

Ending legalised violence against children

ALL AFRICA REPORT 2010



Inside: table of
progress across the
region – page 30

*Children campaigning
in Côte d'Ivoire*

Following up the UN Secretary General's
Study on Violence against Children



Participants in workshop on law reform to prohibit all corporal punishment, Nairobi, 2009

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Messages



Agnès Kabore
Chairperson, African Committee
of Experts on the Rights and Welfare of the Child

Millions of children in Africa are victims of physical, sexual and emotional abuse in the home, at school or within their community, while these settings are supposed to protect them. The violence inflicted on these innocent children, who suffer in silence, is justified in the name of respect for tradition and religion or simply in the name of the respect due to adults by children in the African context.

Corporal punishment, one of the most commonly inflicted forms of violence against children, is a form of inhuman and degrading treatment that is socially tolerated in almost all regions of Africa. At present the laws of African States still contain specific provisions authorising the use of corporal punishment against children.

However, article 16 of the African Charter on the Rights and Welfare of the Child, the symbol of African values for the well-being of the African child, recommends that States Parties take legislative measures to protect African children against all forms of torture, inhuman and degrading treatment.

In fact, the use of corporal punishment of children is contrary to human rights and cannot be identified with African values. Prohibition of corporal punishment of children in all settings (including in the home) is a legal imperative, based on the child's right to respect for his or her dignity and physical integrity.

We cannot afford to jeopardise the future and well-being of our children without good reason. The African Committee of Experts on the Rights and Welfare of the Child has always been committed to the elimination of violence against children, including legal prohibition of corporal punishment.

During its 12th session in November 2008, the Committee held a special session on the issue of prohibition of corporal punishment, and its harmful and often permanent effects on children. This session enabled the Committee and representatives from civil society organisations to openly discuss the need to encourage States Parties to commit themselves to legal reform for the explicit prohibition of corporal punishment.

Two years later, the issue of corporal punishment has remained sensitive. This is evident from States Parties' reports on the implementation of the Charter as well as discussions held during the 15th session of the Committee in March 2010 in Addis Ababa, Ethiopia. During a special session on violence against children, the UN Special Representative made a statement on "Violence against Children" to the African Committee of Experts on the Rights and Welfare of the Child. The African Child Policy Forum also presented on "Violence against children in Africa: Challenges and Priorities for Africa". I add my voice to those of other participants of this session who recommended that Member States are sensitised to become champions against violence against children. I also support recommendations calling for the theme "fighting against violence against children" to be selected as the theme of the African Union Summit of Heads of State and Government.

Once again, the African Committee of Experts on the Rights and Welfare of the Child wishes to thank all those who advocate for the prohibition of corporal punishment and reiterates its commitment towards this fundamental aspect of the African child's well-being.

Marta Santos Pais Special Representative of the UN Secretary General on Violence against Children



It is inspiring to see the progress towards achieving full legal protection from violent punishment for Africa's children, as documented in this report. When I had the privilege of addressing the African Committee of Experts on the Rights and Welfare of the Child earlier this year, I underlined that my mandate – now just one year old – promotes the protection of children from violence as a human rights imperative. Indeed, the Convention on the Rights of the Child, the African Charter and other human rights instruments provide a firm normative foundation for the prevention and elimination of all forms of violence against children, including all corporal punishment. I stressed the critical importance of law reform to unequivocally prohibit all forms of violence – an area which I have adopted as a key priority within my mandate. And I have called for the launch of an African-wide advocacy campaign in support of the enactment in all countries of legislation to this effect.

My participation in the Youth Forum held in Accra, in September, which brought together children and young people from 15 countries in West Africa, inspiring advocates and critical actors in the promotion of the elimination of violence against children across the region, reinforced my conviction of the critical role of ethical child participation in achieving our goal of childhood free of violence. Children may be victims of violence but that does not compromise their courage and determination to intervene and mobilise support and to push us to act with passion. I look forward to working with all key partners across the continent to build on the steps that have been taken and accelerate progress in this critical child rights area.



Professor Yanghee Lee Chairperson, UN Committee on the Rights of the Child

It is very encouraging to see significant progress in Africa towards ending violent and humiliating punishment of children, including within their families.

In its 2006 General Comment No. 8, the Committee sets out in detail its interpretation of the obligations of States under the Convention to protect children from corporal punishment and other cruel or degrading forms of punishment, providing guidance to States on the need for explicit law reform and other measures. The Committee also emphasises: "Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties

under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies." Corporal punishment, even in the "mildest form", is a direct attack on human dignity. And no society should remain tolerant to any acts that attack the human dignity of children.

The UN Committee has further developed a close relationship and cooperation with the African Committee of Experts on the Rights and Welfare of the Child. Through our reporting procedures and other activities, including in the context of follow-up to the UN Secretary General's Study on Violence against Children, we will continue to press urgently for the universal prohibition and elimination of all violence disguised as discipline.

Professor Paulo Sérgio Pinheiro The Independent Expert who led the UN Secretary General's Study on Violence against Children and Commissioner and Rapporteur on the Rights of the Child, Inter-American Commission on Human Rights, OAS



The developments highlighted in this new report reflect a real breakthrough in Africa towards achieving full respect for children's dignity and physical integrity and their right to equal protection under the law. Kenya and Tunisia have become the first two African States to achieve prohibition of all corporal punishment of children in their families and all other settings. This is the essential, human rights-based foundation for child protection and for the promotion of positive, non-violent relationships with children.

The regional consultations held across Africa and globally in 2005 were key elements in the UN Secretary General's Study

on Violence against Children, which I had the privilege to lead. Children played a strongly influential role in these, highlighting the extent of violent punishment and the hurt and distress it causes them. Five years have passed since I delivered my report to the General Assembly: there is real progress, but not nearly fast enough for children. The report notes that there are opportunities for law reform to ban corporal punishment now in many other states across the continent. These opportunities must be used to achieve this so fundamental right for children.

The messages which opened this report aptly communicate the seriousness with which prohibition of corporal punishment of children is viewed under international human rights law and the high priority which should be given to achieving law reform. There is much work to be done in Africa, but all indications are that progress is accelerating. Two African states – Tunisia and Kenya – have now prohibited corporal punishment in all settings, including the home; corporal punishment is also fully prohibited under the interim government of Southern Sudan. Many other states have achieved prohibition in settings outside the home, including 23 in schools, 40 as

The human rights imperative to prohibit corporal punishment

Every human being in the world has the rights to respect for human dignity and physical integrity and to equal protection under the law – regardless of gender, age, ethnicity, socio-economic circumstances, ability or disability, religion, or any other status. There are no exceptions.

But for too long, in the process of trying to make this universal ideal a reality, children have been singled out as being “different”, somehow not qualifying for the full realisation of the human rights that adults readily claim for themselves. There is no more powerful symbol of the low status of children than the legality of corporal punishment – violence inflicted in the name of discipline, punishment and sometimes justice.

Society is moving on. Increasingly, children are being recognised as holders of human rights. Their vulnerability and dependent status are being seen as requiring more, not less, protection from violence.

International standards

The **UN Convention on the Rights of the Child** has been ratified by 193 states worldwide and in Africa by all but Somalia (which has signed the Convention, signifying its intention to ratify). The Convention requires states to take legislative and other measures to protect children from all forms of violence (article 19), to ensure school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the whole Convention (article 28), and to ensure children are not subjected to torture or other cruel, inhuman or degrading treatment or punishment (article 37).

The Committee on the Rights of the Child, which monitors implementation of the Convention, has from the very beginning been clear that this obliges states to prohibit all corporal punishment in all settings

States across the world, including in Africa, are beginning to fulfil their human rights obligations to protect children from all forms of violence, including through the prohibition of corporal punishment in all settings. Much of this progress has been in the context of the UN Secretary General’s Study on Violence against Children, which highlighted the extent of this form of violence and its legal and social acceptance the world over and recommended prohibition and elimination as a matter of priority.

– the home, schools, penal systems and alternative care settings. And states must support prohibition by raising awareness in society of the negative effects of corporal punishment and promoting positive, non-violent discipline in childrearing and education and alternative sentencing for children in conflict with the law. The Committee consolidated and confirmed these obligations in its General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19, 28, para. 2; and 37, inter alia)”.

In its concluding observations following examination of state party reports on implementation of the Convention, the Committee typically recommends prohibition of corporal punishment. Since 2008 the Committee has made such recommendations



a sentence of the courts, and 21 in penal institutions. Research on the issue has been carried out in many African states, there are campaigns to promote prohibition across the region, and real opportunities for influencing the drafting and enactment of new laws are plentiful.

We hope this new All Africa report will help us to build on this good work, to learn from and collaborate with one another, and to renew our determination to end the legality of violence against children once and for all.

to Burkina Faso, Cameroon, Chad, Democratic Republic of the Congo, Djibouti, Eritrea, Malawi, Mauritania, Mozambique, Niger, Nigeria, Sierra Leone and Tunisia.

The monitoring bodies of other international treaties are increasingly making similar recommendations to states, confirming that these treaties too require prohibition of corporal punishment of children. In 2010, the **Committee on Economic, Social and Cultural Rights** recommended prohibition to Algeria and Mauritius, as did the **Committee on the Elimination of Discrimination Against Women** to Botswana. The **Human Rights Committee** recommended prohibition to Tanzania (in 2009) and Botswana (in 2008), and the **Committee Against Torture** in 2009 recommended prohibition to Chad and in 2008 to Algeria and Zambia. The issue is raised frequently during the **Human Rights Council** Universal Periodic Review of states’ human rights records.



Convention on the Rights of the Child

Article 19(1)

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

Article 28(2)

States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.

Article 37(a)

States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment....

