

Ending legalised violence against children



Global Initiative to
End All Corporal Punishment
of Children

**Report for East & Southern Africa Regional Consultation
– the UN Secretary General’s Study on Violence against Children**

Johannesburg, South Africa 2005

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Corporal Punishment of Children**

www.endcorporalpunishment.org

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- + Community Law Centre, South Africa
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Hitting people is wrong – and children are people too. Corporal punishment of children breaches their fundamental rights to respect for their human dignity and physical integrity. Its legality breaches their right to equal protection under the law. Urgent action is needed in every region of the world to respect fully the rights of all children – the smallest and most fragile of people.

This report reviews law and policy in relation to corporal punishment and deliberate humiliation of children in each state in East and Southern Africa. It makes recommendations for law reform and other measures which it is hoped will be adopted at the Consultation and pursued at a national, regional and international level.

Foreword

Jaap E. Doek

Chairperson

United Nations Committee on the Rights of the Child

One hundred and ninety two governments, including all those in this region, have accepted an obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence (article 19 of the United Nations Convention on the Rights of the Child).

The Committee on the Rights of the Child, which monitors implementation of this Convention, has recommended to governments across the region and the world that they should systematically:

- Prohibit all forms of violence, including all corporal punishment however light, in the upbringing of children in their homes, in schools, in care institutions, penal systems and any other place;
- Undertake – at the same time – educational and awareness-raising campaigns to inform parents and others about children's right to protection and about non-violent methods of disciplining and raising children.

Many citizens and politicians express deep concern about increasing violence in their societies. The credibility of this concern is questionable as long as they are not willing to seriously and systematically address the use of violence against children. And nobody should suggest that a little bit of violence is acceptable. That applies equally for adults and children.

The Committee on the Rights of the Child strongly believes that the UN Secretary-General's Study on Violence against Children will accelerate moves to prohibit and eliminate corporal punishment and any other form of violence against children as an unacceptable violation of human dignity and physical integrity. It is the best way to a violence-free society.

Jaap E. Doek
Chairperson
Committee on the Rights of the Child
June 2005

The human rights imperative to end all corporal punishment

Rights to respect for human dignity and physical integrity and to equal protection under the law are upheld for everyone – including children – in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child (CRC) re-emphasises that children, too, are holders of human rights. The Convention also requires states to protect children from “all forms of physical or mental violence” while in the care of parents or others (article 19).

The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment, including in the family, linked to awareness-raising and public education. This interpretation is supported by other human rights treaty bodies, both international and regional, and by high-level court judgments in a growing number of states.

States’ human rights obligations to end all currently legalised violence against children are clear and immediate; there can be no justification for delay. Humanity and logic suggest that children should be the first, not the last, members of human societies to be effectively protected from assault and deliberate humiliation.

The case against corporal punishment does not have to be proved. We do not look for evidence of harm to justify prohibition and other measures to end domestic violence against women or elderly people. The issue is one of fundamental rights. But in any case there is overwhelming research evidence to support the human rights imperative for eliminating corporal punishment. Hitting babies and children is dangerous. Harsh and humiliating forms of discipline are associated with the development of violent and anti-social attitudes and actions in childhood and later life and also with psychological difficulties for the victims.



Hitting children is a lesson in bad behaviour; it teaches them that adults who demand their respect believe that violence is a legitimate way to sort out conflicts or impose authority.

Some adults like to suggest that corporal punishment and child “abuse” are two quite separate phenomena. In fact, more or less all physical “abuse” is administered in a context of punishment or control – it is corporal punishment. There are different degrees of severity, but all corporal punishment breaches children’s right to respect for their human dignity and physical integrity. We do not try to draw lines and justify any level of violence against women or elderly people – so why children? Zero tolerance is generally accepted as a target for ending domestic violence between adults in the home – so why not for children?

Defenders of corporal punishment suggest that children are different. But their differences – their dependence, developmental state and fragility – certainly do not reduce their human rights or justify less protection from violence. Parents and other carers need to use physical actions to protect and restrain children, especially babies and young children. But such actions are clearly distinguishable from causing pain or humiliation as a form of discipline or control.

Human rights standards in the region

All states in the region have ratified the Convention on the Rights of the Child, apart from Somalia, which signed the Convention in 2002. None has entered any reservation to reduce its obligation to protect children from all forms of violence. The Committee on the Rights of the Child has expressed concern over the prevalence of corporal punishment and other forms of violence against children to almost all states in the region (see text of recommendations in state-by-state analysis beginning on page 17). In many cases, the Committee has recommended explicit prohibition of all corporal punishment, including in the family, and awareness raising and public education to promote positive, non-violent forms of childrearing and education.

Most states in the region have also ratified the African Charter on the Rights and Welfare of the Child; four have signed but not yet ratified. The Charter requires states:

- to “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 11);
- to “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 16);
- to “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 17).

Parents and others responsible for the child have the duty of ensuring that domestic discipline “is administered with humanity and in a manner consistent with the inherent dignity of the child” (article 20).

Article 1 of the Charter emphasises: “Nothing in this Charter shall affect any provisions that are more conducive to the realization 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.”

The African Committee of Experts on the Rights and Welfare of the Child, the monitoring body for the Charter, had its inaugural meeting in 2002 (for details see <http://www.africa-union.org/child/home.htm>).

All states in the region have ratified the African Charter of Human and Peoples' Rights. It asserts (article 3) that everyone is equal before the law and shall have equal protection of the law. Article 4 states: "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." And under 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." Under article 18(3), states are required to ensure the protection of the rights of the child "as stipulated in international declarations and conventions".

There have been a number of high level court decisions in various states in the region condemning corporal punishment in some settings. In 1991, the Namibian Supreme Court declared that corporal punishment in schools and the penal system breached article 8(2)(b) of the Constitution: "No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment". (Ex parte Attorney General, Namibia: in Re Corporal Punishment by Organs of State, 1991(3)SA 76)

South Africa's Constitutional Court declared the whipping of juveniles in the penal system to be unconstitutional in 1995, with the leading judge stating: "... 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 section 33(1) of the Constitution". (S v Williams and Others, Constitutional Court, 9 June 1995, 1995(3) SA 632 (CC))

In 2000, the Constitutional Court unanimously rejected an appeal by an association of 196 independent Christian schools to declare the prohibition of corporal punishment in all schools invalid, on grounds of religious rights. The respondent, the Minister of Education, contended that it was the infliction, not the prohibition, of corporal punishment that infringed the constitutional rights of children and their rights to equality, human dignity and freedom and security of the person;

alternatively, if the prohibition limited the religious rights of the applicant, such limitation was justifiable. (Christian Education South Africa v Minister of Education, 2000(4) SA 757 (CC))

There have been similar decisions declaring corporal punishment in some circumstances to be unconstitutional in Zambia and Zimbabwe.

Challenging the concept of “Biblical discipline”

In all regions of the world there are groups of Christians who defend corporal punishment of children as their parental duty. Texts from the book of Proverbs are frequently cited to support this form of punishment, which is often called “Biblical discipline”.

Christians look to the example of Jesus for the way to live their lives, so what did Jesus say about hitting children? Jesus was a teacher and Rabbi, and an expert in interpreting the scriptures. There is no evidence to suggest that he cited the scriptures to justify hitting children. Christians who apply the words of Proverbs 9:10 “The fear of the Lord is the beginning of wisdom,” and the shorthand version of Proverbs 13:24 “Spare the rod and spoil the child,” are suggesting that small, fragile children are deserving of such punishment and that the deliberate infliction of fear and pain is a necessary part of childhood experience.

This attitude to children fails to match up to the approach taken by Jesus who always treated the vulnerable and defenceless with love and compassion. All the recorded encounters between children and Jesus were kind, gentle and respectful, and his reported words about those causing children to stumble, and the consequences for doing so (Matthew 18:6), are amongst the strongest in the New Testament. When he set a little child in the midst of the disciples and said “The kingdom of God belongs to such as these,” (Mark 10:14) he demonstrated enormous regard for children.

Christians who take these accounts seriously have a duty to challenge the harmful practice of hitting children, just as Jesus challenged so many of the cultural and social aspects of his own time. Positive non-violent parenting best models Christ’s teachings.

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

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Global progress towards ending all corporal punishment

Globally, less than 20 of the 190-plus states have as yet prohibited all corporal punishment, including in the family (for details see www.endcorporalpunishment.org). So only 52 million children out of the world's 2,195 million live in countries where the law gives them equal protection from being assaulted. In about 90 states worldwide, corporal punishment is still authorised in schools and other institutions, including 11 states in East and Southern Africa. In almost 80 states globally, whipping or caning is still permitted as a sentence of the courts or as a punishment in penal institutions for young offenders. This includes at least 10 states in this region. All this state-authorised deliberate and severe violence against children ironically co-exists in these countries with child protection systems. Corporal punishment is also reported in domestic and other situations of child labour.

Prevalence of corporal punishment

One indication of the low priority accorded to this issue is the lack of research into the violent victimisation of children by adults in their homes, schools, other institutions and situations of child labour. No state can judge to what extent it is fulfilling its human rights obligations to children without this basic research.

Where corporal punishment in the family has not been systematically challenged through law reform linked to public education, research from a number of states in each continent suggests that a majority of children are being hit regularly by one or both parents and that up to a third are being punished “severely” – beaten with belts or sticks.

In East and Southern Africa there has been some research in a few states (see state-by-state analysis beginning on page 17). This suggests that corporal punishment remains socially approved by a majority and severe punishment is still common.

Promoting positive discipline

In states in all continents there are developed programmes and materials to promote positive, non-violent forms of discipline and child-rearing for parents, other carers and teachers. In some states, the government has taken a lead with public education. In others, non-governmental organisations, human rights institutions and private sector publishers and media have taken initiatives (for links to a variety of programmes and materials, see www.endcorporalpunishment.org).

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

UN Convention on the Rights of the Child, article 19

RECOMMENDATIONS

THE GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN URGES THE EAST AND SOUTHERN AFRICA REGIONAL CONSULTATION TO ADOPT AND PROMOTE THE FOLLOWING RECOMMENDATIONS FOR IMMEDIATE ACTION IN ALL STATES IN THE REGION. THE AIM SHOULD BE TO ADOPT THE DEADLINE OF THE CONCLUSION OF THE UN SECRETARY GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN IN 2006 FOR IMPLEMENTATION OF LAW REFORM AND PUBLIC EDUCATION TO ELIMINATE CORPORAL PUNISHMENT.

1 Explicitly prohibit all violence against children, including all corporal punishment, in the family and in all other settings. This requires repeal of any existing defences that can be used to justify violent punishment and of any laws that authorise corporal punishment in any setting. Explicit prohibition in sectoral laws applying within the family and to alternative care, schools and the penal system is required to send a clear message.

This action, taken to date by less than 20 countries worldwide, sends a clear signal that children have an equal right to respect for their human dignity and physical integrity. The extent to which the law is respected and effectively and appropriately enforced may vary between states. But no state will make significant progress towards preventing and eliminating violence against children until it has a clear and well-publicised legal framework prohibiting all violence. All states have criminal laws against assault; some have constitutions outlawing inhuman or degrading treatment; most have laws prohibiting "abuse" or cruelty; many have incorporated the Convention on the Rights of the Child and other international instruments into their domestic law. But none of this is adequate to challenge the traditional acceptance of violent and humiliating punishment of children.

