the UN Convention on the Rights of the Child, has consistently interpreted the Convention as requiring prohibition of all corporal punishment, including in the family, and has recommended law reform to more than 130 states in all continents. In 2006, it issued a detailed General Comment, emphasising states' obligations. Other UN human rights treaty bodies have echoed these recommendations, as have regional human rights mechanisms. High level constitutional and other courts in a number of states have issued judgments condemning corporal punishment. (details of human rights recommendations and legal developments are available on the Global Initiative website at www.endcorporalpunishment.org).

The purpose of this briefing is to encourage human rights institutions and others to advocate for the prohibition of all corporal punishment. Where governments are unwilling to reform the law, the legality of corporal punishment should be challenged, using national courts and/or regional or international human rights mechanisms. The Global Initiative will gladly provide detailed advice: info@endcorporalpunishment.org



The UN Secretary General's Study on Violence against Children

The Study (<http://www.violencestudy.org/r25>), which reported to the UN General Assembly in October 2006, provides a current context for challenging all forms of violence against children and thus an opportunity to make progress towards eliminating corporal punishment. The report recommends prohibition of all forms of violence against children, including all corporal punishment in all settings including the family. It sets a deadline of 2009 for achieving full law reform.

Nine regional consultations were held in connection with the Study during summer 2005. The Global Initiative submitted a report to each meeting, urging action to end all corporal punishment. These highlight the human rights obligations and include a state-by-state analysis of the legality of corporal punishment: see www.endcorporalpunishment.org



The importance of law reform

Ending corporal punishment is not just a child protection issue. It is fundamental to asserting the status of children as holders of human rights. Just as challenging routine domestic violence against women has been an essential element in campaigns for women's rights, so it is with children.

Law reform to prohibit all corporal punishment is essential:

- To assert in law children's human rights to respect for their physical integrity and human dignity, and to equal protection under the law.
- To provide a clear and logical basis for child protection, enabling child protection workers and others working with or for parents and children to transmit a clear message that no level of corporal punishment is lawful.
- To support parents, teachers and others, by providing a clear – not confused – legal basis for awareness-raising on children's right to protection and for public education to promote positive, non-violent forms of discipline. There is no evidence to suggest that education programmes substantially change parental and others' attitudes and practice where the law still condones corporal punishment.
- To ease prosecution of perpetrators in those cases in which it is plainly necessary to protect the child and in the best interests of the child.

Human rights provide the imperative for law reform. When it is accompanied by comprehensive awareness-raising and public education there will be much wider benefits. From existing research findings, it can confidently be predicted that reducing and ultimately eliminating corporal punishment will substantially reduce death and injury among children and will contribute to the reduction of all forms of violence in childhood and adult society.



Progress towards abolition

The Global Initiative to End All Corporal Punishment of Children, launched in Geneva in 2001, has built a global map of the legality and prevalence of corporal punishment. This finds that:

- 85 states still permit flogging, whipping or caning of children in their penal systems (100 have prohibited);
- 94 states still permit corporal punishment, usually administered with canes or belts, in schools (98 have prohibited);
- 17 states have explicitly prohibited all corporal punishment, including in the family – but at least 12 more are committed to full reform (November 2006).

Summary information is available on our website at www.endcorporalpunishment.org and we can provide detailed information on most states (info@endcorporalpunishment.org).



Persuading governments to reform the law to prohibit all corporal punishment

While there is an open debate and accelerating progress towards prohibition of all corporal punishment now in many states, governments are often hesitant about introducing reform, perceiving it as an unpopular issue. Traditional attitudes to children and a traditional reliance on violent and humiliating forms

of discipline fuel a resistance to reform. In some states, faith groups argue that corporal punishment is encouraged or even required by their religion, although this is challenged now by respected leaders in all the major religions.

In this context, it is essential that human rights institutions and children's rights NGOs should actively advocate for reform, if necessary threatening or pursuing legal action.



Steps towards eliminating all corporal punishment of children

The Global Initiative urges your institution to consider taking the following steps, and is available to provide advice and support at any point:

- 1** Clarify the legality of corporal punishment of children – in the family, in alternative care, in schools, other institutions and in the penal system for young offenders – both as a sentence of the courts and as a punishment in penal institutions (the Global Initiative can provide a summary report and advice on detailed research).
- 2** Find out whether proposals to end the legality of corporal punishment have been prepared and debated (within government or by human rights institutions and/or NGOs).
- 3** If there appears to be no progress, propose necessary law reform to the relevant departments of government, quoting the human rights imperative.
- 4** If there are no signs of progress, investigate possible forms of legal advocacy, involving courts within your state and/or regional or international human rights mechanisms: see below.