Committee on the Rights of the Child, General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”

Paragraphs 20, 21 and 22

Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The travaux préparatoires for the Convention do not record any discussion of corporal punishment during the drafting sessions. But the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.

The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties....

Regional human rights standards

Most African states have ratified the **African Charter on the Rights and Welfare of the Child**. This requires states to ensure that discipline by parents and at school respects the child's human dignity (articles 11 and 20), that children are protected from all forms of torture and inhuman or degrading treatment by parents and others caring for the child (article 16) and that children in detention are not subjected to torture or inhuman or degrading treatment or punishment (article 17).

Implementation of the Charter is monitored by the African Committee of Experts on the Rights and Welfare of the Child. Since 2009, the Committee has addressed the issue of corporal punishment in its concluding observations following examination of the state party reports of Burkina Faso, Egypt, Kenya, Nigeria and Uganda.

The Committee's work is supported by the Civil Society Forum on the African Charter on the Rights and Welfare of the Child, which meets before each session of the Committee. In 2009, the Forum made a number of recommendations to the Committee, including to develop General Comments on articles 11, 16 and 20 of the Charter concerning prohibition of corporal punishment in all settings. In 2010, the Forum pledged to explore the issue of violence against children, including corporal punishment, at a future meeting.



African Charter on the Rights and Welfare of the Child

Article 1(2)

Nothing in this Charter shall affect any provisions that are more conducive to the realisation of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

Article 11(5)

States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

Article 16(1)

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.

Article 17(2)(a)

States Parties to the present Charter shall in particular ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment.

Article 20(1)(c)

Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty ... to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

African Charter on Human and Peoples' Rights

Article 3

(1) Every individual shall be equal before the law.

(2) Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Cairo Declaration on the Convention (CRC) and Islamic Jurisprudence

Participants to the Conference recommend that OIC Member States prohibit all corporal punishment and other cruel or degrading forms of punishment or treatment of children, in all settings including within schools and within the family, linking law reform with the promotion of positive, non-violent forms of discipline.

In March 2010, Marta Santos Pais, Special Representative to the UN Secretary General on Violence against Children, met with the Committee as part of her mandate to advocate for the protection of children from all forms of violence as a human rights imperative and to act as a catalyst for actions by a wide network of partners within and beyond the UN system. She emphasised her focus on promoting a strategic agenda, strengthening key partnerships to achieve progress in following up the UN Study, and securing firm support for promoting progress in protecting children from all forms of violence. She urged the Committee to consider undertaking “an advocacy campaign to call for an explicit legal ban on all violence against children, including corporal punishment”. Other suggestions were to develop a strategic agenda to work collaboratively with her to end violence against children in Africa, to include protection from violence systematically in reviewing state party reports, to promote the development of an African report on national follow up to the UN Study recommendations, and to support the placing of violence against children high on the policy agenda of the African Union and its member states.

All states in the region except Morocco have ratified the **African Charter on Human and Peoples' Rights**, which asserts that everyone should have equal protection of the law (article 3), respect for personal integrity (article 4) and respect for human dignity (article 5). It prohibits torture and cruel, inhuman or degrading punishment and treatment (article 5).

In 2000, a complaint was submitted to the African Commission on Human and Peoples' Rights concerning the sentencing of eight students in the Sudan to 25-40 lashes under the criminal law (*Curtis Francis Doebber v Sudan*, 236/2000, 33rd Ordinary Session, Niger, 2003). In its decision the Commission stated that it was not the task of the African Commission to interpret *Shari'ah* law, but to ascertain whether the lashes administered



“Talk to them” Childline South Africa poster

were consistent with human rights standards. It stated clearly (para. 42): “There is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of this human rights treaty.” The Commission concluded that the Sudanese legislation permitting flogging violated article 5 of the Charter on Human and Peoples' Rights, and requested that the government of Sudan amend the criminal law in question, abolish the penalty of lashes, and compensate the victims.

The Organisation of the Islamic Conference (OIC), of which 27 African countries are member states, has also confirmed the obligation to prohibit all corporal punishment of children. At a 2009 conference in Cairo to mark the 20th anniversary of the Convention on the Rights of the Child, organised by the Egyptian Ministry of State for Family and Population and co-sponsored by OIC and UNICEF, participants renewed their commitment to implementing the Convention. The resulting **Cairo Declaration on the Convention and Islamic Jurisprudence** includes a recommendation to all OIC member states to prohibit corporal punishment in the family and other settings.

Prohibition as a foundation for child protection

Legalised violence against children in the guise of “discipline” or “reasonable” punishment or correction undermines effective child protection.

There are many reasons for this:

- There is always a risk that mild smacking or slapping will escalate to serious assault. The more hitting is used as a disciplinary strategy, the less effective it becomes. It then tends to become more severe, as adults are desensitised to what they are doing and frustrated by the child’s diminishing compliance. Research has shown that corporal punishment is a major risk factor for more serious abuse.¹ Research has also shown that people are unable to judge accurately the strength of directly applied force – we use greater force than we think we are using.²
- Professionals working with families cannot give a clear message that hitting and hurting children is unacceptable when the law allows a certain degree of violence against them.
- Children do not complain about something which they are told is justified and not against the law.
- Adults who witness other adults hitting or beating children are unlikely to feel able to intervene or report what they see to the authorities when they do not have the backing of the law.
- Parents receive confusing messages about the legitimacy of hurting their children, and children receive confusing messages about the acceptability of violence.

Prohibiting all corporal punishment is the only safe foundation for child protection.



“Touch them” Childline South Africa poster

- Trying to draw a line between lawful physical punishment and unlawful “abuse” leads to arbitrary and inconsistent distinctions which fail to protect all children, such as those with darker skin who do not bruise as readily, or those who are subjected to repeated and habitual assault and humiliation which does not cross the threshold for intervention.
- Physical punishment makes children more vulnerable to other forms of violence in the home and elsewhere, including sexual abuse and exploitation.
- Even a “light smack” teaches children that hitting people is acceptable.

Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies. *Committee on the Rights of the Child, General Comment No. 8 (2006), para. 3*

¹ For example, see Gershoff, E. T. (2002), “Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review”, *Psychological Bulletin*, vol. 128, no. 4, pp.539-579
² Shergill, S. S. et al (2003), “Two eyes for an eye: The neuroscience of force escalation”, *Science*, vol. 301, 11 July 2003, p. 187

Law reform – what it means and how to achieve it

The foundation for legal reform is a clear understanding of what the law says now, and what it should say to achieve prohibition of all corporal punishment of children in all settings of their lives. Prohibition results from reviewing the law and then reforming it through drafting new legislation and promoting law reform through national and, ideally, regional strategies.

Reviewing the law

The first step is a comprehensive review of existing legislation relating to all settings – the home, schools, alternative care settings (institutional and non-institutional forms of care), the penal system (disciplinary measures in penal institutions and sentencing by the courts), situations of child labour, and any other state or private institutions caring for or providing treatment for children. In some states governments have issued policies, guidance or circulars stating that corporal punishment should not be used, but these do not amount to prohibition, which must be achieved through enforceable legislation passed by Parliament. The review should identify:

- all legal defences and justifications for corporal punishment, such as confirmation of a “right to discipline” children or to use “reasonable punishment” or “reasonable chastisement” (as in English common law, introduced in a number of African states during the colonial period);
- all laws which explicitly authorise or regulate corporal punishment, e.g. in schools or as a sentence of the courts; and
- laws which are “silent” on the issue but which should include explicit prohibition, e.g. education laws which do not prohibit corporal punishment.



Spectators at a community march, Zambia

Reforming the law

The second step is to draft new legislation to prohibit corporal punishment, and should be carried out as soon as possible after the review. All defences and authorisations of corporal punishment should be repealed (removed) from the legislation. This will ensure that laws on assault apply equally to assaults against children. But to send a clear message which provides a firm legal framework for public education and awareness raising and the promotion of non-violent discipline and childrearing the law should also explicitly prohibit corporal punishment. It is important to ensure that no loopholes are left which could be construed as allowing corporal punishment in any setting.

Because corporal punishment has been almost universally accepted in all regions as a disciplinary measure in childrearing, it is still not generally perceived as harmful, abusive or even violent. It is even frequently argued that it is a good and necessary element of childrearing – “in the child’s best interests”. For this reason, legislation which prohibits “violence” or “inhuman or degrading treatment”, or which protects “physical integrity” or “human dignity”, is not readily interpreted as prohibiting all corporal punishment but can be seen as prohibiting only that which reaches a certain level of severity. But children have a right to protection from all corporal punishment, without exception. The definition of corporal punishment

adopted by the Committee on the Rights of the Child provides a useful reference point for ensuring that new legislation really does achieve full prohibition.