2

Ensure that awareness-raising of children's right to protection, promotion of non-violent child-rearing and education and the principles of non-violent conflict resolution are built into all the points of contact with future parents and parents and into the training of all those working with or for children and families. Encourage political, community and faith leaders and educators to support this awareness-raising and public education.

Promoting non-violence does not have to be a separate and expensive process. All those in contact with future parents and parents can build messages into their programmes and activities, from ante-natal classes, through birth registration, immunisation, health surveillance and treatment, pre-school and school and so on. There is no shortage of models of programmes and materials which can be adapted for all states and cultures.

3

Review the extent of violent victimisation of children, including in the family, through interview studies with children themselves, parents and other carers.

Making the true extent of violence against children visible is an essential step towards gaining public support and political priority for its elimination. The methodology exists for such studies, involving confidential interviews with parents and with children, with appropriate ethical safeguards. Studies can be quite small-scale, but must cover children of all ages and children in institutions and other forms of care, as well as children living and/or working on the street and in other situations of child labour.

4

Review safeguards to protect children from all forms of violence in the full range of residential institutions and other forms of alternative care, state and private, and implement any necessary improvements.

Studies in states in all continents suggest that children in institutions and alternative care have suffered physical, mental and sexual violence on a huge scale and remain at risk unless a range of safeguards are implemented. These include effective training and vetting of all staff, regular, confidential reviews of all children's placement and treatment, independent inspection including interviewing of children and staff in private and protection of whistle-blowers.

What is the purpose of law reform against corporal punishment and how will it be implemented?

Children's rights to respect for their human dignity and physical integrity and to equal protection under the law require that the law effectively and equally protects them from all forms of corporal punishment and other humiliating punishment or treatment.

Equal protection for children **does** mean that any assault of a child that would be considered a criminal assault if directed at an adult should be considered and dealt with under the criminal law as a crime. All countries have laws which define and prohibit criminal assault and this definition should include all corporal punishment as a form of assault.

But this principle of equal protection for both adults and children in cases of assault **does not** necessarily mean that cases involving corporal punishment should result in prosecution of parents. This is very seldom in the interests of children, because of children's dependent status, and should only be used as an intervention of last resort.

In every case in which corporal punishment in the family comes to light, the aim must be first to seek to help parents and children through voluntary positive interventions – offers of advice, discussions with other parents and so on – which aim to stop violent and humiliating treatment of children.

In extreme cases of serious and continuing abuse, separating children from their parents may be the only way to protect them. And in those cases, according to the Convention on the Rights of the Child (article 9), there must be a court hearing, focusing on the best interests of the child and with the parents and child represented. In exceptional cases, where it is believed the child is at risk of severe violence, it may be necessary immediately to remove the child or the perpetrator to protect the child. But such measures should be temporary and only continued following a court hearing.

Equal protection under the law

Efforts to reform the law to prohibit all corporal punishment as a form of assault often meet with strong opposition. One of the fears expressed is that it will lead to thousands of parents being prosecuted and put in prison, or children will be taken away and put in institutions; it will turn children against their parents, and so on. But in the growing number of states in which the law has been changed, this has not been the experience. The first aim of these reforms, linked to awareness-raising and public education, is to raise awareness of the right of the child to equal protection. Changing the law and linking this to awareness-raising is likely to change attitudes and reduce violence against children. Adults' sensitivity to violence against children is likely to increase and this may lead to more reporting of such violence.

Controlling prosecution policy in relation to parental corporal punishment

In most countries, there is a code or advice to decide when prosecution for a crime should go ahead. This usually requires certain tests to be satisfied. For example:

- that there is sufficient evidence to make conviction likely;
- that the prosecution is in the public interest.

The prosecution of parents and other close family carers should only proceed when it appears to be the only way to provide the child with effective protection and other supportive interventions have failed. It is important that guidelines are developed and implemented which set out conditions for prosecution in these cases. In addition, detailed guidance is required for all those involved in child protection, including for example social workers, health workers, teachers and police. This should focus on the need for interventions to emphasise the dangers and illegality of hitting children and to seek to provide appropriate support for positive, non-violent parenting.

In advocating law reform, it can be emphasised that minor assaults on adults by adults, while clearly unlawful, very seldom get to court (in many states, the *de minimis* principle is recognised: that the law does not concern itself with trivial matters).

Some opponents of law reform will then respond: “But what is the point of a law if it is unenforceable?” The first answer is that the real purpose of law is education and deterrence to achieve protection, rather than prosecution. Prosecution is always a sign of the failure of the law effectively to deter and prevent a child being assaulted.

The law will be as enforceable as the law on assault between adults, if the necessary evidence exists – but there will need to be consideration to determine whether prosecution is in the best interests of the victim child as well as in the public interest. In the few cases in which prosecution is considered necessary to protect a child, and in the child’s best interests, it will be easier to pursue if parents can no longer defend assault before the courts as “reasonable punishment”.

In order to deter parents from using corporal punishment in the privacy of their homes, the law needs to send a very clear message. That is the real purpose of explicit law reform. Having clear law that prohibits all corporal punishment enables all those working with and for families and children to promote this clear message.

Enforcing prohibition of corporal punishment outside the family

Corporal punishment in schools, other institutions and forms of care and places of employment must be prohibited explicitly in legislation. Prohibition through administrative circular or guidance is not adequate. Implementation and enforcement of prohibition requires proper administrative measures including awareness-raising of the law among adults and children; building knowledge of the prohibition into training, both initial and in-service, for teachers and other school personnel; rigorous inspection by trained inspectors independent of the institution (including interviews in private with children and adults); and access to advice, advocacy and independent complaints procedures for children and parents and ultimately access to the courts.

Respecting the law will or should become a contractual condition, so that teachers and others who continue to use corporal punishment risk losing their jobs. This in itself will act as a strong deterrent. In cases in which teachers and others, after warning, continue to use corporal punishment, prosecution is a legitimate and necessary response.



CORPORAL PUNISHMENT IN EAST AND SOUTHERN AFRICA

State-by-state analysis of legality and prevalence

The information in this section was compiled by the Global Initiative from many sources, including reports to and by the United Nations human rights treaty bodies. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions and many individuals who have helped to compile and check information. Please let us know if you believe any of the information to be incorrect: info@endcorporalpunishment.org

Country reports will be published and updated on the website of the Global Initiative: www.endcorporalpunishment.org

ANGOLA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home, where parents have a right to beat their children in the name of discipline. Parental authority is defined in the Family Code and includes the obligation to protect children's physical and moral integrity.

Children have some protection from violence and abuse under Decree No. 58 (1982), the Constitution (1975, amended 1992), the Criminal Code (1886) and the Family Code. Article 20 of the Constitution protects the right of every person to human dignity and personal integrity. Article 30 states: "(1) Children shall be given absolute priority and shall therefore enjoy special protection from the family, the State and society with a view to their all-round development; (2) The State shall promote the harmonious development of the personality of children and young people and create conditions for their integration and active participation in the life of society."

Schools

Corporal punishment is prohibited in schools.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under article 109 of the Criminal Code, which provides for children under the age of 16 to be subject only to assistance, educational and correctional measures. The Juvenile Justice Act (1996) states that young persons may not be sentenced to imprisonment but only to crime prevention measures. We have yet to confirm that there is no provision for corporal punishment for young offenders, including those over the age of 16. Article 23 of the Constitution states that no citizen may be subjected to torture or any other cruel, inhuman or degrading treatment or punishment.

We have been unable to establish the legality of corporal punishment as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 November 2004, CRC/C/15/Add.246, Concluding observations on initial report, paras. 32, 33, 36 and 37 (b))

"The Committee is concerned at the common use of corporal punishment in families and in schools and other institutions for children.

"The Committee recommends that the State party take effective measures to enforce the ban on corporal punishment in schools and other institutions; to prohibit the use of violence against children, including corporal punishment, by parents and other caregivers; and to undertake campaigns to educate families, teachers, and other professionals working with and for children on alternative ways of disciplining children.

"The Committee is concerned about the growing cases of abuse and violence against children, including sexual abuse in their homes, in schools and in other institutions.

“The Committee recommends that the State party strengthen current efforts to address the problem of child abuse, including by ensuring that:

b) public education campaigns about the negative consequences of ill-treatment and preventive programmes, including family development programmes, promoting positive, non-violent forms of discipline are conducted....”

BOTSWANA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children have limited protection from abuse under the Children’s Act (1981) and the Penal Code (1986). As at October 2004, the Children’s Act was under review.

Schools

Corporal punishment is lawful in schools under the Education Act. According to the Education Act (Corporal Punishment) Regulations, only the head teacher is authorised to use the cane but can delegate this authority to a teacher. Male teachers cannot whip female students. The Act also specifies the size of the stick to be used and the maximum number of strokes permitted (10). Each incident of corporal punishment should be officially recorded.

Penal system

Corporal punishment is lawful as a **sentence for crime**. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is stated in article 7 of the Constitution (1961, amended 1999). A Court of Appeal in 1984 found that to administer corporal punishment in instalments is inhuman and degrading, but corporal punishment per se is constitutional (*Clover Petrus and Another vs The State*). The Penal Code (article 26) allows a maximum of 6 strokes as a sentence for a child (male only) under 18, its infliction being regulated by the Criminal Procedure and Evidence Act. The Draft Penal Code Amendment Bill 12 of 2004 allows for corporal punishment to be used as an alternative to imprisonment for all imprisonable crimes except for murder, rape and robbery, and this amendment would apply to all males between the ages of 14 and 40. The Customary Courts Act allows corporal punishment as a sentence for crime (article 17), and was amended in 2000 to allow caning to be imposed for all offences instead of being restricted mainly to cases of assault occasioning actual bodily harm and stock theft. In April 2005, the Customary Courts Amendment Bill, allowing chiefs in traditional courts to sentence men and women up to the age of 50 years to corporal punishment, was approved by Parliament.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. A young offender may be designated “in need of care” under the Children’s Act (article 17) and may be sent to a school of industry or children’s home or placed under the supervision of a social worker; if the child “does not obey”, the Act allows for punishment by caution or corporal punishment (article 20). Children aged 14-18 years can be sentenced to prison by all courts; boys may be ordered to receive corporal punishment instead of imprisonment.

Alternative care

There is no explicit prohibition of corporal punishment in alternative care settings. The provisions against abuse in the Children’s Act and the Penal Code (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 November 2004, CRC/C/15/Add.242, Concluding observations on initial report, paras. 36 and 37)

“The Committee notes with deep concern that corporal punishment is permissible under the State party laws and is used as a way of disciplining children at home, as a disciplinary measure by schools as stipulated in the Education Act and as a sanction in the juvenile justice system.

“The Committee strongly recommends that the State party take legislative measures to expressly prohibit corporal punishment in the family, schools and other institutions and to conduct awareness-raising campaigns to ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, as an alternative to corporal punishment at all levels of society.”