Possible legal strategies to encourage or require prohibition of all corporal punishment

It seems that few governments decide voluntarily to abolish corporal punishment of children, despite the growing human rights pressure to do so. It remains everywhere a controversial and difficult issue. So it is important to consider how the government can be required to reform the law, by the use of national or international human rights legal processes.

It may make it easier for governments to act if they are able to say that they are required by their human rights obligations to make the change. Appeals to constitutions or applications to external human rights mechanisms may produce binding decisions which governments cannot ignore. If these actions provide a decision condemning corporal punishment, the government will still have to go to parliament to change national law, but that should not be a difficult process if it can point to clear external human rights obligations.

There are various possible strategies which should be explored:

1 USING DOMESTIC COURTS

If the Constitution or equivalent laws guarantee respect for “everyone’s” human dignity and physical integrity and equal protection under the law, it may be possible to challenge the constitutionality of any laws which permit or justify corporal punishment of children.

Most constitutions also include a provision prohibiting torture and inhuman or degrading treatment or punishment. The problem of challenging corporal punishment using only this provision is the illogical tendency of courts to suggest that not all corporal punishment of children is inhuman or degrading, but only corporal punishment which reaches a certain degree of severity. Challenges to school and penal system corporal punishment, which is institutionalised and generally administered with an implement, will almost certainly succeed. But challenges to the legality of all parental corporal punishment may not.

In many states, the Convention on the Rights of the Child (CRC) and other international human rights instruments, once ratified, are incorporated into domestic law. If the CRC has been incorporated, it may be possible to base a challenge to the legality of corporal punishment on the Convention, asserting the consistent interpretation of it by the Committee on the Rights of the Child as requiring prohibition of all corporal punishment (consolidated in the Committee’s General Comment No. 8). Whether or not it has been incorporated, the Convention can be quoted and used in any legal challenge.

In some legal systems, human rights or constitutional challenges to existing laws and policies can be pursued without identifying individual victims. If a victim is required, given the dependent status of children, it will be difficult to find one prepared and able to challenge parental corporal punishment. Parents and children together may be able and willing to challenge school or penal system corporal punishment.

Examples of judgments of high level courts condemning corporal punishment, including South Africa's Constitutional Court, Supreme Courts in Namibia, Italy, Canada and Israel and other high level courts in Fiji, Nepal and New Delhi are summarised at www.endcorporalpunishment.org

2 APPEALING TO INTERNATIONAL OR REGIONAL HUMAN RIGHTS MECHANISMS

INTERNATIONAL MECHANISMS:

There are mechanisms allowing individual communications to be made to various human rights treaty bodies, alleging breaches of the relevant instruments:

- Human Rights Committee (International Covenant on Civil and Political Rights);
- Committee for the Elimination of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women);
- Committee Against Torture (Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).

Citizens - including children - of states which have ratified the relevant Optional Protocols or provisions can submit communications alleging that they are the victims of breaches of the rights guaranteed by the Conventions. Individual communications to the Human Rights Committee have already been used successfully by young adults to challenge penal corporal punishment in Jamaica and Trinidad and Tobago, but the procedure has not as yet been used by children. The Global Initiative will provide advice on using these mechanisms.

REGIONAL MECHANISMS:

In the 46 Council of Europe member-states, individual citizens including children can make applications to the **European Court of Human Rights** in Strasbourg, France alleging breaches of their human rights as guaranteed by the European Convention on Human Rights. The applicants have to be direct victims of the breach, and have to show that they have exhausted any domestic remedies that may be available to them. This procedure has been used over the last 30 years to challenge and end corporal punishment of children in the penal system and schools in the UK. It is currently being used to challenge corporal punishment in the home. Judgments of the European Court are widely respected and often quoted in other high level courts throughout the world.

The European Social Charter and Revised Social Charter guarantee social and economic rights and cover child protection. The **European Committee of Social Rights** monitors compliance by reviewing reports from states. In 2001 the Committee observed that compliance with the Charters requires prohibition of all corporal punishment and all other humiliating treatment of children. It has since concluded that a number of states are in breach of the Charters because they have not explicitly prohibited all corporal punishment, including in the family.

There is also a procedure for making "collective complaints" under the Charters. This has recently been used to challenge the legality of corporal punishment in five of the 13 European states which have accepted the complaints procedure.

There are regional human rights mechanisms in the Americas – the **Inter-American Commission and Court of Human Rights** – and in Africa – the **African Commission and Court on Human and Peoples' Rights**, the **African Union Court of Justice** and the **African Committee of Experts on the Rights and Welfare of the Child**. These have not as yet been used to challenge corporal punishment of children.

The Global Initiative website www.endcorporalpunishment.org includes individual reports on the legal status of corporal punishment in every state and dependent territory worldwide, as well as other information on human rights standards and key judgments. Contact us on info@endcorporalpunishment.org