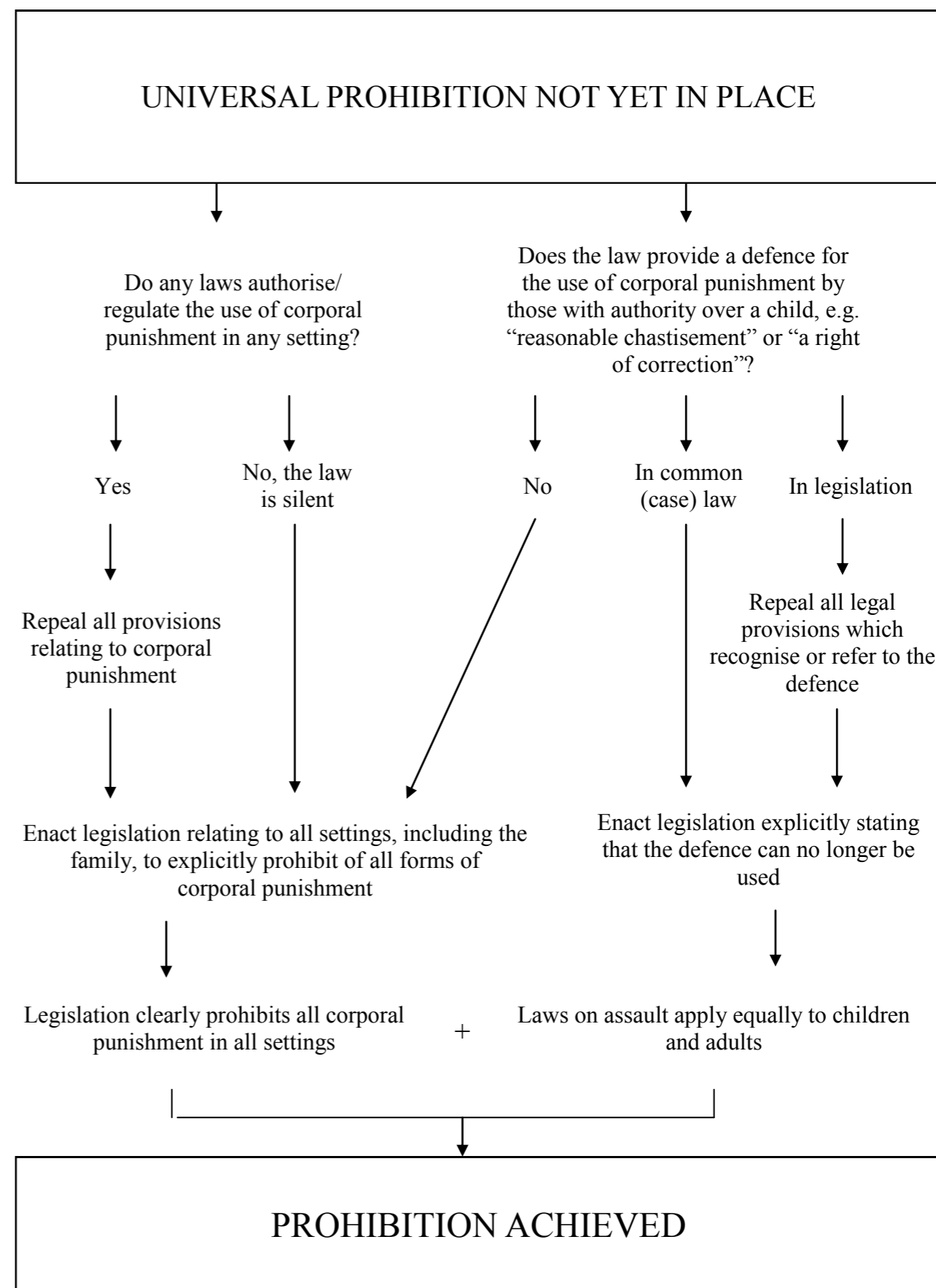
The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

Committee on the Rights of the Child, General Comment No. 8 (2006), para. 11



“Teach them” Childline South Africa poster

Reforming the law to prohibit all corporal punishment of children



Making the most of opportunities for promoting prohibition

Opportunities for promoting law reform arise when governments review legislation, e.g. to harmonise laws with the Convention on the Rights of the Child and the African Charters, and when new laws are being drafted, such as education or juvenile justice laws or laws on domestic violence. And monitoring these legal developments is also important in mobilising opposition to proposals for laws which would allow corporal punishment, as well as actively promoting

Taking legal action

In countries where governments are refusing to introduce law reform or are actively opposing it, international human rights law and national law can be used to “force” them to accept their obligations to realise children’s rights.

The Convention on the Rights of the Child (UNCRC), like other instruments (see pages 4-7), is part of international human rights law. In some states, on ratification the UNCRC automatically becomes part of (is incorporated into) national domestic law and takes precedence over domestic law, so can be used in courts to claim the rights guaranteed by it. In other states, incorporation is not automatic but requires an action of Parliament. In some, the status of the UNCRC will only be established when a case is taken to court. But in all cases, governments need to be reminded that the UNCRC imposes legal obligations under international law, including to enact legislation prohibiting all corporal punishment of children.

Most states have provisions in constitutions or other basic laws that conflict with legislation authorising or justifying corporal punishment, e.g. laws protecting people’s human dignity and physical integrity, prohibiting cruel or degrading punishment or treatment, or stating everyone’s right to equal protection under the law. These national legal provisions can also be used to challenge corporal punishment in all or some settings. The complaint is against the state, and the final authority in the case depends on the national legal system.

When there is no progress towards prohibition, or a government is actively resistant, it may be valuable to obtain a legal opinion written by a lawyer who

believes in children’s rights and is fully supportive of the human rights imperative to prohibit all corporal punishment of children. The table on page 14 lists some of the law reform processes currently under way in Africa.

Sometimes, media reporting of severe cases of corporal punishment generates interest in the issue. This, too, can be an opportunity to advocate for law reform, as can the publication of new relevant research, or new recommendations made to the government by treaty monitoring bodies.



Making a film in Namibia

believes in children’s rights and is fully supportive of the human rights imperative to prohibit all corporal punishment of children. This is an essential first step towards challenging the legality of corporal punishment in the courts. It can provide a basis for considering use of international and/or regional human rights mechanisms (see below) and can be useful in supporting campaigns for prohibition.

The Global Initiative publishes on its website detailed reports on individual states worldwide, including all states in Africa. These include regularly updated information on the legality of corporal punishment in all settings, prevalence research, and relevant extracts from the recommendations of human rights treaty monitoring bodies. In addition, the Global Initiative has started preparing special “legal action” reports for some states, to provoke and support legal action, as described above, in states where there is no progress towards prohibition. For further information contact info@endcorporalpunishment.org.

Using international and regional human rights mechanisms

There are complaints/communications procedures attached to international and African human rights instruments which may be used to challenge violations of children’s rights – including the persisting legality and use of corporal punishment. There are mechanisms associated with the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of Persons with Disabilities, the African Charter on the Rights and Welfare of the Child, and the African Charter on Human and Peoples’ Rights. A complaints procedure is being developed for the Convention on the Rights of the Child (for further information see www.crin.org/petitions/petition.asp?petID=1007).

The first step is to check whether a particular state has accepted use of one or more of these mechanisms (by ratifying the relevant optional protocol or making the appropriate declaration). These mechanisms usually require that any possible use of national legal systems to challenge the human rights violation has been tried and has failed – the process known as “exhausting domestic remedies”. They nearly always require that the complaint/communication is made by or on behalf of a victim or group of victims of the violation. For further details contact info@endcorporalpunishment.org.



Children in Zanzibar

Resources to support law reform

Many resources to support the promotion of law reform are available at www.endcorporalpunishment.org, including reports on the legality of corporal punishment of children in all settings in every African state, global and regional tables summarising progress towards prohibition, facts and figures relating to prohibition across the world, information on states which have achieved full prohibition, and links to online resources. Global Initiative publications freely available online include:

Campaigning for law reform to prohibit corporal punishment (2009), a series of seven summary briefings, in English, Arabic and French:

1. *Understanding the need for prohibition*
2. *Reviewing current law*
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*

Prohibiting corporal punishment of children: A guide to legal reform and other measures (2009), in English, French and Spanish, and supported by online resources

Prohibiting all corporal punishment of children: Frequently Asked Questions (2009), in adult and child-friendly versions in English, French and Spanish

State	Opportunity for achieving prohibition of corporal punishment
Angola	Laws being harmonised with UNCRC – many laws being revised and new laws being drafted, including Penal and Civil Codes and Law on the Penitentiary System
Botswana	Domestic Violence Bill under discussion (recently enacted Children Act confirms corporal punishment is lawful)
Cameroon	New Children’s Code planned
Chad	Draft Family Code, Child Protection Code and amendments to Criminal Code under discussion
Equatorial Guinea	Children’s Code being drafted; Civil Code being amended
Eritrea	New Penal and Civil Codes drafted
Guinea-Bissau	Laws being harmonised with UNCRC and African Charter; Domestic Violence law under discussion
Kenya	Repeal of legal defence by amending the Children Act under discussion; new legislation required to implement the new Constitution (new Constitution enshrines the right of every person not to be subjected to corporal punishment)
Lesotho	Child Protection and Welfare Bill and Education Bill under discussion
Liberia	Children Bill under discussion (as at January 2010, draft prohibits in penal system but no explicit prohibition in other settings)
Malawi	Law Commission has proposed a Marriage, Divorce and Family Relations Bill (recently passed Child (Care, Protection and Justice) Act and revisions to Penal Code do not prohibit corporal punishment in the family)
Mali	Draft Family Code under discussion
Mozambique	Penal Code being revised; draft Domestic Violence law under discussion
Namibia	Draft Child Care and Protection Bill under discussion (as at August 2010, draft prohibits in all settings except the family)
Niger	Family Code and Children’s Code being drafted
Nigeria	New Constitution under discussion; Criminal Law Bill under discussion in Lagos (as at August 2010, draft prohibits judicial corporal punishment of children but in schools prohibits only corporal punishment of a certain severity)
Rwanda	Draft Child Act under discussion
Uganda	Children Act under review; Domestic Violence Bill under consideration
United Republic of Tanzania	Children’s Bill under discussion in Zanzibar (initial drafts included prohibition in all settings but it was decided to omit these before tabling the Bill in Parliament)
Zambia	Laws relating to children under review; draft Constitution and Education Bill under discussion (as at August 2010, draft Education Bill prohibits in schools)
Zimbabwe	New Constitution and possibly Education Bill under discussion

High level court rulings

There are judgments from national high level courts in Africa and around the world concluding that corporal punishment violates human rights to freedom from cruel, inhuman and degrading treatment or punishment and to respect for human dignity. Increasingly, courts are referring to the Convention on the Rights of the Child and other human rights treaties, in addition to their national constitutions, in their judgments. Typically, the rulings lead to amendments to domestic laws, including to prohibit corporal punishment – except in Zimbabwe, where court rulings against corporal punishment were followed by amendments to the Constitution to explicitly allow corporal punishment of children. The following are significant judgments from African states: for further details on these and examples from other regions, see www.endcorporalpunishment.org.