BURUNDI

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Hitting or wounding a child under the age of 13 is forbidden under the Criminal Code (article 140), but this is not understood as a prohibition of all corporal punishment by parents. Other protection is given by the Code of Personal and Family Affairs (1993, amended 2000).

Schools

Corporal punishment is lawful in schools.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Code of Criminal Procedure (1999, in force 2000). The Constitution (2004) prohibits torture and cruel, inhuman and degrading treatment (article 25).

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions for persons under 18 years. New laws concerning juvenile offenders and young people in difficult circumstances were under consideration in 2000.

Alternative care

There is no prohibition of corporal punishment in alternative care settings. The provisions in the Criminal Code (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(16 October 2000, CRC/C/15/Add.133, Concluding observations on initial report, paras. 40 and 41)

“The Committee is concerned that corporal punishment continues to be practised at home and in some schools and that domestic legislation does not prohibit its use.

“The Committee recommends that the State party take all appropriate measures, including legislation, information campaigns and the promotion of alternative forms of sanctions which respect the physical and mental integrity of children, to end corporal punishment within the family, schools, juvenile justice and alternative care.”

COMOROS

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Articles 297 and 298 of the Penal Code permit the use of “light” punishment by parents and those in authority over children. Article 95 of the Family Code provides that those with parental authority must protect children from violence, with the exception of “light” violence exercised under the “right of correction” of parents.

Children are protected from some forms of violence under the Penal Code. The Constitution (2001) recognises the right of children and young people to be protected by the authorities from all forms of abandonment, exploitation and violence.

Schools

Corporal punishment is lawful in schools under articles 297 and 298 of the Penal Code (see above). Severe punishment is punishable under article 311 of the Penal Code.

Penal system

We have been unable to confirm that corporal punishment is unlawful as a **sentence for crime**. Children under 13 years charged with a criminal offence are subject to measures of guardianship, supervision and assistance. Special rules exist for those aged between 13 and 18, although only offenders under 16 are protected from the death penalty. The Penal Code does not allow for corporal punishment other than in articles 297 and 298 (see above). A Decree of November 1928 of France was confirmed in Law No. 75-04/ANP (1975), article 40 of which outlines specific measures available to children in conflict with the law. The Constitution affirms that Islam is “l’inspiration permanente des principes et règles qui régissent l’Union” (preamble). We have been unable to establish the extent to which young persons under 18 years may be sentenced to corporal punishment under Shari’a law.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions.

Alternative care

Corporal punishment is lawful in other institutions and forms of childcare under articles 297 and 298 of the Penal Code (see above).

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(23 October 2000, CRC/C/15/Add.141, Concluding observations on initial report, paras. 31 and 32)

“Concern is expressed at the insufficient awareness regarding the harmful consequences of ill-treatment and abuse of children, including sexual abuse, both within and outside the family. While aware that the draft family code aims at the protection of the dignity of the child, the Committee is concerned that the practice of corporal punishment in the home is socially and legally accepted, particularly for boys. The practice of corporal punishment in Koranic schools is also a matter of concern.

“The Committee recommends that the State party take effective measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in other institutions, and in society at large. Furthermore, educational programmes should be established to combat traditional attitudes in society regarding this issue. In particular, the Committee recommends that the State party include in its legislation a specific prohibition on the use of corporal punishment within the family and at school. The Committee encourages the State party to consider seeking to this effect international cooperation from, inter alia, UNICEF and international non-governmental organizations.”

ERITREA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Under articles 548 (2) and 64 (b) of the Transitional Penal Code, the prohibition of beating a child does not preclude the rights to administer “lawful and reasonable chastisement” or other acts carried out in exercising the “right of correction”.

Children have limited protection from abuse and neglect under the Transitional Penal Code, the Transitional Civil Code and the Draft Penal Code. As at October 2004, the Child Law Committee was drafting a new Child Law.

Schools

There is no explicit prohibition of corporal punishment in schools, though it is possibly prohibited as a matter of policy.

Penal system

Corporal punishment is lawful as a **sentence for crime** under article 172 of the Transitional Penal Code, but it is abolished in the Draft Penal Code. Article 16 of the Constitution states that the dignity of all persons is inviolable and that no person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

We have been unable to ascertain the legality of corporal punishment as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions in the Transitional Penal Code (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 July 2003, CRC/C/15/Add.204, Concluding observations on initial report, paras. 31 and 32 (b and c))

“The Committee is concerned at the lack of data on ill-treatment of children, including child abuse and corporal punishment. It also notes with concern that corporal punishment is not expressly prohibited by law and is widely practised in the home and in institutions.

“The Committee recommends that the State party:

b) carry out public education campaigns about the negative consequences of ill-treatment of children and, in collaboration with community leaders and others, promote positive, non-violent forms of discipline as an alternative to corporal punishment;

c) expressly prohibit corporal punishment by law in the home, schools and other institutions; ...”

ETHIOPIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Articles 64 and 548 of the Penal Code allow “reasonable chastisement” to be employed by institutions and parents. Provisions in the Civil Code allowing for “light bodily punishment” as an educative measure within the family have been repealed but the new family law states that “the guardian may take the necessary disciplinary measures for the purpose of ensuring the upbringing of the minor”.

Children have some protection from violence and abuse under the Constitution (1994, in force 1995) which states that everyone has the right to protection from “bodily harm” (article 16) and “cruel, inhuman or degrading treatment or punishment” (article 18).

Schools

Corporal punishment is explicitly prohibited in schools by article 36 of the Constitution, which states that every child has the right “to be free of corporal punishment or cruel and inhuman treatment in schools and other institutions responsible for the care of children”. It is not among permitted disciplinary measures in the school administration regulation issued by the Ministry of Education in 1998. However, the provisions relating to “reasonable chastisement” in the Penal Code (see above) have not been repealed.

Penal system

A child offender may be sentenced to corporal punishment under article 172 of the Penal Code. Corporal punishment is unlawful as a **sentence for crime** under the Revised Penal Code, but as at May 2005 this was awaiting proclamation.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The Constitution states that all persons in detention have the right to “treatments respecting their dignity” (article 21) and article 36 (see above) also applies.

Alternative care

Corporal punishment in institutions is prohibited under article 36 of the Constitution (see above), but this is contradicted by the provisions in the Penal Code allowing “reasonable chastisement” (see above).

Prevalence research

In a survey of 1,000 street children interviewed in government sponsored research in 1992, 28% reported being on the streets because of family problems at home, and one third of the boys experienced being beaten at least once a week on the streets. (Lalor, K. J., 1999, “Street children: a comparative perspective”, *Child Abuse & Neglect*, vol.23, no.8) Research undertaken by Radda Barnen Ethiopia indicated that more than 90% of students were punished by their teachers, although 70% of teachers were aware of the negative effects of corporal punishment. Of teachers surveyed, 50% did not believe in the effectiveness of corporal punishment and 80% indicated their willingness to attend programmes on alternative disciplinary methods. (Tsegaye, C., 1995-6, “Pilot study on Ethiopian attitudes towards the physical punishment of children and its prevalence in schools”, Radda Barnen Ethiopia; Radda Barnen, 1998, “Spare the rod and spoil the child – a survey on attitudes towards physical punishment among Ethiopian students, parents and teachers”, Addis Ababa)

In light of the previously mentioned study and the Constitutional prohibition of corporal punishment in schools in effect from 1995, workshops were organised over a period of three years, and a follow-up study was undertaken to assess their impact. This study involved 907 teachers and 510 students from 40 government, public and private religious primary schools across Addis Ababa completing questionnaires, and interviews with people working in the education bureau. The information gathered on the frequency of corporal punishment over a period of one week showed a decline in comparison with the earlier study, from 90% three years ago to less than 20%. The types of punishments reported were hitting with a stick (27% teachers, 28% students), slapping (7% teachers, 25% students), pinching the ear (21% teachers, 13% students), punching (3% teachers, 8% students), kneeling down (54% teachers, 57% students), hitting on the head (19% teachers, 31% students), belting (5% teachers, 13% students) and whipping (14% teachers, 21% students). (Radda Barnen, 2002, *Spare the Rod – Raise a Healthy Child*, Addis Ababa) In other research, reported in 1997, 21% of urban schoolchildren and 64% of rural schoolchildren reported bruises or swellings on their bodies resulting from parental punishment. (Ketsela, T. & Kedebe, D., 1997, “Physical punishment of elementary school children in urban and rural communities in Ethiopia”, *Ethiopian Medical Journal*, vol.35, pp.23-33, cited in Krug, E. G. et al., eds, 2002, *World report on violence and health*, Geneva: World Health Organisation)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(21 February 2001, CRC/C/15/Add.144, Concluding observations on second report, paras. 6, 38 and 39)

“The Committee notes the interim prohibition by the Ministry of Education of the use of corporal punishment by schools....

“While noting the Ministry of Education’s interim measures prohibiting the use of corporal punishment in schools, the Committee remains concerned that, in practice, corporal punishment remains common in schools and in the context of the family.



“In the light of article 28.2 of the Convention, the Committee recommends that the State party permanently prohibit all forms of corporal punishment, including the context of the school and the family, inter alia, through the enforcement of appropriate legislation, through awareness raising activities for parents, teachers and other relevant groups and through the training of teachers in alternative disciplinary sanctions which are not harmful to children. The Committee recommends that, for this purpose, the State party consider taking advantage of the current drafting of a new penal code. The Committee recommends, in addition, that children be provided with mechanisms through which they can report and complain of corporal punishment practices.”

Committee on the Rights of the Child

(24 January 1997, CRC/C/15/Add.67, Concluding observations on initial report, paras. 13 and 27)

“The Committee notes with concern the non-compatibility of certain provisions of domestic law with the principles and rights enshrined in the Convention, such as the provision for a different minimum age of marriage between girls (15 years of age) and boys (18 years of age), the provision in the Penal Code for the possibility to sentence children to corporal punishment, the provision in the Civil Code for “light bodily punishment” as an educative measure within the family and the limitation of the right to counsel when the child may be represented by his or her parents or legal guardian during legal proceedings.

“The Committee recommends that the Government pursue the process of bringing existing legislation into line with the provisions of the Convention and that the best interests of the child be fully taken into account in the drafting of new legislation. In this regard, the Committee particularly recommends that the provisions for the minimum age of marriage for girls at 15 years, the sentencing of children to corporal punishment, the “light bodily punishment” as an educational measure within the family, and the limitation of the right to legal counsel of children be abolished as a matter of priority.”

KENYA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Article 23 of the Children and Young Persons Act allowed persons having care or control of a child to administer reasonable punishment. This Act has been replaced by the Children Act (2001, in force 2002), article 13(1) of which states that children are entitled to protection from “physical and psychological abuse, neglect and any other form of exploitation”. Part III of the new Act regulates parental responsibility – it makes no mention of “reasonable chastisement” but does not explicitly prohibit corporal punishment by parents. Children are protected from “excessive” use of force by article 241 of the Penal Code.

Schools

Corporal punishment was prohibited in schools by the Children Act in 2001, when the provisions in the Education Act (1968) permitting corporal punishment as regulated by the Education (School Discipline) Regulations (1972), were repealed by Ministry of Education legal notice No. 56.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Children Act, part XIII of which deals with child offenders and explicitly prohibits corporal punishment for persons below the age of 18 (article 191). Provisions in the Penal Code which allowed for the corporal punishment of male young offenders were repealed under the Criminal Law (Amendment) Act (2003).

Corporal punishment is unlawful as a **disciplinary measure** in juvenile detention centres under the Children Act. Legislation which allows for “disciplinary” corporal punishment of young offenders (article 55 of the Prisons Act, rule 77 of the Prisons Rules, articles 33 and 36 of the Borstal Institutions Act, and rules 53 of the Borstal Institutions Rules) no longer applies.

Alternative care

Corporal punishment is prohibited in institutions under the Children Act. Regulation 6 of the Children’s Department internal rules and regulations for the administration of children’s institutions, which allows corporal punishment, has been repealed.

Prevalence research

A 2004 survey by Population Communication Africa reported that over 60% of children believed that they had been or were being physically abused at school, including being slapped in the face, being hit on the body with a cane or stick, and being beaten, kicked or punched or otherwise physically bullied. (Johnston, T., 2004, *Gender Series: The Abuse of Nairobi School Children*, Population Communication Africa: Nairobi. Cited in O’Sullivan, M., 2005, “Corporal Punishment in Kenya”, *Juvenile Justice Quarterly*, vol.2, no.1)

A survey of 267 adults and children and interviews with parents, teachers and children, reported in 2005, found that the most frequent forms of physical discipline used on children were smacking (78.8%), pulling ears (68.8%) and cuffing (61.5%). Other corporal punishments included forcing a child to kneel on a hard floor (45.9%), tapping (43.3%), forcing a child to stand in the sun (33.2%) and burning fingers (19.7%). Almost two thirds of children

(62.2%) said they wanted the use of corporal punishment to be stopped. Over half of parents (54%) said that physical punishment should not be stopped. (ANPPCAN Kenya Chapter, 2005, *From Physical Punishment to Positive Discipline: Alternatives to Physical/Corporal Punishment in Kenya*, second draft)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 November 2001, CRC/C/15/Add.160, Concluding observations on initial report, paras. 33, 34 and 64 (e))

“While the Committee notes that corporal punishment has been formally banned in schools (April 2001) as a matter of policy, it is deeply concerned that this form of punishment continues to be practised in schools, as well as in the juvenile justice system, in the family and in care institutions, with resulting cases of permanent injury and even death.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, in the juvenile justice system, in schools and care institutions, and in the family. The Committee also recommends that the State party monitor the ban on corporal punishment in schools. The Committee encourages the State party to reinforce its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.

“The Committee recommends that the State party:

e) abolish the use of corporal punishment in the juvenile justice system....”

LESOTHO

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Article 18 of the Child Protection Act (1980) states that “if a parent or guardian of a child assaults, ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or causes him to injure or detrimentally affect his health, the parent or guardian is guilty of an offence” but that “nothing in this section shall be construed as affecting the right of the parent or guardian of a child to administer reasonable punishment”.

As at October 2004, a Child Protection and Welfare Bill was under consideration, providing for children in need of care and welfare and those in conflict with the law.

Schools

Corporal punishment is reportedly prohibited in schools, but we have been unable to establish whether provisions in the Education Rules (1965) regulating the administration of corporal punishment have been repealed.

Penal system

Corporal punishment is lawful as a **sentence for crime**. It is prohibited under the Child Protection Act, but articles 307 and 308 of the Criminal Procedure and Evidence Act (1981) allow males under the age of 21 to be given a sentence of “moderate correction of whipping”. The prohibition against torture and inhuman or degrading punishment in article 8 of the Constitution (1993, amended 2001) is qualified by the statement that “nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in Lesotho immediately before the coming into operation of this Constitution”.

We have been unable to ascertain the legality of corporal punishment as a **disciplinary measure** in penal institutions. Rule 3 of the Lesotho Prison Rules states that the object of detaining a person in a juvenile training centre is to “keep them under discipline”. Rule 31 states that “no officer shall use force unnecessarily when dealing with prisoners”. The Child Protection and Welfare Bill was expected to prohibit corporal punishment of all children in state institutions.

Alternative care

Corporal punishment is lawful in other institutions and forms of childcare under the right of guardians to administer “reasonable punishment” in the Child Protection Act (see above). The Child Protection and Welfare Bill was expected to prohibit corporal punishment in state institutions.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(21 February 2001, CRC/C/15/Add.147, Concluding observations on initial report, paras. 31, 32, 61 (k) and 62 (b))

“While noting that corporal punishment is prohibited by law in schools, the Committee remains concerned that the practice continues to be widespread in schools and in the family, in the care and juvenile justice systems and generally in society. The Committee is concerned, in particular, that corporal punishment of children is accepted among the public at large.



“The Committee recommends that the State party take measures to implement effectively legislation prohibiting corporal punishment in schools and in care and juvenile justice institutions, and consider prohibiting corporal punishment in the family. The Committee recommends, in addition, that the State party raise awareness of the negative effects of such punishment and ensure that discipline in families, schools and all institutions is administered in a manner consistent with the child’s dignity and in conformity with the Convention. The Committee recommends, further, that the State party promote the use of alternative disciplinary measures, in accordance with the principles and provisions of the Convention.

“While the Committee notes that a juvenile justice system has been established in the State party, the Committee remains concerned at:

k) the legality of corporal punishment as a penalty for boys who have committed criminal offences under the Criminal Procedure and Evidence Act 1981...

“The Committee recommends that the State party:

b) amend the law as soon as possible in order abolish the sanction of flogging for juvenile delinquents and, in the meantime, provisionally suspend the application of this form of sanction.”

MADAGASCAR

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children have some protection from violence and abuse under the provisions on offences against children (articles 345-357) in the Criminal Code (1972, amended 2000) and the Constitution (1992, amended 1998), which states in article 17 that the State “shall organize the exercise of rights which guarantee to the individual personal integrity and dignity, and complete physical, intellectual, and moral development”.

Schools

Corporal punishment is lawful in schools.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under Order 62-038 (1962) on the protection of childhood and the Code of Criminal Procedure (1962).

We have been unable to ascertain the legality of corporal punishment as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare. The provisions in the Criminal Code and the Constitution (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.218, Concluding observations on second report, paras. 45 and 46 (b))

“While noting that child abuse is prohibited under the Criminal Code as amended by Act No. 98-024 of 25 January 1999, the Committee is concerned at the incidence of abuse, including sexual abuse, violence against and neglect of children in the State party; that corporal punishment is not prohibited under law; and that insufficient efforts have been made to protect children....

“The Committee recommends that the State party:

b) take all necessary steps to introduce the legal prohibition of corporal punishment in schools and other institutions and at home, and train teachers in the use of alternative measures of discipline....”

Committee on the Rights of the Child

(24 October 1994, CRC/C/15/Add.26, Concluding observations on initial report, paras. 11 and 18)

“The Committee is concerned about the problems associated with ill-treatment, abuse and violence directed towards children in school and in the family, which is reinforced by social custom. In this connection, the Committee notes with concern that child abuse has not yet been clearly addressed, that adequate legal remedies for abused children do not exist and that there are inadequate safeguards against reprisals against children who report abuse.

“... New legislation should be adopted in those areas where the protection of children is not yet adequately addressed, such as in the fields of child abuse and national and intercountry adoption or the administration of juvenile justice....”

MALAWI

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Article 22 of the Constitution (1994, amended 2001) states that “each member of the family shall enjoy full and equal respect and shall be protected by law against all forms of neglect, cruelty or exploitation”, and children are protected from extreme forms of abuse in other laws. Under article 23 of the Constitution all children under 16 years of age are entitled to protection from treatment or punishment that is likely to be harmful to their health or to their physical, mental or spiritual or social development. As at March 2005, the Malawi Law Commission was reviewing laws on child care and protection.

Schools

Corporal punishment is unlawful in schools under the Constitution and is discouraged in education policy, but we have been unable to ascertain if this is reflected in education law. Article 19 of the Constitution states that “no person shall be subject to corporal punishment in connection with any judicial proceedings or in any other proceedings before any organ of the state”, and article 5 states that any act of government or any law inconsistent with the provisions of the Constitution shall be invalid. The Teachers’ Code of Conduct prohibits corporal punishment in schools.

Penal system

Corporal punishment is prohibited as a **sentence for crime** and as a **disciplinary measure** in penal institutions under article 19 of the Constitution (see above), but this has not been confirmed in other legislation and corporal punishment is permitted under volume IV, article 28 of the Laws of Malawi, the Children and Young Persons Act (1970, article 16), and the Penal Code. The Malawi Law Commission has reviewed the Children and Young Persons Act and made recommendations regarding juvenile justice.

Alternative care

Corporal punishment is prohibited in state institutions by article 19 of the Constitution (see above).

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 February 2002, CRC/C/15/Add.174, Concluding observations on initial report, paras. 33 and 34)

“The Committee welcomes that section 19 of the Constitution provides that ‘No person shall be subject to corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State’. While noting that the Head of State made a statement on radio against corporal punishment within the family and that corporal punishment is banned at schools, it remains concerned that corporal punishment is still widely accepted and practiced at schools, within the family, and in the justice system. The Committee is further concerned that some legal Acts contain provisions which allow corporal punishment.

“The Committee recommends that the State party take legislative measures, including amendment to existing Acts which violate the Constitution, to prohibit all forms of physical and mental violence, including corporal punishment within the juvenile justice system, schools and care institutions as well as within the family. The Committee also recommends that the State party monitor the ban of corporal punishment in schools. The Committee encourages the State party to reinforce its public awareness campaigns, including among community leaders to teach on the harmful effects of corporal punishment and to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.”

MAURITIUS

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children are protected from abuse, assault and harm under article 13 of the Child Protection Act (1994), where “harm” is defined as covering physical, psychological, emotional or moral injury, ill-treatment and impairment of health or development, but this is not interpreted as applying to all corporal punishment by parents. Protection is also provided by the Criminal Code (amended 2003), the Protection of the Child (Miscellaneous Provisions) Act (1998), the Social Aid Act, the Civil Code and the Protection from Domestic Violence Act (1997, amended 2004).

Schools

There is no explicit prohibition of corporal punishment in schools. The provisions in the Child Protection Act (see above) apply.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. The Constitution (1968, with amendments) protects persons from inhuman treatment (articles 6 and 7). Available sentences under the Juvenile Offenders Act (1935) do not include corporal punishment. The Act was due to be revised.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. The treatment of detainees is regulated by the Reform Institutions Act (1988) and associated regulations, applicable to prisons, correctional youth centres and rehabilitation youth centres. The Act states that “no detainee shall be subject to punishment or privation of any kind”, but article 12 allows the use of “such force as is reasonably necessary ... to maintain discipline in the institution”.

Alternative care

There is no explicit prohibition of corporal punishment in all alternative care settings. Applicable laws include the Child Protection Act, the Institution for Welfare and Protection of Children Regulations (2000) and the Child Protection (Foster Care) Regulations (2002).