2004 Kenya (*Isaac Mwangi Wachira v Republic High Court of Kenya (Nakura), Criminal Application No 185 of 2004 (Unreported)*). Appealing against a prison sentence on conviction under the Children’s Act of subjecting his young daughter to torture, the appellant argued that he was a parent disciplining his child and this should be a mitigating factor. The High Court rejected this argument, commenting that “society expects the appellant to give protection and love to his children, especially when they are of young and tender age”. The case concerned severe punishment, beyond what many would regard as “reasonable”, and the judgment did not categorically rule out all corporal punishment or challenge the right of parents and others to administer “reasonable punishment” under article 127 of the Children’s Act (which has become inapplicable under Kenya’s new Constitution – see page 16). It was nevertheless a landmark case because it affirmed the right of children to be protected from torture and cruel, inhuman and degrading treatment and asserted that a parent’s actions under the guise of discipline can constitute such treatment. It also confirmed the power of the courts to examine the status of corporal punishment in the home.

2000 South Africa (*Christian Education South Africa v The Minister of Education 2000(10) BCLR 1051 (CC)*). Corporal punishment was prohibited in schools in 1996. An association of 196 independent Christian schools appealed to the High Court and then the Constitutional Court to declare the law invalid insofar as the prohibition extended to independent schools where parents had consented to the use of corporal punishment and because it interfered with their right to freedom of religion. The Constitutional Court ruled that the prohibition of corporal punishment was a justifiable limitation of the right to freedom of religion.

1999 Zambia (*John Banda v The People HP A/6/1998*). The High Court heard an appeal against a sentence of 10 strokes of the cane ordered by a magistrates’ court. The Court set aside the sentence of caning and declared that the Penal Code provisions for judicial corporal punishment were unconstitutional and should be repealed. In 2003, a number of laws were amended to prohibit corporal punishment as a sentence and in prisons and reformatory schools, though further reforms are necessary.

1995 South Africa (*S v Williams and others 1995(3) SA 632 (CC)*). The Constitutional Court declared the whipping of juveniles in the penal system to be unconstitutional. The leading judge stated: “... it is my view that at this time, so close to the dawn of the 21st century, juvenile whipping is cruel, it is inhuman and it is degrading. It cannot, moreover, be justified in terms of 33(1) of the Constitution.” Subsequent law reform abolished corporal punishment as a sentence of the courts and as a disciplinary measure in penal institutions.

1991 Namibia (*Ex parte Attorney General, Namibia: in Re Corporal Punishment by Organs of State, 1991(3) SA 76*). The Supreme Court declared that corporal punishment breaches the Constitutional protection from cruel, inhuman or degrading treatment or punishment. The leading judge noted it would not be appropriate “to allow corporal punishment which is unconstitutional to continue to be inflicted until Parliament makes the necessary amendments”, and the Court declared that corporal punishment as a sentence for crime and in schools is unlawful and in conflict with article 8 of the Namibian Constitution. The criminal law was subsequently amended to prohibit corporal punishment as a sentence and in state schools, private schools and hostels, though further reform is necessary.

Progress in the region

Global and regional progress towards prohibition

Worldwide, 29 states have achieved law reform to prohibit all corporal punishment of children in all settings, including the home. In 2010, the legal defence for corporal punishment was explicitly repealed from the Penal Code in Tunisia, making provisions against even light assault now apply equally to “correction” of children. The new Constitution of Kenya, which came into force in August 2010, asserts every person’s right not to be subjected to any form of violence from either public or private sources and specifically not to be subjected to corporal punishment or treated or punished in a cruel, inhuman or degrading manner (article 29). The Constitutional prohibition of corporal punishment overrides – declares void – all laws condoning, authorising or regulating corporal punishment, including the right of parents and others to “administer reasonable punishment” in article 127 of the Children Act (2001). It also confirms that any convention ratified by Kenya forms part of the law of Kenya.

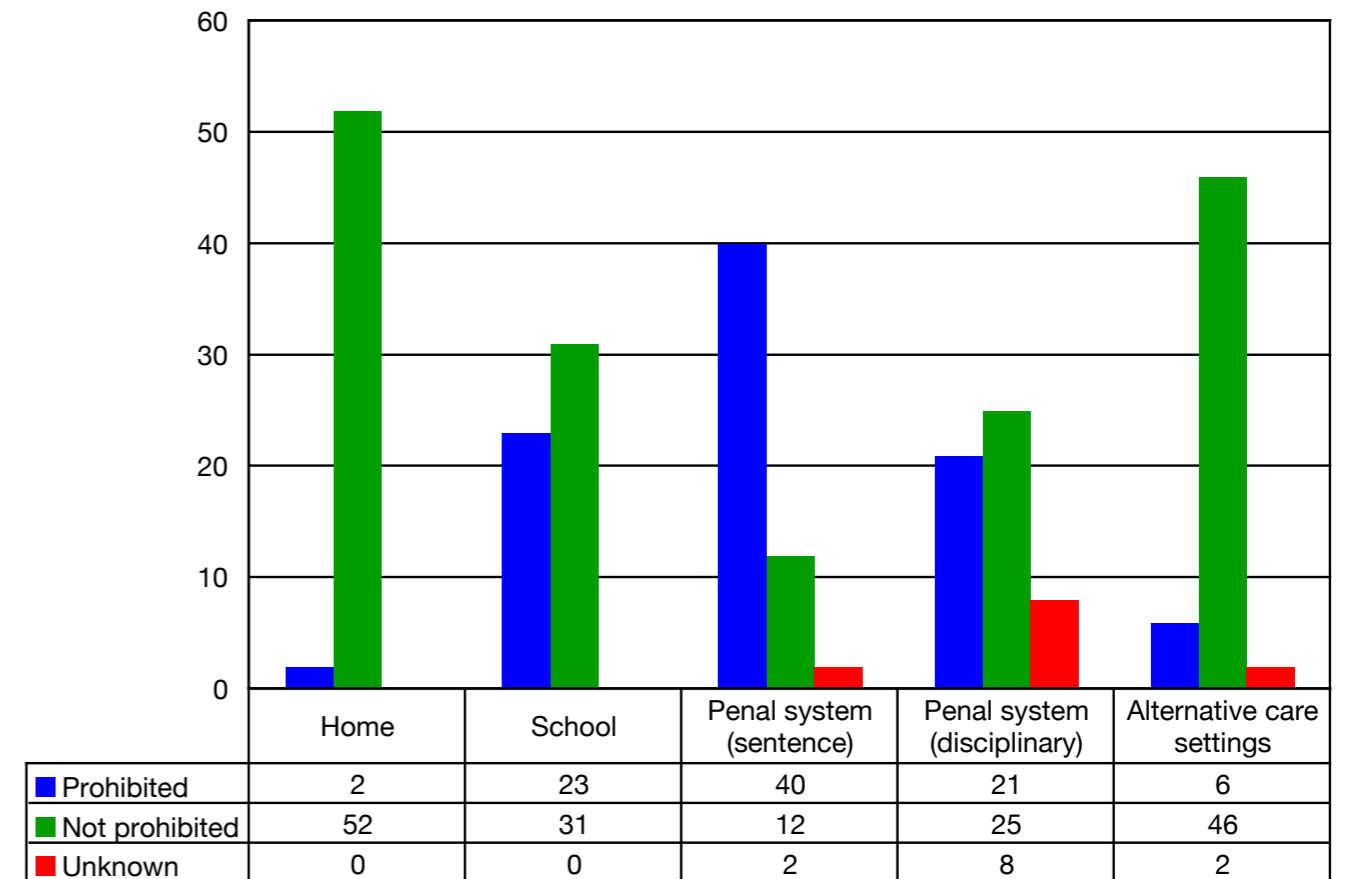
The interim government of Southern Sudan has also prohibited all corporal punishment of children. Article 21 of the Interim Constitution of Southern Sudan (2005) explicitly states that every child has the right “to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions”, and prohibition is included in the Child Act of Southern Sudan (2008).

Progress is also being made in prohibiting corporal punishment in settings outside the home – in schools and justice and care settings. Across Africa, 23 states have achieved prohibition in schools, 40 as a sentence for crime, 21 as a disciplinary measure in penal institutions, and 6 in alternative care settings (see summary table on pages 30 to 32). Globally, corporal punishment is prohibited in schools in 108 states, as a sentence for crime in 152 states, as a disciplinary measure in penal institutions in 110 states, and in alternative care settings in 38 states.