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 October 1996, CRC/C/15/Add.64, Concluding observations on initial report, paras. 18 and 31)

“The Committee is concerned by the reported increase in child abuse, including infanticide, domestic violence and child prostitution and the lack of adequate measures for the psycho-social recovery of child victims of such abuse. “In the light of articles 19, 34 and 35 of the Convention, the Committee encourages the State party to take all appropriate measures to prevent and combat ill-treatment of children, including child abuse within the family, corporal punishment, child labour and the sexual exploitation of children, including victims of sexual tourism...”

MOZAMBIQUE

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Under the Civil Code, the father is responsible for guiding his children’s education and instruction (article 1881), while the mother is responsible for watching over the physical and moral integrity of the child (article 1882). Article 108 of the Statutes on Jurisdictional Assistance for Minors allows for the removal of parental authority – including of guardians and adoptive parents – in cases of extreme ill-treatment or conviction of crimes against minors. The Constitution (1990) states that children should not be subjected to ill treatment (article 56). The process of drafting a comprehensive new children’s act has begun.

Schools

Corporal punishment is reportedly unlawful in schools, but we have been unable to obtain details of legislation. Punishment of abuse and violence by people outside the family is covered only by Penal Code provisions on civil crimes against third parties.

Penal system

Public flogging as a **sentence for crime** was outlawed when Mozambique gained independence in 1975, but was reintroduced in 1984 by legislation mandating sentences of up to 30 lashes for a wide range of offences. Article 70 of the Constitution (1990) states that all persons “shall have the right to physical integrity and may not be subjected to torture or to cruel or inhuman treatment”. Corporal punishment is not among the permitted sentencing measures for minors under the age of 16 under article 21 of the Statute on Jurisdictional Assistance to Minors, but we have been unable to establish its legality as a sentence for 16 and 17-year-olds. According to a report by UNICEF, corporal punishment is not part of judicial practice in courts for adults or children (Zuberi, F., 2005, *Assessment of Violence Against Children in the Eastern and Southern Africa Region*, draft 4).

Corporal punishment is reportedly unlawful as a **disciplinary measure** in penal institutions, but we have been unable to obtain details of legislation.

Alternative care

We have been unable to ascertain the legality of corporal punishment in other institutions and forms of childcare. Children's centres are regulated by "Despacho núm. 1/92, de la Secretaria de Estado de Acción Social, por el que se aprueba el reglamento de los centros infantiles" (1992) and a draft Ministerial Regulation on Minimum Standards of Care for Children stipulates minimum standards of care for children in institutions, but we have been unable to obtain details of provisions relating to corporal punishment.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 February 2002, CRC/C/15/Add.172, Concluding observations on initial report, paras. 38 (a and b) and 39 (a, b and c))

"The Committee is concerned:

a) at acts of violence and abuse, including sexual abuse, committed against children in schools and alternative care institutions and by members of the public or the police force in the streets and that boys are not as well protected from sexual offences as girls;

b) that corporal punishment is widely practised in the home, in schools and in other public institutions, such as prisons, and in alternative care contexts....

"The Committee recommends that the State party:

a) take action to address acts of violence and abuse, including sexual abuse, committed against children in the family, in schools and in the streets through, inter alia, the use of training and information campaigns on the impact of violence on children, children's rights and the prosecution of perpetrators;

b) take action to end the practice of corporal punishment in the home, in schools and in all other contexts, including through legislative and administrative measures, as well as public education initiatives to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment;

c) make every effort to ensure the provision of treatment and rehabilitation to the victims of violence and abuse...."

NAMIBIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Namibian common law provides for "parental power" which includes the right to exercise "reasonable and moderate chastisement".

Children are protected from ill-treatment under the Children's Act No. 33 (1960), inherited from South Africa, and article 95 of the Constitution (1990, amended 1998). The Child Care and Protection Bill is expected to replace the Children's Act. Other protection is given by the Combating of Domestic Violence Act (2003).

Schools

Corporal punishment is prohibited in schools under the Namibian Educational Code of Conduct, following a Supreme Court judgement in 1991 that the constitutional guarantee of human dignity precludes the use of corporal punishment in schools as well as for adult and juvenile offenders (*Ex Parte Attorney-General, Namibia: in Re Corporal Punishment by Organs of State, 1991 (3) SA 76*). Article 8 of the Constitution (1990) states: "(1) The dignity of all persons shall be inviolable; (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed; (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."

Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions, following the 1991 judgement by the Supreme Court (see above) which stated that "the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with article 8 of the Namibian Constitution". However, there have been no subsequent legislative amendments or repeals and provisions remain for corporal punishment under articles 112 and 294-295 of the Criminal Procedure Act (1977, amended 1991). Under article 66 of the Constitution, the Supreme Court ruling applies to customary and common law. A Child Justice Bill is under consideration.

Alternative care

Corporal punishment is unlawful in other institutions and forms of childcare provided by the state under the 1991 ruling (see above), but there is no explicit prohibition in legislation. Corporal punishment is lawful in privately administered alternative care settings.



Prevalence research

A study on childrearing among the Nama of Karas and Hardap regions, published in 1995, found that 89% of Nama parents surveyed believed it is acceptable for parents to “beat up their misbehaving children”, and 86% believed it acceptable for teachers to “beat up” children who misbehave. When asked for the reasons underlying this belief, 34% of parents felt it was an effective way of teaching the difference between right and wrong; 27% stated that it is the only way to elicit respect, honesty and good behaviour. Teachers felt that such punishment promotes discipline, respect, honesty and order (32%) and that it is acceptable if applied fairly and justifiably (28%). (Zimba, R. F. & Otaala, B., 1995, “The Family in Transition: A Study of Childrearing Practices and Beliefs Among the Nama of Karas and Hardap Regions of Namibia”, UNICEF/UNAM)

Unpublished research reported in 1996 involving focus group discussions in the Windhoek, Mariental and Owambo regions found that corporal punishment was a daily occurrence in most families and was the most common method of discipline, with many participants admitting that they were unaware of any other disciplinary methods. (Cited in Becker, H. & Classen, P., 1996, *Violence Against Women and Children: Community Attitudes and Practices*, available from the Legal Assistance Centre in Namibia)

RWANDA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Parents have a right of correction under article 347 of Law No. 42 (1988). Children have limited protection from violence and abuse under the Penal Code (1977) and Law No. 27 concerning the rights of the child and protection of children against violence (2001).

Schools

There is no explicit prohibition of corporal punishment in schools. New legislation is in preparation (2005) which provides for sanctions against teachers who inflict corporal punishment on children.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. Young offenders between 14 and 18 years receive reduced sentences of the Penal Code and the Code of Penal Procedure (1963). The Constitution (2003) protects physical and mental integrity and prohibits cruel, inhuman and degrading treatment (article 15). Article 20 of Law No. 27 prohibits cruel, inhuman or degrading treatment or punishment.

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions under Law No. 27 and the Constitution.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare outside the home. The provisions against violence in the Penal Code and Law No. 27 apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(1 July 2004, CRC/C/15/Add.234, Concluding observations on second report, paras. 34 and 35 (a, b, c and d))

“The Committee notes that the Rwandan legislation does not include an explicit prohibition of corporal punishment and is concerned at the persistent practice of corporal punishment by parents, teachers and law enforcement officers.

“The Committee recommends that the State party:

- a) introduce legislation explicitly prohibiting corporal punishment;
- b) make use of information and education campaigns to sensitize parents, teachers, other professionals working with children and the public at large to the harm caused by corporal punishment and promote alternative, non-violent forms of discipline, as foreseen in article 28, paragraph 2, of the Convention;
- c) investigate in an effective way reported cases of ill-treatment of children by law enforcement officers and ensure that appropriate legal action is taken against alleged offenders; and
- d) provide for the care, recovery and rehabilitation of child victims, in the light of article 39 of the Convention.”

SEYCHELLES

Lawfulness of corporal punishment

Home

In its concluding observations in 2002, the Committee on the Rights of the Child noted “the State party’s prohibition of corporal punishment in the home, schools and all other institutions involved in the care or protection of children” (CRC/C/15/Add.189, para. 5), but we have been unable to obtain confirmation that all forms of corporal punishment by parents are prohibited. Children are protected from violence and abuse by the Family Violence (Protection of Victims) Act (2000) and the Penal Code (amended 1996). The Children Amendment Act (1998) amended the Children Act (1982), but we have been unable to ascertain whether the “reasonable chastisement” defence was repealed.

Schools

Corporal punishment is prohibited in schools.

Penal system

Corporal punishment is unlawful as a **sentence for crime**. It is not among the permitted sanctions in the Children Act (article 94). The Constitution (1993) prohibits torture and cruel, inhuman or degrading treatment or punishment (article 16).

We have been unable to establish the legality of corporal punishment as a **disciplinary measure** in penal institutions, though the remarks by the Committee on the Rights of the Child (see above) suggest that it is prohibited.

Alternative care

The remarks by the Committee on the Rights of the Child (see above) suggest that corporal punishment is prohibited in alternative care settings, but we have been unable to confirm this. The Children Act and Penal Code provisions (see above) apply.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 October 2002, CRC/C/15/Add.189, Concluding observations on initial report, paras. 5, 32 and 33)

“The Committee notes the State party’s prohibition of corporal punishment in the home, schools and all other institutions involved in the care or protection of children.

“While noting that the State party has prohibited corporal punishment, the Committee remains concerned that children may still be subject to violence in the home, schools or institutions, and that corporal punishment may be reintroduced in schools.

“The Committee recommends that the State party:

- a) carry out public education campaigns about the negative consequences of ill-treatment of children and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- b) provide further training for all professional groups working with or for children, including police and detention officials, on alternative forms of discipline and on how to detect and address signs of ill-treatment in a child-sensitive manner....”

SOMALIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Schools

Corporal punishment is lawful in schools.

Penal system

We have been unable to ascertain the legality of corporal punishment as a **sentence for crime** and as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare.

Prevalence research

Figures provided by the NGO Somalia Child Protection and Development (SOCPD) state that in one study 30% of adults and 40% of children reported some form of beating being administered. (Reported by Somalia Child Protection and Development, August 2004)

SOUTH AFRICA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Under common law, parents have the power “to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (*R v Janke and Janke*, 1913). This power may be delegated to a person acting in the parent’s place, though not in the case of teachers.

Children are protected from ill-treatment by parents, guardians or persons having custody of a child under the Child Care Act (1983). The Constitution (1996) states that every child has the right “to be protected from maltreatment, neglect, abuse or degradation” (article 28) and that everyone has the right “to be free from all forms of violence from either public or private sources” and “not to be treated or punished in a cruel, inhuman or degrading way” (article 12). The Domestic Violence Act (1998, in force 1999) defines domestic violence as including “physical, sexual, emotional, verbal and psychological abuse, intimidation, harassment, economic abuse and damage to property where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant”, but this is not interpreted as applying to “moderate and reasonable” corporal punishment of children. A Children’s Bill is under discussion and is intended to replace the Child Care Act. There have been proposals from the Law Commission and others to include in the new Bill a provision to remove the “reasonable chastisement” defence; debate continues (May 2005).

Schools

Corporal punishment is unlawful under article 10 of the South African Schools Act (1996, effective 1997). The National Education Policy Act (1996, article 3) states that “no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution”. In 2000, the Constitutional Court dismissed a bid by 196 Christian schools to make an exception to the prohibition on grounds of religious conviction (*Christian Education South Africa v Minister of Education*, 2000).

Penal system

Corporal punishment was abolished as a **sentence for crime** in 1997 under the Abolition of Corporal Punishment Act, following a Constitutional Court judgement in 1995 that whipping (as under article 294 of the Criminal Procedure Act, 1977) is unconstitutional (*The State v Williams et al*, 1995). Article 1 states that “[A]ny law which authorises corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorises such punishment”, and repeals or amends the following laws: Black Administration Act (1927), Magistrates’ Courts Act (1944), Witchcraft Suppression Act (1957), Stock Theft Act (1959), Animals Protection Act (1962), Dangerous Weapons Act (1968), National Parks Act (1976), Criminal Procedure Act (1977). Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The Correctional Services Second Amendment Act (1996) abolished disciplinary corporal punishment in prisons in respect of civil debtors, though there is no explicit prohibition of corporal punishment in the Correctional Services Act (1998), promulgated in 2004. Regulations under the Child Care Act (1983) prohibit its use in industry and reform schools (regulations 30-32).

Alternative care

Corporal punishment is prohibited in other institutions and forms of childcare. It was abolished in foster care and in children’s care facilities under 1998 amendments to the Child Care Act (regulations 30A.1 and 32.3). The Minimum Standards for Child and Youth Care System (1998) prohibit corporal punishment in shelters, children’s homes, places of safety, industrial schools, reform schools and secure care facilities.

Prevalence research

The first national survey of attitudes to child rearing and the use of corporal punishment by caregivers was undertaken in 2003, as part of the South African Social Attitude Survey (SASAS). Out of a representative sample of 2,497 men and women over 16 years of age from all provinces, population groups and economic backgrounds, 952 parents with children were surveyed specifically on corporal punishment. 57% of parents reported using corporal punishment, most commonly on children aged 3 years, with 33% using severe corporal punishment (beating with a belt or stick), most commonly on 4-year-olds. Of those who had smacked their children in the past year, 30% were men and 70% were women, with fewer younger than older parents using corporal punishment. The study concluded that the strongest predictor of severe corporal punishment was an attitude supportive of the use of physical punishment. (Dawes, A. et al., 2004, *Partner violence, attitudes to child discipline & the use of corporal punishment: A South African national survey*, Cape Town: Child Youth & Family Development, Human Sciences Research Council)

In 2004, Save the Children undertook qualitative research involving 410 boys and girls aged 6-18 years from four provinces in South Africa. The study found that children of all ages and income categories experienced corporal punishment at home and in school, although very few cases were reported by children in high income environments and children from Indian communities. The most common form of corporal punishment was beating with a belt; in schools it was most often inflicted using a ruler, stick or board duster on the hands. The most severe forms were experienced by children from low income environments, in both the home and school. Schools from high income areas were generally not using corporal punishment. (Clacherty, G., Donald, D. & Clacherty, A., 2005, *South African Children's Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(23 February 2000, CRC/C/15/Add.122, Concluding observations on initial report, paras. 3, 8 and 28)

“The Committee expresses appreciation for the efforts made by the State party in the area of legal reform.... [T]he Committee notes with appreciation the additional legislation enacted to bring about greater harmonization between domestic legislation and the Convention, including ... the Abolition of Corporal Punishment Act (1997)....

“The Committee appreciates the State party’s initiatives within the school environment. In this regard, it welcomes the enactment of the South African Schools Act (1996) which has led to enhanced participatory rights for children within the educational system; the right of children to choose their own language of learning (multilingualism); and the abolition of corporal punishment in schools....

“While the Committee is aware that corporal punishment is prohibited by law in schools, care institutions and the juvenile justice system, it remains concerned that corporal punishment is still permissible within families and that it is still regularly used in some schools and care institutions as well as generally within society. The Committee recommends that the State party take effective measures to prohibit by law corporal punishment in care institutions. The Committee further recommends that the State party reinforce measures to raise awareness on the negative effects of corporal punishment and change cultural attitudes to ensure that discipline is administered in a manner consistent with the child’s dignity and in conformity with the Convention. It is also recommended that the State party take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation.”

SWAZILAND

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home, where parents have a right to use “moderate chastisement” on their children. Article 30 of the draft Constitution states that a child “shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction”.

Schools

Corporal punishment is lawful and regulated by “A Guide to Schools Regulations and Procedures” (1988), produced by the Swaziland Ministry of Education.

Penal system

Corporal punishment is lawful as a **sentence for crime** for male offenders under the age of 18, regulated by articles 306-308 of the Criminal Law and Procedure Act. According to article 84 of the Magistrates Court Act, magistrates cannot implement whipping until the High Court has reviewed the sentence.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions.

Alternative care

There is no explicit prohibition of corporal punishment in other institutions and forms of childcare.

Prevalence research

A large scale survey by Save the Children in 2005 looked at the experience over a two week period of corporal punishment of 2,366 children aged 6-18 years from all of Swaziland’s four regions. 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 period; 28% reported being beaten with objects such as sticks, belts, sjamboks and whips. Boys were punished for such behaviour as breaking or stealing things, not tending livestock properly, playing instead of working, or playing out too late. Young children, particularly girls, were punished in connection with household chores. In school during the two weeks, 28% 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 punishments included physical labour or physical (and often humiliating) activities causing pain and discomfort. Children reported experiencing humiliating punishment, 35% in the home, 28% in school, in addition to experiencing corporal punishment itself as humiliating. Generally, corporal punishment was more commonly used in low income environments and on younger children.



77% of children considered corporal punishment to be unacceptable in the home and in school; 81% felt humiliating punishment to be unacceptable. The study also involved qualitative research with 384 children from the regions. (Clacherty, G., Donald, D. & Clacherty, A., 2005, *Children's Experiences of Corporal Punishment in Swaziland*, Pretoria: Save the Children Sweden)

UGANDA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Children are protected from abuse and neglect under the Children's Statute (1996), the Constitution (1995) and the Penal Code (amended 1990). Article 6 of the Children's Statute states that it is the duty of a parent, guardian or any person having custody of a child to protect the child from discrimination, violence, abuse and neglect. Article 24 of the Constitution protects every person from torture, cruel, inhuman or degrading treatment or punishment. Articles 219, 222 and 235-246 of the Penal Code cover bodily harm and assault.

Schools

Corporal punishment is unlawful in schools under the Children's Statute, a Ministry of Education circular Ref CE/C/23 (1997) and the guidelines on policy, roles and responsibilities of stakeholders in the implementation of Universal Primary Education (UPE) No. 34 (iii) (1998).

Penal system

Corporal punishment is unlawful as a **sentence for crime** and as a **disciplinary measure** in penal institutions. The Children's Statute states that no child (defined as a person below the age of 18) shall be subject to penal corporal punishment (article 95). A 1999 Supreme Court ruling stated that corporal punishment is prohibited under article 24 of the Constitution (*Kyamanywa v Uganda*, Criminal appeal No. 16). However, as at 2005 legislation is still in the process of being amended and corporal punishment continues to be imposed under the Penal Code.

Under article 11 of the Prisons Act, prison officers may use "any such force against a prisoner as is reasonably necessary in order to make him obey lawful orders he or she refuses to obey or in order to maintain discipline". The Prison Rules allow up to 12 strokes of the cane as a disciplinary measure for prisoners under the age of 45. The Prisons Bill (2003), which prohibits corporal punishment, went through Parliament in 2003-4. The conduct of police officers is regulated by the Police Act and the Police Code of Conduct.

Alternative care

We have been unable to ascertain whether the Children's Statute prohibits corporal punishment in other institutions and forms of childcare. Children are protected from other violence and abuse by the Children's Statute and the Foster Care Regulations.

Prevalence research

Research carried out by the Mulago Child Health Development Centre showed that mothers were the main enforcers of corporal punishment, and between 55% and 82% of them reported caning, slapping or beating their children. (Cited in Economic and Social Council, 1999, *Report submitted by Ms Katarina Tomasevski, Special Rapporteur on the right to education Addendum Mission to Uganda 26 June – 2 July 1999*, E/CN.4/2000/6/Add.1)

The initial state party report to the Committee on the Rights of the Child cites research by the Child Law Review Committee which established that of the 129 children who were found guilty and sentenced, 15.5% were caned. (Initial state party report, 1996, CRC/C/3/Add.40, para. 243)

In research by Save the Children UK focusing on deprivation and criminal behaviour, carried out in 2002, 116 children who had been convicted of theft and children at the national rehabilitation centre, aged 10-19 years and 71 parents/guardians were interviewed. The prohibition of caning in the juvenile justice system under the Children's Statute was perceived as a weakness by 14% of parents. The research confirmed that despite the law, children are tortured and beaten in police stations. 52% of parents said they normally disciplined their children by caning.

(Kakama, P. T., 2002, *Deprivation of Basic Needs as a Motivator for Criminal Activities among Children*, Save the Children UK)

Research reported in 2004 looked at the problem of violence against children in Uganda and found that physical abuse was the most common form. More than nine out of ten children (93.3%) reported having experienced physical violence including caning, slapping and pinching. Of those who experienced physical violence, 16.1% said it occurred at least once a week, and 15% said it occurred daily. (Dipak, 2004, "Raising Voices Uganda", cited in Derib, A., 2005, *Regional Report on Physical and Humiliating Punishment Against Children*, Save the Children)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(21 October 1997, CRC/C/15/Add.80, Concluding observations on initial report, paras. 15 and 35)

“The Committee is concerned at the insufficiency of the measures to combat and prevent ill-treatment and abuse, including sexual abuse of children within the family, and at the lack of information on this matter. The Committee is further concerned that disciplinary measures in some schools and law enforcement institutions often involve corporal punishment, although this is prohibited by law.

“The Committee recommends that special attention be given to the problems of ill-treatment and abuse, including sexual abuse of children within the family and corporal punishment in schools, and stresses the need for information and education campaigns to prevent and combat the use of any form of physical or mental violence against children, in accordance with article 19 of the Convention. The Committee also suggests that comprehensive studies on these problems be initiated in order to understand them better and to facilitate the elaboration of policies and programmes to combat them effectively, including rehabilitation programmes.”

Human Rights Committee

(4 May 2004, CCPR/CO/80/UGA, Concluding observations on initial report, paras. 5 and 18)

“The Committee welcomes the ruling of the Supreme Court in *Kyawanywa v. the Attorney-General*, declaring corporal punishment as unconstitutional.

“The State party has acknowledged the deplorable prison conditions in Uganda. The most common problems are overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The treatment of prisoners continues to be a matter of concern to the Committee. There are reported incidents of corporal punishment for disciplinary offences. Solitary confinement and deprivation of food are also used as disciplinary measures. Juveniles and women are often not kept separate from adults and males. The Committee has taken note of the measures implemented by the State party to counteract these shortcomings, including the introduction of community service as an alternative to imprisonment. However, it notes that they are inadequate to overcome the problems. It is also concerned about the high percentage of persons detained on remand (almost 70 per cent of inmates) (arts. 7 and 10).