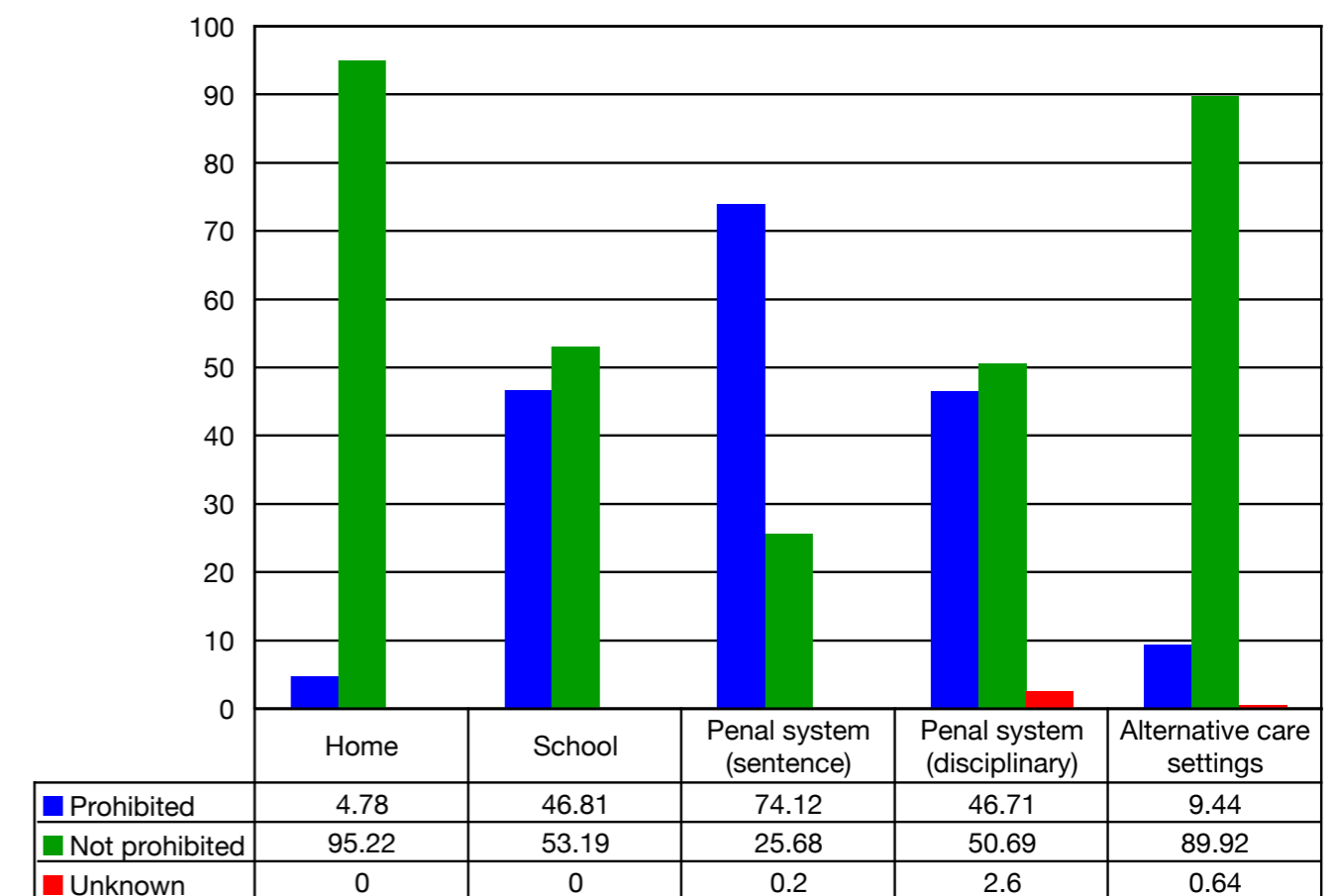


Marching to raise awareness of child abuse in Zambia

Number of states prohibiting corporal punishment of children by law



Percentage of child population legally protected from corporal punishment



Campaigns to prohibit and eliminate corporal punishment

There is a growing movement across Africa supporting prohibition of corporal punishment of children in all settings of their lives. This has been initiated by civil society organisations in individual states – non-governmental organisations (NGOs), human rights institutions and faith-based groups – working together with international NGOs and, increasingly, with Pan-African bodies.

The **Southern African Network** to End Corporal and Humiliating Punishment of Children (www.rapcan.co.za/sanchpc/) supports campaigns for the prohibition and elimination of all corporal

punishment, including through law reform and the promotion of positive parenting, in Botswana, Mauritius, Mozambique, Namibia, South Africa, Swaziland and Zambia.

Plan International's “Learn Without Fear” campaign against violence in schools (<http://plan-international.org/learnwithoutfear/>) has been launched in a number of African states, including Benin, Cameroon, Côte d’Ivoire, Gambia, Ghana, Guinea, Liberia, Senegal, Togo and Uganda.

Other active campaigns include:

Cameroon EMIDA (www.emida-cameroon.org) campaigns against corporal punishment in the family and schools. In 2010, in collaboration with local partners, EMIDA provided training for parents, teachers and children in 5 local communities. It has also published materials promoting non-violent teaching and positive discipline.

Kenya A group of NGOs is calling for repeal of the “right of any parent or other person having the lawful control or charge of a child to administer reasonable punishment on him” from the Children Act (2001). In 2010, the Children of Kibera Foundation (CoKF) (www.childrenofkibera.org) launched a campaign entitled *End Violence Against Children! Protect Our Children From Violence in Schools and the Home*. It began with teacher training on the negative effects of corporal punishment and promoting positive disciplinary methods.

Nigeria The Child Rights Network (CHIRN) (info_chirn@yahoo.com) campaigns for prohibition of all corporal punishment through a regular bulletin – *Discipline ... Ending Violence & Corporal Punishment Against Children* – distributed free to stakeholders in child protection. The Network facilitates the newly formed NGO coalition, National Action on Banning Corporal Punishment and Violence against Children, and is engaging teachers as partners to end corporal punishment in schools. In another initiative, “Whip Not Child” (<http://whipnotchild.tumblr.com>), launched in Lagos in 2010, uses art to draw attention to child abuse and corporal

punishment of children. Nigerian artists, Chidi Kwubiri and Mike Omoighe, facilitate the programme, and have held workshops in several schools in Lagos. The campaign concludes with a presentation and exhibition in Germany in late 2010. It will include a final report on the project and the media and public response, and other information on corporal punishment and child abuse in Africa.

Somalia The NGO KAALO Relief and Development works in partnership with UNICEF (www.unicef.org/somalia/) and the Puntland Ministry of Education to end corporal punishment in schools. Since the beginning of the initiative in 2006, over 2,500 educators, parents and community education committees have participated in workshops, discussions and media campaigns. The Puntland Ministry of Education issued a Decree stating that corporal punishment should not be used in schools and, together with KAALO, developed guidelines on alternatives to corporal punishment for teachers.

Sierra Leone Defence for Children International – Sierra Leone (www.dcisl.org) launched a campaign to end corporal punishment in schools in 2009, producing training materials and working with teachers to train them in non-violent methods of discipline.

Tanzania The Caucus for Children’s Rights is a national NGO network that campaigns for an end to violence against children, models innovative ways to protect children, and builds the skills of all who work with children. Its 50% Campaign (www.ccr-tz.org/50campaign/about-50) is a three year campaign to make violence against children socially unacceptable, including through prohibition of corporal punishment.

Zambia The Zambia Coalition on Ending Corporal Punishment was formed in 2008 and includes civil society organisations as well as governmental bodies. In 2009, the Coalition developed an Advocacy Plan proposing strategic activities to end corporal punishment and promote positive parenting. It has made submissions to the National Constitution Conference aimed at retaining children’s right to protection from corporal punishment in various drafts of the new Constitution. There are plans for an audience with the Parliamentary Caucus on Children and the House of Chiefs to present a position paper on corporal punishment and positive discipline.



Children playing following a popular drama about violence, Zambia

Legal reform workshops

Two regional technical workshops on legal reform have been held, bringing together key people from Governments and NGOs to explore the issue of law reform to prohibit corporal punishment and to draft national strategies to achieve it.

In 2010, a workshop for the Middle East and North Africa was held in Beirut, organised by Save the Children in partnership with the League of Arab States, the Higher Council for Childhood in Lebanon, and the Global Initiative to End All Corporal Punishment of Children. Around 70 participants attended from across the region, including from Algeria, Egypt, Mauritania, Morocco, Sudan and Tunisia. It was also

attended by Marta Santos Pais, Special Representative of the Secretary General on Violence against Children, Professor Paulo Sérgio Pinheiro, the Independent Expert who led the UN Secretary General's Study on Violence against Children, and representatives from the League of Arab States.

In 2009, a workshop for the East and Central Africa region, organised by Save the Children in partnership with the Global Initiative and the Churches' Network for Non-violence. Nearly 40 people participated from Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. The report of the workshop is available at www.endcorporalpunishment.org.

Children's participation in campaigning across Africa



Ms Agnes Aidoo, UN Committee on the Rights of the Child, responding to children's questions

All children have the right to freedom from corporal punishment at school, from the police and in prisons, and at home.

Children have the right to say no to violence.

These statements are from article 5 of the first Children's Charter of South Africa, drafted and adopted in 1992 by more than 200 children from all over the country at the International Summit on The Rights of Children in South Africa. Across Africa today, children continue to be involved in campaigning to end all forms of violence against them.

More than 80 children from countries in West Africa gathered for the Regional Youth Forum on Violence Against Children in Accra, Ghana from August 31 to September 3 2010. Children shared experiences and spoke with government and UN officials, including Marta Santos Pais, the UN Secretary General's Special Representative on Violence against Children. A particular focus was placed on violence in schools, including corporal punishment, with young people highlighting the fact that severe school violence is widespread and can lead to children dropping out of school. The children made recommendations for action,

including for more and harsher punishments for the perpetrators of violence. Marta Santos Pais said that her office would make the necessary partnerships to ensure children's issues are promoted throughout Africa. The forum was given national and international media coverage. It was a part of the VAC Project, co-ordinated by Plan International and Save the Children in West Africa, to support effective follow-up to the UN Study on Violence against Children through increasing the engagement of young people in violence prevention. For more information see <http://vac.plan-childrenmedia.org> (in French and English).

Last year's 20th anniversary of the Convention on the Rights of the Child (November 20) prompted celebrations in many countries, often including opportunities for young people to speak to lawmakers about their rights. In the **Gambia**, members of the Voice of the Young, a child advocacy network, held a press conference during which they discussed violations of children's rights including corporal punishment:

We children can't accept that other children's rights are violated in this way; we want to see a change now.