“The State party should terminate practices contrary to article 7 and bring prison conditions into line with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate action to reduce overcrowding in prisons as well as the number of persons detained on remand.”

Committee Against Torture

(May 2005, CAT/CO/34/UGA, Concluding observations on initial report, Advanced unedited version, para. 3 (b))

“The Committee notes with satisfaction the following positive developments:

b) the abolition of corporal punishment following Criminal Appeal No. 16 of 1999 (Supreme Court) *Kyamanywa vs. Uganda*....

UNITED REPUBLIC OF TANZANIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home.

Protection from other violence and abuse is given by the Penal Code (1945, amended 1998), the Sexual Offences Special Provisions Act (1998), the Juvenile Courts Rules (1944, amended 1958) and the Children and Young Persons Ordinance, Cap.13. A Law relating to children is being drafted (2005).

Schools

Corporal punishment is lawful in schools. Under the Education Act (1978), corporal punishment is regulated by the National Corporal Punishment Regulations (1979), produced by the Ministry of Education. Government guidelines in 2000 reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations. In Zanzibar, two “non-corporal punishment pilot schools” have been established under the government’s policy of discouraging corporal punishment.

Penal system

Corporal punishment is lawful as a **sentence for crime** for boys under the Corporal Punishment Ordinance, the Minimum Sentences Act (1963), the Sexual Offences (Special Provisions) Act (1998), the Penal Code and the Criminal Procedure Code (1985), even though the latter prohibits persons under restraint being subjected to cruel, inhuman or degrading treatment (article 455). The Minimum Sentences Act amends the Corporal Punishment Ordinance (article 12) to allow for administering corporal punishment in instalments. Under article 8 of the Ordinance, juveniles may be given up to 12 strokes (up to 20 for adults). The Minimum Sentences Act does not apply to females or to juveniles under the age of 16 years (articles 2 and 3). In Zanzibar, the Children and Young Person Act establishes a special procedure for dealing with offenders under the age of 16 and states that the treatment of children



in conflict with the law must be consistent with the promotion of the child's sense of dignity and worth. In August 2004, the Attorney General announced the intention of the Zanzibar government to abolish caning as a punishment for crime and stated that amendments would be tabled in the House of Representatives. We have been unable to obtain further information on the progress of this proposal.

There is no explicit prohibition of corporal punishment as a **disciplinary measure** in penal institutions. Applicable law includes the Prisons Act (1967).

Alternative care

There is no prohibition of corporal punishment in alternative care settings. Applicable laws include the Children's Home (Regulations) Act (1968), the Day Care Centres Act (1981), and the National Guidelines for Care and Protection of Orphans and Vulnerable Children in Institutional Care.

Prevalence research

Research into the use of corporal punishment in schools across the country revealed a high prevalence rate and the strong support of parents in both urban and rural schools: 65% of pupils accepted corporal punishment, 85% of parents. All pupils disliked corporal punishment. Punishments included contorted body positions, frog jumps, push ups, kneeling down, standing in bright sunshine, lying on sand and lifting stones, with most pupils being subjected to more than two types. ("Kuleana study on corporal punishment in primary schools in Mara region", 1997, reported in initial state party report to the Committee on the Rights of the Child, 1999, CRC/C/8/Add.14/Rev.1, paras.187-194)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(9 July 2001, CRC/C/15/Add.156, Concluding observations on initial report, paras. 38, 39 and 67 (e))

"The Committee notes with regret that the law does not prohibit the use of corporal punishment as a sentence for children and youth in the juvenile justice system. Concern is also expressed that this type of punishment continues to be practised in schools, families and care institutions.

"The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment within the juvenile justice system, schools and care institutions as well as in families. The Committee encourages the State party to intensify its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.

"The Committee recommends that the State party:

e) abolish corporal punishment as a sentence within the juvenile justice system...."

Human Rights Committee

(18 August 1998, CCPR/C/79/Add.97, Concluding observations on third report, para. 16)

"The Committee notes with approval the Nyalali Commission's recommendation to abolish corporal punishment as a judicial sentence; such penalty should also be precluded for offences against prison regulations and children should no longer be subjected to corporal punishment in schools (art.7)."

ZAMBIA

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home. Article 46 of the Juvenile Act (1956, amended 1994) covers cruelty to juveniles under 19 years of age, and punishes "any person who has attained the age of sixteen years and has the custody, charge or care of any juvenile" who "wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to loss of sight, or hearing, or limb, or organ of the body, and any mental suffering)". But it also states: "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him."

Children have limited protection from violence and abuse under the provisions on assault in the Penal Code (1931). Article 235 of the Penal Code protects children from "excessive" force. Article 24 of the Constitution (1996) states that all young persons under the age of 15 "shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation". As at August 2004, the Juvenile Act and the Penal Code were under review.

Schools

Corporal punishment is unlawful in schools. Article 12 of the Education Act allowing the Minister to make regulations regulating the administration of corporal punishment in government and aided schools and hostels was repealed by the Education Amendment Act (2003), though there is no explicit prohibition of corporal punishment.

Penal system

Under a ruling by the Supreme Court in 1999 (*John Banda v The People* HPA/6/1998), articles 24 (c) and 27 of the Penal Code, which allow for corporal punishment as a **sentence for crime**, were judged to be a violation of article 15 of the Constitution which states that “no person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment”. Provisions in the Penal Code providing for corporal punishment as a sentence of the courts were amended by the Penal Code Amendment Act (2003). However, as at June 2005, the provision in article 73 (1) (e) of the Juveniles Act, which allows a court to order that the offender be caned, was yet to be repealed.

Provisions in the Prisons Act (1966) allowing and regulating the use of corporal punishment as a **disciplinary measure** in penal institutions were repealed by the Prisons Amendment Act (2004). Approved schools and reformatories are covered by the Juveniles Act and Rules which, as at June 2005, were yet to be amended in respect of their provisions for corporal punishment. The Reformatory School Rules (1965) also provide for the caning of detainees.

Alternative care

Corporal punishment is lawful in alternative care settings, where article 46 of the Juveniles Act (see above) applies. The Act covers provision for juveniles in need of care, including foster care and voluntary homes. A Handbook published by the Ministry of Community Development and Social Services Department of Social Welfare states that disciplining children should not include corporal punishment, but as at June 2005 this had not yet been confirmed in law.

Prevalence research

A large scale survey conducted by Save the Children in 2005, involving 2,321 children aged 6-18 years from all nine of Zambia's provinces, looked at children's experiences of corporal punishment over a two week period. The findings were also informed by in depth qualitative research with 384 children from four provinces. The research found that 24% of children reported experiencing corporal punishment in the home during the period, including being beaten with hands, sticks and belts. Despite the prohibition of corporal punishment at school, 32% reported being hit with a hand during the period and 38% with an object, most commonly a stick or hosepipe. Other punishments included hard physical labour and excessive physical exercise. Humiliating punishment was reported as being experienced in the home by 43% of children and in school by 37%. Corporal punishment was more common in low income than high income environments and more common for younger (6-12 years) than older (13-18 years) children. It was most often inflicted by mothers in the home and by teachers in schools. It was also administered by prefects in boarding schools. Almost three in four children (70%) felt corporal punishment was unacceptable in the home and in school; 79% felt that humiliating punishment was unacceptable. (Clacherty, G., Donald, D. & Clacherty, A., 2005, *Zambian Children's Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(2 July 2003, CRC/C/15/Add.206, Concluding observations on initial report, paras. 30, 31, 32 and 33 (a, b and c))

“The Committee notes that the Constitutional Court outlawed the practice of corporal punishment (*John Banda v. the People*, HPA/6/1998) but remains concerned that corporal punishment is still practised and accepted in schools, families, and care and juvenile detention institutions.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, in schools and care institutions, as well as in families. The Committee encourages the State party to reinforce its public awareness campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment at all levels of society.

“The Committee is deeply concerned about allegations of instances of ill-treatment by law enforcement officers against street children and children in custody in police stations and other detention centres, despite the circular of 27 December 1999 ordering prison authorities to stop the practice of caning.

“The Committee recommends that the State party:

- a) set up child-sensitive mechanisms to receive complaints against law enforcement officers regarding ill-treatment during arrest, questioning and police custody, and make sure that perpetrators are brought to justice;
- b) systematically train the police force and prison staff and other authorities on the human rights of children; and
- c) ensure the physical and psychological recovery and social reintegration of child victims of such ill-treatment.”

Committee Against Torture

(23 November 2001, CAT/C/XXVII/Concl.4, Concluding observations on initial report, para. 3 (e))

“The Committee notes, with satisfaction, the following elements,

- e) the legal prohibition of corporal punishment.”



ZIMBABWE

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home, where parents have a common law right to chastise their child. Following a Supreme Court ruling that caning of minors amounted to cruel and inhuman punishment, the Constitution (1979) was amended in 1990 to allow “moderate” corporal punishment “in appropriate circumstances upon a person under the age of eighteen years by his parent or guardian or by someone in loco parentis or in whom are vested any of the powers of his parent or guardian” (article 15).

The Children’s Protection and Adoption Act (1971, amended 2001) makes it an offence for a parent or legal guardian to ill-treat, neglect or abandon their child.

Schools

Corporal punishment is lawful in schools under the Education (Disciplinary Powers) Regulations (1990), which state: “[C]orporal punishment may be inflicted only in cases of continued or grave neglect of work, of lying, bullying, insubordination, indecency, truancy, or other offences of like gravity. No girls shall be subjected to corporal punishment.”

Penal system

Corporal punishment is lawful as a **sentence for crime** for males under the Criminal Procedure and Evidence Act (1927, amended 2001). Following the Supreme Court ruling (see above), the Constitution was amended in 1990 to allow corporal punishment “in execution of the judgment or order of a court, upon a male person under the age of eighteen years as a penalty for breach of any law” (article 15).

Corporal punishment is lawful as a **disciplinary measure** in penal institutions. The Prisons (General) Regulations (1996) govern prisons, the prison service, and prison officers. The Prisons Act (1956) provides for the establishment and management of prisons, including discipline of prisoners and the use of corporal punishment. Provisions in the Children’s Protection and Adoption Act also apply.

Alternative care

Corporal punishment is lawful in alternative care settings under the Constitution (see above). The Children’s Protection and Adoption Act also applies.

Prevalence research

None identified.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(7 June 1996, CRC/C/15/Add.55, Concluding observations on initial report, paras. 16, 21 and 31)

“The Committee further notes that insufficient attention has been paid to the principle of the best interests of the child both in legislation and practice, as well as to the respect for the views of the child in school, social and family life. In this regard, it is noted that, as recognized by the State party, the civil rights and freedoms of the child are to be exercised subject to parental consent or discipline, thus raising doubts as to the compatibility of this practice with the Convention, notably articles 5 and 12.

“The Committee is concerned at the present system of juvenile justice, including the lack of a clear prohibition of capital punishment, life imprisonment without possibility of release and indeterminate sentencing, as well as at the recourse to whipping as a disciplinary measure for boys.