In **Ghana**, UNICEF organised a roundtable discussion between children and parliamentarians, at which children raised the issue of corporal punishment.

The Day of the African Child, on June 16, provides another opportunity for children to take action. In **Tanzania**, members of Children's Baraza (Children's Platform) spoke before a large audience about the problems which face them in their daily lives, including corporal punishment at home and school. The young people called for laws to protect children's rights and punish the perpetrators of rights violations. In **Sierra Leone**, children who experience corporal punishment at home and at school held an exhibition entitled "Talent Exhibition: Children Must be Heard and Seen". The exhibition was designed to raise awareness of children's rights and showcase children's talents.

In **Kenya**, children and young people from the children's parliament work with ANPPCAN Kenya to celebrate "No Kiboko Day" as part of international "No Hitting Day" on 30 April every year. The children use a different slogan every year. Past slogans have included:

"Hitting people is wrong and children are people too."

"10 ways of raising children without the cane."



Children Advisory Board elections, Zanzibar

"Creating a kiboko-free society."

"Raise disciplined children – end all forms of violence against children."

Children are also involved in more sustained and long-term initiatives to end corporal punishment. Throughout the rest of the year following "no Kiboko Day", children in Kenya worked to create an interactive radio programme, "Vijana Jumamosi", which discussed issues that affect children. Many children used it to discuss corporal punishment. Alongside this, ANPPCAN Kenya runs workshops on positive discipline for parents and teachers. In **Tanzania**, children attend their local Ward Development Committees, where they can discuss school-related issues that concern them, including corporal punishment.

In **Uganda**, children in two schools took part in a programme run by Raising Voices to make their schools "Good Schools", free from corporal punishment (www.raisingvoices.org/children/good_school.php). Each school formed a committee of children, teachers, parents and other community members. The committee members developed Codes of Conduct for the schools that children understand and accept. Teachers and children decide together how teachers can help children behave better without using violence. The programme was successful and is being expanded to other schools.

For further details of these and other examples of children's participation, see www.endcorporalpunishment.org/children.

See the Global Initiative children's website (www.endcorporalpunishment.org/children) for information for children and those who work with them, including examples of children's participation worldwide, Questions and Answers, and links to useful resources.

Research on corporal punishment of children in Africa

Recent research studies in Africa indicate that there is still a high prevalence of corporal punishment in all settings, including in the home, as there is in many states in all regions globally. Corporal punishment and other forms of degrading treatment are inflicted on children in all parts of the continent, regardless of gender, religion, social background or ability/disability.

It is not necessary to undertake research before embarking on a campaign for law reform – law reform is a human rights obligation. The need to review laws against international human rights standards is recognised in Africa, and is leading to accelerating reform. Nevertheless, research can play an important role in campaigning for, developing and implementing laws which prohibit corporal punishment of children. It can be used, for example, in raising awareness of the issue and increasing understanding of how corporal punishment is experienced by children in all settings.



Child in Zanzibar

A statistical review by UNICEF (UNICEF, 2009) documented the percentage of 2-14 year old children in African states who experienced physical punishment and/or psychological aggression in the home in 2005-2006: Algeria 86%, Burkina Faso 83%, Cameroon 92%, Central African Republic 88%, Côte d'Ivoire 90%, Djibouti 70%, Egypt 92%, Gambia 84%, Ghana 89%, Guinea-Bissau 80%, Sierra Leone 92%, Togo 90%. The following is a sample of other prevalence studies carried out in the region. For further examples and for qualitative research with children, see www.endcorporalpunishment.org.



Algeria

A study of 431 primary schools conducted by Association Djazairouna found that 48% of students had suffered corporal punishment and other forms of abuse in the school setting. (*Association Djazairouna, 2010*)

Cameroon

A study of children who had lost their parent(s) due to HIV-related illnesses, exposed a high level of physical violence and corporal punishment in the home. The study involved 180 children: 70% of boys without a mother reported experiencing physical violence in the month before the study, as did 62% of non-orphan boys. Between 60% and 70% of non-orphan girls reported suffering physical punishment during the same period. (*Morgan and Behrendt, 2007*)

Democratic Republic of the Congo

A retrospective survey of 600 women aged between 18 and 24 found beating and kicking the most prevalent forms of physical violence against girls: 74% reported having been hit and 66% beaten as children; 25% said they had been kicked. Mothers, sisters and other female relatives were responsible in 32% of the hitting cases; fathers were responsible in 49% of cases of hitting. (*The African Child Policy Forum, 2010a*)

Ethiopia

A retrospective survey on violence against children with disabilities revealed that corporal punishment of disabled children is more prevalent in the home than in any other setting. The data was collected through 218 interviews with disabled 18-24 year olds. Hitting, punching, kicking and beating were by far the most prevalent, with 54% of respondents reporting they had experienced this. Mothers and fathers were the main perpetrators of physical punishment, accounting respectively for 12.5% and 12% of incidents. (*The African Child Policy Forum, 2010b*)

Malawi

In a study in 40 schools, involving interviews with 800 students and 288 teachers, 68.5% of students reported having experienced whipping/caning (20.5% in the home and 48% in school); 70.6% said they had experienced beating/fighting. More boys than girls reported being beaten: 47.2% and 40.7% respectively. (*DevTech Systems, Inc. and Centre for Educational Research and Training, 2007*)

Morocco

A Multiple Indicators Cluster Survey (MICS) commissioned by UNICEF, UNFPA and the Arab Family Health Project in 2008, revealed the magnitude of corporal punishment of children in Morocco. In interviews with 5,078 children, 24% reported experiencing severe physical punishment (including being hit on the face or the head with a hard object), 67% minor physical punishment (e.g. being shaken, or slapped). Children are more likely to be physically punished in rural zones (30%) than in urban zones (20%); educated mothers are less likely to use corporal punishment than uneducated mothers; and wealthy families are less likely to use corporal punishment (12%) than poorer parents (32%). (*UNICEF, 2008*)

Mozambique A survey of more than 2,680 children looked at their experiences of being hit or beaten with a hand or object and of other humiliating punishments during a two week period. In the home, over a third of children (34.5%) reported being hit with the hand, 37.4% beaten with an object, and 43.1% other humiliating punishments. At school, over the same period, 35.4% reported being hit with the hand, 41.2% beaten with an object, and 42.4% other humiliating punishments. (Clacherty, Donald and Clacherty, 2009)

Nigeria A retrospective survey found that a high percentage of girls were victims of physical violence, including corporal punishment. The most widespread forms of physical punishment reported by respondents were beating (90%), hitting (84%) and kicking (55%). Other punishments included being made to eat hot chilli (18%), being choked or burned (17%) and being tied (16%). The majority of corporal punishment was administered by girls' closest relatives. (The African Child Policy Forum, 2010a)

Senegal In a survey on violence against children with disabilities, 39% of children reported having been beaten for disciplinary purposes. The physical punishment was inflicted mainly by mothers, aunts or foster mothers (16%) and fathers, uncles or foster fathers (13%). It was also administered by others, including teachers (15%). It appears that physical punishment of disabled children in Senegal was mostly carried out by female adults (87.5%; male adults 12.5%). (The African Child Policy Forum, 2010a)

Sudan In a study of children's experiences of physical punishment at home and in school, and in two reformatories and custody centres, the most common form of corporal punishment by teachers and parents was reported by the children as whipping (87%). In the reformatories and custody centres visited, 65% of juvenile offenders said they had received corporal punishment at some stage of the juvenile justice process; 87% of those interviewed while in custody said they had been beaten by police to obtain a confession. (Save the Children Sweden, 2005)

Swaziland A large scale survey looked at the experiences of 2,366 children aged 6-18 years over a two week period. Children revealed being subjected to high levels of corporal punishment in the home and at school: 18% reported being hit with the hand in the home during the two week period; 28% reported being beaten with objects such as sticks, belts, sjamboks and whips. In school during the two weeks, 20% of children reported being hit with a hand, and 59% reported being beaten with an object, most often sticks, canes, sjamboks and blackboard dusters. Other humiliating punishment was experienced at home by 35% of children and at school by 25%. (Clacherty, Donald and Clacherty, 2005a)

Zambia In a survey of 2,321 children aged 6-18 years, 24% reported experiencing corporal punishment in the home during a two week period, including being beaten with hands, sticks and belts. At school, 32% reported being hit with a hand during the period and 38% with an object, most commonly a stick or hosepipe. Other humiliating punishment was reported as being experienced in the home by 43% of children and in school by 37% during the two week period. (Clacherty, Donald and Clacherty, 2005b)

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Community awareness raising on child abuse, Zambia

Promoting skilful parenting and positive discipline in the African context

Law reform to ban all corporal punishment must be accompanied by comprehensive and sustained awareness raising and public education on children's right to protection and promoting positive and constructive parenting. Corporal and other humiliating punishment is frequently justified as "discipline". Ensuring that prohibition in law leads to elimination in practice requires support for parents/caregivers, educators and others to use positive and constructive approaches to discipline.

Non governmental organisations and civil society organisations have pioneered the promotion of positive discipline and skilful parenting in Africa as an alternative to corporal punishment in childrearing. For example:

- In 2008, International Child Support (www.ics.nl/index.php?id=22) and The African Child Policy Forum (www.africanchildforum.org) launched a parenting project called "Empowering parents to bring up healthy and responsible children" which consists of a network of organisations focusing on parenting issues in Africa. It aims to address issues related to challenges faced by most African families and which weaken protective factors. In late 2008, a gathering of 13 organisations in the region highlighted violence at home as one of the main challenges. Reinforcing positive aspects of parenting and guidance and counselling in schools were identified as ways of helping children cope with circumstances at home and in schools. The project



Children reading about positive discipline, Namibia

is expected to become a platform for discussion and information sharing on parenting issues in the African context.

- In Morocco, in 2009, L'Espace Associatif (www.espace-associatif.ma) and Save the Children started a 3 year project in six schools across the country to encourage and sensitise teachers to stop inflicting corporal punishment and use positive educational methods instead.
- In Namibia the Legal Assistance Centre (www.lac.org.na) developed comics and a poster sheet to promote positive discipline.
- In South Africa, the Working Group on Positive Discipline (www.rapcan.org.za/wgpd/), a network of South African organisations working to prevent and address child abuse and neglect and ensure the protection of the rights of children, was created in

2006. It has a particular emphasis on the promotion of positive parenting and non-violent discipline.

- The Zambia Interfaith Networking Group (ZINGO) on HIV/AIDS published a baseline study in 2008 on parenthood and parenting trends in three districts of Zambia. The study recommended that parenting programmes include issues such as violence against children and positive discipline in order to address the holistic development of children.

The concept of positive discipline and skilful parenting as a way to avert corporal punishment and ensure safe child development is widely accepted in the African context. However, recent studies and surveys indicate that many children as well as adults still believe the use of corporal punishment is justified. For example, the African Child Policy Forum study on corporal punishment of disabled children in Senegal (see page 23) showed that 22% of children felt that the physical abuse was reasonable and justified. The same study found that in Ethiopia 30% of respondents felt that violence against them had been "mostly discipline" and

justified. In Morocco, the UNICEF MICS (see page 23) showed that 41% of females (mothers, guardians) believed in the use of corporal punishment of children as a way of disciplining them.

These findings indicate that the perception of "justified corporal punishment" remains prevalent in Africa – as it does in all regions globally. They also highlight the importance of raising awareness of children's rights among children themselves. Prohibition of corporal punishment in law can only lead to elimination of the practice if adequate positive discipline and positive parenting programmes are also implemented. Explicit prohibition of corporal punishment in itself sends a clear message to parents, guardians, teachers and all who work with children. Coordinated laws and programmes on positive parenting will simultaneously provide the necessary guidance and support. Strengthening the capacity of parents, children and relevant institutions in Africa is central to the realisation of children's right to live free from corporal punishment.



"Teach them" Childline South Africa poster

Building on faith-based support for prohibition

In every state, there are those who assert that their religion condones or even requires corporal punishment of children. Many have used selective readings of scriptures and holy books to justify their actions, and generations of children have been subjected to physical punishment in religious schools, institutions and family homes in the guise of discipline.

But equally there are growing numbers of respected leaders from the major world religions who assert that corporal punishment of children is incompatible with their religious values of compassion, justice and equity and respect for the inherent dignity of all human beings. There are a number of examples of ways in which religious leaders have used their roles and functions as pastors, community leaders, scholars and theologians to speak out and take action towards ending corporal punishment of children.

In May 2006 the World Conference of Religions for Peace in partnership with UNICEF convened a global consultation of religious leaders and experts in Toledo, Spain. Participants from 30 countries representing many religions including Buddhist, Christian, Hindu, Jain, Muslim, Sikh, Shinto, Zoroastrian and Indigenous Leaders pledged support for the UN Study on Violence against Children. One significant outcome was a Declaration – “A Multi-Religious Commitment to Confront Violence Against Children” – identifying approaches and multi-religious actions which can be used to promote the dignity of the child and prohibit and eliminate all forms of violence against children, including corporal punishment. The Declaration was endorsed in 2006 at the 8th World Assembly of Religions for Peace in Kyoto and has served as an effective tool and framework for changing attitudes and engaging religious communities in support for law reform to prohibit all corporal punishment of children.

Children’s issues were given prominence during the 9th General Assembly of the All Africa Conference of Churches (AACC), held in Maputo, Mozambique, in December 2008. The Assembly resolved to entrench children’s issues within the AACC and its member churches. A document intended to assist and stir action made several proposals, including that all AACC



Children in Zanzibar

member churches should ensure that their country has passed legislation that outlaws all forms of corporal and other humiliating punishment of children. A Biblical Mandate states:

The church in Africa would want to realise that the Biblical basis for doing child ministry is more than a rationale; it is, especially, a command for the church to minister to children. Child ministry is a systematic programming for children that seek[s] to achieve the holistic transformation of all children out of all forms of physical, spiritual, socio-cultural and economic bondages so that children attain the fullest realisation of their potential and ultimately become agents of transformation of society, to the glory of God.

Three successive Anglican Archbishops of Cape Town have formally declared their support for the aims of the Global Initiative: Archbishop Emeritus Desmond Tutu, Archbishop Emeritus Njongkulu Ndungane and the current Archbishop of Cape Town, Dr Thabo Makgoba.

Archbishop Tutu highlighted the role churches can play towards achieving justice for children in his message for the Global Initiative’s global report in 2008:

Millions of the world’s children still suffer from humiliating acts of violence and these violations can have serious lifelong effects. Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery, and I look forward to church communities working with other organisations to make progress towards ending all forms of violence against children....

Archbishop Ndungane in a speech to the General Synod on the Millennium Development Goals (2006) urged clergy to be guided by the Convention on the Rights of the Child:

We have articulated the importance of creating networks to address the issues of children’s rights... While Holy Scripture is the basis by which we undertake this work, the United Nations Convention on the Rights of the Child will serve as a guiding framework in our advocacy.

The Southern African Catholic Bishops’ Conference Parliamentary Liaison Office supported prohibition of corporal punishment during the South African Parliamentary deliberations on the Children’s Act Amendment Bill in 2007.

During 2009 Al Azhar University, Cairo in partnership with UNICEF released a manual designed to underscore how the care, protection and development of children is central to Islam. *Children in Islam – Their Care, Upbringing and Development* includes research papers and extracts from Koranic verses, Hadiths and Sunnas that provide guidance on children’s rights to health, education and protection. It states (pages 55-56): “Disciplining the child should take place without the use of violence or abusive language... Given that it is not permissible to incur harm, no parent (or teacher or employer) has the right to smack a child; this would inevitably inflict psychological as well as physical damage.”

Concerned about the extent of corporal punishment of children in Mauritania, the Network of Imams carried out a study to assess whether corporal punishment is allowed in Islam. The study concluded that violence has no place in the Koran and thus in Islam. A regional workshop to validate the study was held in Adrar in April 2009. The results of the study formed the basis of a Fatwa barring physical and verbal violence against children in educational settings and in the home.

Religious leaders and their communities have the power, influence and capacity to play a pivotal role in addressing corporal punishment and taking a lead in the movement to end legalised violence against children. At the same time those who use their religion to justify corporal punishment of children pose a serious challenge to reform.

The Churches’ Network for Non-violence is preparing a handbook on working with multi-religious groups, which will be available early in 2011. It provides information, tools and resources for engaging with religious leaders and communities to mobilise support and encourage multi-religious cooperation in eliminating corporal punishment of children. It discusses the challenges presented by religious resistance to legal reform and ways of countering opposition, and includes examples of how religious scholars and theologians have addressed the issue. Regular updates will be posted on a dedicated web page: www.churchesfornon-violence.org.

We call upon our governments to adopt legislation to prohibit all forms of violence against children, including corporal punishment, and to ensure the full rights of children, consistent with the Convention on the Rights of the Child and other international and regional agreements. We urge them to establish appropriate mechanisms to ensure the effective implementation of these laws and to ensure that religious communities participate formally in these mechanisms. Our religious communities are ready to serve as monitors of implementation, making use of national and international bodies to maintain accountability.

Recommendation 6 of the Kyoto Declaration, 2006

Summary of legality

Progress towards prohibiting all corporal punishment in Africa

The following table summarises the legal status of corporal punishment of children – and progress towards achieving prohibition – in all settings in all African states. As at October 2010, two states – Tunisia and Kenya – have prohibited corporal punishment in all settings, including the home. Twenty three states have prohibited corporal punishment in schools, 21 in penal institutions, and six in alternative care settings. In 40 states, corporal punishment is no longer lawful as a sentence of the courts.

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Algeria	✗	✓	✓	[✗]	✗
Angola	✗	✗	✓ ¹	✗	✗
Benin	✗	✗ ²	✓	[✓]	✗
Botswana	✗	✗	✗ ³	✗	✗
Burkina Faso	✗	✓	✓	✓ ⁴	SOME ⁵
Burundi	✗	✗	✓	✗	✗
Cameroon	✗	✓	✓	[✓]	✗
Cape Verde	✗	✗ ⁶	✓	✗	[✓]
Central African Republic	✗	✗	✓	???	✗
Chad	✗	✓	✓	✗	✗
Comoros	✗	✗	[✓] ⁷	✗	✗
Congo, Republic of	✗	[✓]	✓	✗	✗
Côte d'Ivoire	✗	✗ ⁸	✓	✓ ⁹	✗
DR Congo	✗	✓	✓	✗	✗
Djibouti	✗	[✓]	[✓]	✗	✗
Egypt	✗	✓	✓	✓ ¹⁰	✗
Equatorial Guinea	✗	✗	???	???	✗
Eritrea	✗	✗ ¹¹	✗ ¹²	???	✗
Ethiopia	✗	✓	✓	✓	SOME ¹³