“The Committee recommends that the State party adopt appropriate legislative measures to forbid the use of any form of corporal punishment within the family and in school.”

DEPENDENT TERRITORIES

FRANCE – RÉUNION (France overseas department)

We have been informed that French law applies in the overseas departments, including the Penal and Civil Codes, though this requires explicit confirmation. The following information is based on the assumption of the application of French law.

Lawfulness of corporal punishment

Home

Corporal punishment is lawful in the home, under the parental “right of correction” in customary law. Children have limited protection from violence and abuse under the Criminal Code and the Civil Code.

Schools

Corporal punishment is reportedly prohibited in schools, but there is no explicit prohibition in law and it would seem that “light correction” is tolerated as for parents.

Penal system

Corporal punishment is unlawful in the penal system.

Alternative care

Corporal punishment is not explicitly prohibited in other institutions and forms of care but prosecution is possible under the Criminal Code (see above).

Prevalence research

None identified.

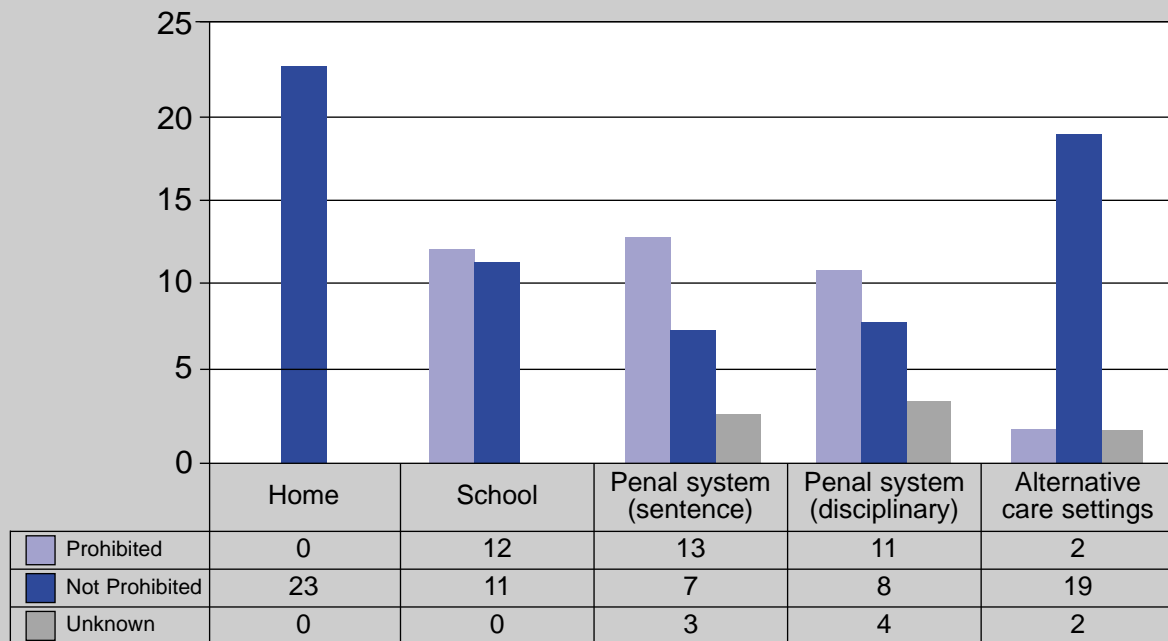


SUMMARY TABLE LEGAL STATUS OF CORPORAL PUNISHMENT OF CHILDREN

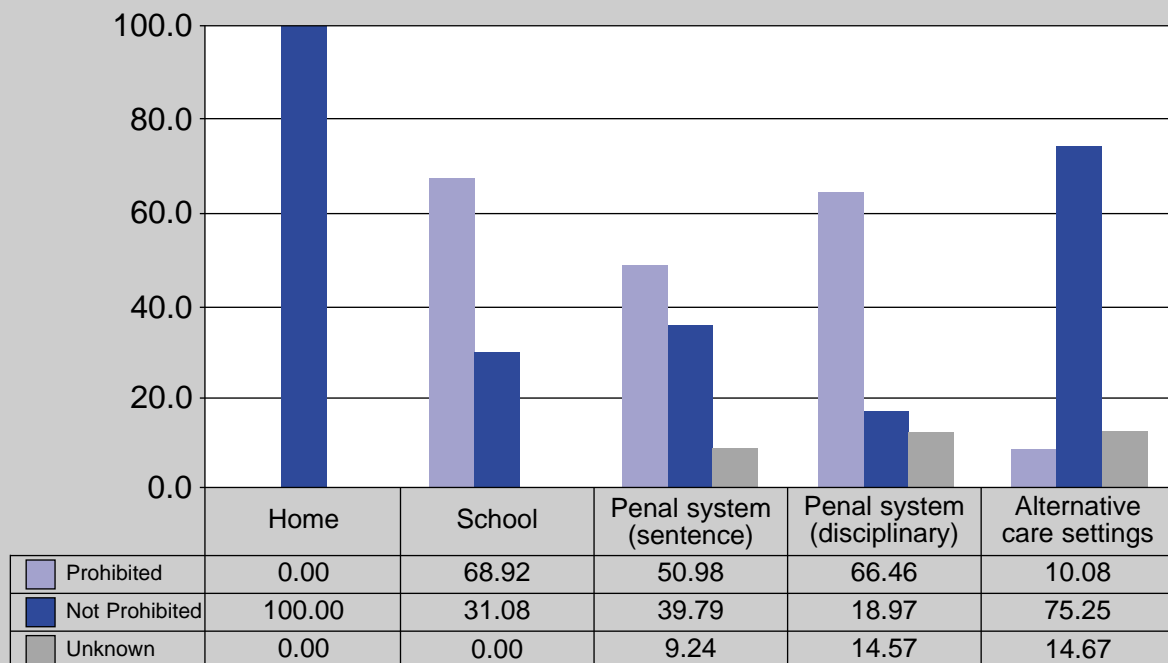
	Prohibited in the home	Prohibited in schools	Prohibited in the penal system As a sentence for crime	Prohibited in the penal system As a disciplinary measure in penal institutions	Prohibited in alternative care
Angola	NO	YES	YES ¹	?	NO
Botswana	NO	NO	NO	NO	NO
Burundi	NO	NO	YES	NO	NO
Comoros	NO	NO	? ²	NO	NO
Eritrea	NO	NO	NO ³	?	NO
Ethiopia	NO	YES ⁴	NO ⁵	YES ⁶	SOME ⁷
Kenya	NO	YES	YES	YES	SOME ⁸
Lesotho	NO	YES ⁹	NO	NO ¹⁰	NO ¹¹
Madagascar	NO	NO	YES	?	NO
Malawi	NO	YES ¹²	YES ¹³	YES ¹⁴	SOME ¹⁵
Mauritius	NO	NO	YES	NO	NO
Mozambique	NO	YES ¹⁶	? ¹⁷	YES ¹⁸	?
Namibia	NO	YES	YES ¹⁹	YES ²⁰	SOME ²¹
Rwanda	NO	NO	YES	YES	NO
Seychelles	NO	YES	YES	YES ²²	YES ²³
Somalia	NO	NO	?	?	NO
South Africa	NO ²⁴	YES	YES	YES	YES
Swaziland	NO	NO	NO	NO	NO
Uganda	NO	YES	YES ²⁵	YES ²⁶	?
United Republic of Tanzania	NO	NO	NO ²⁷	NO	NO
Zambia	NO	YES	YES ²⁸	YES ²⁹	NO
Zimbabwe	NO	NO	NO	NO	NO
France - Réunion ³⁰	NO	YES ³¹	YES	YES	NO

¹Information unconfirmed. ²Prohibited in secular law (information unconfirmed), but possibly lawful under Shari'a law. ³But prohibited in the Draft Penal Code. ⁴Prohibited by government directive and Constitution, but "reasonable chastisement" defence available. ⁵Prohibited in Revised Penal Code but as at May 2005 this was awaiting proclamation. ⁶But "reasonable chastisement" defence possibly available. ⁷Prohibited in institutions by the Constitution, but "reasonable chastisement" defence available. ⁸Prohibited in institutions. ⁹Information unconfirmed. ¹⁰But possibly prohibited in Child Protection and Welfare Bill. ¹¹But possibly prohibited in state institutions in Child Protection and Welfare Bill. ¹²Prohibited in Constitution. ¹³Prohibited in Constitution, but permitted in other legislation. ¹⁴Prohibited in Constitution, but permitted in other legislation. ¹⁵Prohibited in state institutions by Constitution but possibly not confirmed in legislation. ¹⁶Information unconfirmed. ¹⁷Not available as a sentence for persons under 16 years, but possibly permitted for those aged 16-17. ¹⁸Information unconfirmed. ¹⁹Declared unconstitutional by 1991 Supreme Court ruling, but not confirmed in legislation. ²⁰Declared unconstitutional by 1991 Supreme Court ruling, but not confirmed in legislation. ²¹Unlawful in state institutions under 1991 Supreme Court ruling, but not confirmed in legislation. ²²Information unconfirmed. ²³Information unconfirmed. ²⁴As at May 2005, a Children's Bill was under discussion, including proposals from the Law Commission and others to include a provision to remove the "reasonable chastisement" defence. ²⁵Prohibited in 1996 Children's Statute and ruled unconstitutional by 1999 Supreme Court ruling, but other legislation not amended. ²⁶Prohibited in 1996 Children's Statute and ruled unconstitutional by 1999 Supreme Court ruling, but other legislation not amended. ²⁷In August 2004, the Attorney General announced the intention of the Zanzibar government to abolish caning as a punishment for crime. ²⁸Ruled unconstitutional by 2000 Supreme Court ruling, but as at June 2005 some legislation not amended. ²⁹Ruled unconstitutional by 2000 Supreme Court ruling, but as at June 2005 some legislation not amended. ³⁰Information unconfirmed. ³¹No explicit prohibition in law and "light correction" tolerated as for parents.

East & Southern Africa - states and territories prohibiting corporal punishment of children



Percentage of child population legally protected from corporal punishment



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This report is one in a series prepared by the Global Initiative for submission to each of the nine regional consultations being held in connection with the UN Secretary General's Study on Violence against Children.

The Global Initiative was launched during the Commission on Human Rights in Geneva in 2001. It aims to act as a catalyst to encourage more action and progress towards ending all corporal punishment in all continents; to encourage governments and other organisations to "own" the issue and work actively on it; and to support national campaigns with relevant information and assistance. The context for all its work is implementation of the Convention on the Rights of the Child. We believe ending all corporal punishment is fundamental to improving the status of children and realising their rights to respect for their human dignity and physical integrity and to equal protection under the law.



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

The aims of the Global Initiative are to:

- forge a strong alliance of human rights agencies, key individuals and international and national non-governmental organisations against corporal punishment;
- make corporal punishment of children visible by building a global map of its prevalence and legal status, ensuring that children's views are heard and charting progress towards ending it;
- lobby governments systematically to ban all forms of violence including corporal punishment and to develop public education programmes;
- promote awareness-raising of children's rights to protection and public education on positive, non-violent forms of discipline for children;
- provide detailed technical assistance to support states with these reforms.

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