- 1 Prohibited for persons under 16 years; prohibition for 16 and 17 year olds unconfirmed
- 2 Government circular advises against the use of corporal punishment in formal education, but no prohibition in law
- 3 2009 Children's Act provides for judicial corporal punishment
- 4 But possibly no explicit prohibition
- 5 Prohibited in institutions; not prohibited in foster care
- 6 Ministry of Education guidelines advise against the use of corporal punishment, but no prohibition in law
- 7 Possibly lawful under *Shari'a* law and in traditional justice systems
- 8 Ministerial circular states that corporal punishment should not be used, but no prohibition in law; prohibition is expected to be enacted in legislation in 2010
- 9 But no explicit prohibition
- 10 But possibly permitted in social welfare institutions
- 11 Policy states that corporal punishment should not be used, but no prohibition in law
- 12 Lawful under Transitional Penal Code but prohibited in Draft Penal Code
- 13 Prohibited in institutions by Constitution, but "reasonable chastisement" defence available

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Gabon	✗	✓	???	???	✗
Gambia	✗	✗	✓	✗	✗
Ghana	✗	✗ ¹⁴	✓	SOME ¹⁵	✗
Guinea	✗	✓	[✗]	???	✗
Guinea-Bissau	✗	✓	✓	[✓]	???
Kenya	✓ ¹⁶	✓ ¹⁷	✓	✓ ¹⁸	✓
Lesotho	✗	✗ ¹⁹	✗ ²⁰	✗	✗
Liberia	✗	✗	✓	??? ²¹	✗
Libyan Arab Jamahiriya	✗	✓	✗	???	???
Madagascar	✗	✗	✓	✗	✗
Malawi	✗	✓ ²²	✓	✓ ²³	SOME ²⁴
Mali	✗ ²⁵	✓	✓	✓ ²⁶	✗
Mauritania	✗	✗ ²⁷	✗	✗	✗
Mauritius	✗	✓	✓	✗	✗
Morocco	✗	✗ ²⁸	✓	✓	✗ ²⁹
Mozambique	✗	✗ ³⁰	✓	✓	✗
Namibia	✗	✓	✓ ³¹	✓ ³²	SOME ³³
Niger	✗	✗	✓	✗	✗
Nigeria	✗	✗	SOME ³⁴	✗	✗
Rwanda	✗ ³⁵	✗ ³⁶	✓	✗ ³⁷	✗ ³⁸

- 14 Ministerial directive advises against the use of corporal punishment (information unconfirmed), but no prohibition in law
- 15 Prohibited in prisons; no explicit prohibition in borstal institutions and industrial institutions
- 16 Prohibited in 2010 Constitution; some legislation still to be formally repealed
- 17 See previous note
- 18 See note 16
- 19 Prohibited in Education Bill (2009)
- 20 Prohibited in the Child Protection and Welfare Bill, under discussion July 2008
- 21 Prohibited in prisons, but legality in other institutions accommodating children in conflict with the law unknown
- 22 Prohibited in the Constitution and possibly in the Child (Care, Protection and Justice) Act
- 23 See previous note
- 24 Considered unlawful in state institutions under the Constitution; possibly prohibited in the Child (Care, Protection and Justice) Act
- 25 Draft Family Code (2009) removes the right of correction but does not explicitly prohibit corporal punishment
- 26 But no explicit prohibition
- 27 Ministerial Order states that corporal punishment should not be used, but no prohibition in legislation
- 28 Ministerial direction advises against the use of corporal punishment, but no prohibition in law
- 29 No prohibition in foster care; possibly no prohibition in other alternative care settings
- 30 Government directive advises against the use of corporal punishment, but no prohibition in law
- 31 Unlawful under 1991 Supreme Court ruling but some legislation yet to be repealed
- 32 See previous note
- 33 Unlawful in state institutions under 1991 Supreme Court ruling but some legislation yet to be repealed; Child Care and Protection Bill 2009 would prohibit in alternative care settings
- 34 Prohibited as sentence in 2003 Child Rights Act, but this not enacted in all states and other legislation not amended; lawful as a sentence in some areas under *Shari'a* law
- 35 Draft Child Protection Act would possibly prohibit (May 2010)
- 36 Draft Child Protection Act would prohibit (May 2010)
- 37 See previous note
- 38 See note 36

Global Initiative website: www.endcorporalpunishment.org

Detailed information on all aspects of prohibiting corporal punishment is available on the Global Initiative website:

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Sao Tome & Principe	✗	[✓]	SOME ³⁹	???	✗
Senegal	✗	✓	✓	✓ ⁴⁰	✗
Seychelles	✗	✗ ⁴¹	✓	[✓]	[✓]
Sierra Leone	✗ ⁴²	✗ ⁴³	✓	✗	✗
Somalia	✗	SOME ⁴⁴	SOME ⁴⁵	SOME ⁴⁶	SOME ⁴⁷
South Africa	✗ ⁴⁸	✓	✓	✓	✓
Sudan	SOME ⁴⁹	SOME ⁵⁰	✓	SOME ⁵¹	SOME ⁵²
Swaziland	✗	✗ ⁵³	✗ ⁵⁴	✗ ⁵⁵	✗ ⁵⁶
Togo	✗ ⁵⁷	✓	✓	✓	✓
Tunisia	✓ ⁵⁸	✓	✓	✓	✓
Uganda	✗	✗ ⁵⁹	✓	✓	✗
United Rep. of Tanzania	✗	✗	SOME ⁶⁰	✗	✗
Western Sahara	✗	[✗]	[✓]	[✓]	[✗]
Zambia	✗	✗ ⁶¹	✓ ⁶²	✓ ⁶³	✗
Zimbabwe	✗	✗	✗	✗	✗

39 Prohibited for persons under the age of 17, but possibly lawful for those aged 17
 40 But no explicit prohibition
 41 Policy states that corporal punishment should not be used, but no prohibition in law
 42 Sierra Leone Truth and Reconciliation Commission recommended prohibition in the home and schools (2004), but 2007 Child Rights Act reaffirms the right to correct
 43 See previous note
 44 Prohibited in Somaliland
 45 See previous note
 46 See note 44
 47 Prohibited in Somaliland but possibly not in all alternative care settings
 48 Efforts to prohibit corporal punishment by parents through the legislature failed in 2007; a national advocacy campaign continues to promote law reform
 49 Prohibited in Southern Sudan; lawful elsewhere
 50 Prohibited in Southern Sudan; elsewhere cruel punishment is prohibited in the federal Child Act 2010 but there is no explicit prohibition of all corporal punishment
 51 See note 49
 52 See note 49
 53 Proposals have been made to prohibit in draft legislation (May 2008)
 54 See previous note
 55 See note 53
 56 See note 53
 57 Possibly prohibited in Children's Code 2007
 58 Prohibited in 2010 amendment to Penal Code
 59 Ministerial circular advises against the use of corporal punishment in state schools, but no prohibition in law; Government has stated its intention to prohibit in schools when the Children Act is reviewed
 60 Possibly prohibited in Zanzibar; lawful in mainland Tanzania
 61 Provisions in the Education Act allowing the Minister to make regulations on corporal punishment were repealed in 2003 but no explicit prohibition enacted; Education Bill which would prohibit under discussion (June 2010)
 62 Ruled unconstitutional by Supreme Court in 1999, but some legislation not amended
 63 See previous note

Please note: The above information has been compiled from many sources, including reports to and by the United Nations human rights treaty bodies. Information in square brackets is unconfirmed. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions, and many individuals who have helped to provide and check information. Please let us know if you believe any of the information to be incorrect:
 email vohito@africanchildforum.org or info@endcorporalpunishment.org.

For detailed reports on each state in the world, see the Global Initiative website: www.endcorporalpunishment.org



Human rights, law and corporal punishment – details of international and regional human rights standards, the work of the Committee on the Rights of the Child and other treaty monitoring bodies and briefings submitted to them by the Global Initiative, and national high level court judgments

Global progress – reports on the legality of corporal punishment and progress towards prohibition in every state worldwide, detailed information on states which have achieved prohibition in all settings including the home, and useful facts and figures

Research – research on prevalence, children's views and experiences, the effects of corporal punishment and on the experiences of states which have achieved full prohibition

Resources – internet and other resources to support the promotion of positive discipline for parents, teachers and carers, downloads of useful reports

Reform – details of legislative and other measures to support law reform, information on international, regional and national campaigns for law reform, online resources to support the promotion of law reform – designed to supplement the Global Initiative legal reform handbook

Website for children

Keep up to date
 The Global Initiative and The African Child Policy Forum publish a quarterly African e-newsletter covering progress towards prohibition in the region, new research and resources to support law reform, human rights monitoring and more (to subscribe email vohito@africanchildforum.org). The Global Initiative publishes a bi-monthly e-newsletter covering developments worldwide (to subscribe email info@endcorporalpunishment.org).

The **Global Initiative** was launched in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to “own” the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. Its aims are supported by UNICEF, UNESCO, human rights institutions, and international and national NGOs.

www.endcorporalpunishment.org • info@endcorporalpunishment.org



Global Initiative to
End All Corporal Punishment
of Children



The **African Child Policy Forum** (ACPF) is an independent, Pan-African research and advocacy organisation which aims to put children in Africa on the public and political agenda through the promotion of supportive policies and laws. ACPF works with other child rights organisations and governments to develop and implement effective pro-child policies and programmes.

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In 2009, the ACPF and the Global Initiative initiated a joint project to increase the number of states in Africa committed to and actively pursuing prohibition and elimination of corporal punishment of children, in the family and other settings. They liaise with organisations campaigning for prohibition, or interested in doing so, and provide technical support and advice on all aspects of law reform to achieve prohibition.

Save the Children Sweden's vision is a world in which every child attains the right to survival, protection, development and participation. Our mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting changes in their lives. Save the Children Sweden opposes all corporal and other humiliating punishment of children and works in close collaboration with local civil society organisations to promote the prohibition of corporal punishment and the promotion of parental skills to ensure children's rights to protection as outlined in the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

<http://resourcecentre.savethechildren.se> • postmaster@saf.savethechildren.se



Save the Children

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Children Advisory Board elections, Zanzibar