


Cruel, inhuman and degrading: ending corporal punishment in penal systems for children



“The vision of a world in which violent punishment of children is universally condemned and prohibited is now within our grasp. We cannot let more generations of children suffer these obvious and deliberate violations of their rights. We must not keep children waiting.”

Professor Paulo Sérgio Pinheiro



The aims of the Global Initiative – promoting the prohibition and elimination of all corporal punishment of children – are supported by UNICEF, UNESCO and many international and national organisations, including:

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Professor Paulo Sérgio Pinheiro

The Independent Expert who led the UN Secretary General's Study on Violence against Children

This report documents that 38 states, which include just under 40% of the world's children, have not fully prohibited the sentencing of children to corporal punishment by their courts and 67 states have not prohibited violent punishment of children in penal institutions. It is being launched at the 2015 World Congress on Juvenile Justice, which "aims to become a milestone in the implementation of international norms". How can these states, 25 years after adoption of the Convention on the Rights of the Child, continue to ignore their international obligations and maintain these barbaric practices? For many children, I fear we are barely at the starting point in respecting their human dignity: we must all redouble explicit advocacy.

Acknowledgements

Photo on inside front cover from Middle East and North Africa law reform workshop, Beirut, 2010. Other photographs of children depict models and are used for illustrative purposes only.

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Note on facts and figures

The Global Initiative bases its analyses on a total of 198 states, all states parties to the UN Convention on the Rights of the Child except Holy See, plus Somalia, South Sudan, Taiwan, US and Western Sahara. Child population figures are from UNICEF 2012 (2010 for Russian Federation) and, where no UNICEF figures are available, World Population Prospects 2010 (0-19) (Cyprus, Montenegro, Serbia, Western Sahara), Statistical Yearbook 2012 (Lao PDR), Children Bureau Ministry of Interior 2005 (Taiwan); South Sudan and Sudan figures are estimates.

The information in the legality tables (pp. 12-15) has been compiled 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 provide and check information. Please send any corrections or updates to info@endcorporalpunishment.org. For further details on all states see the individual country reports at www.endcorporalpunishment.org.

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Save the Children www.savethechildren.net, resourcecentre.savethechildren.se

Human rights standards for juvenile justice



Abolition of corporal punishment in systems of juvenile justice – both as a sentence for crime and as a disciplinary measure in penal institutions – is a fundamental human rights obligation. The UN Convention on the Rights of the Child states in article 37 that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” and that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person”. Article 40 confirms the right of “every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”. The Committee on the Rights of the Child has confirmed that corporal punishment is a violation of this article and since the beginning of its work has recommended abolition of corporal punishment in penal systems as in all other settings.

Other treaties and their monitoring bodies similarly require abolition of corporal punishment in penal systems, including the Committee Against Torture, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights. In its visits to places where people are deprived of their liberty under the Optional Protocol to the Convention Against Torture, the Subcommittee on Prevention of Torture has several times documented corporal punishment of children in conflict with the law and has recommended its prohibition. The issue is raised in the Universal Periodic Review of states which have not yet achieved abolition.

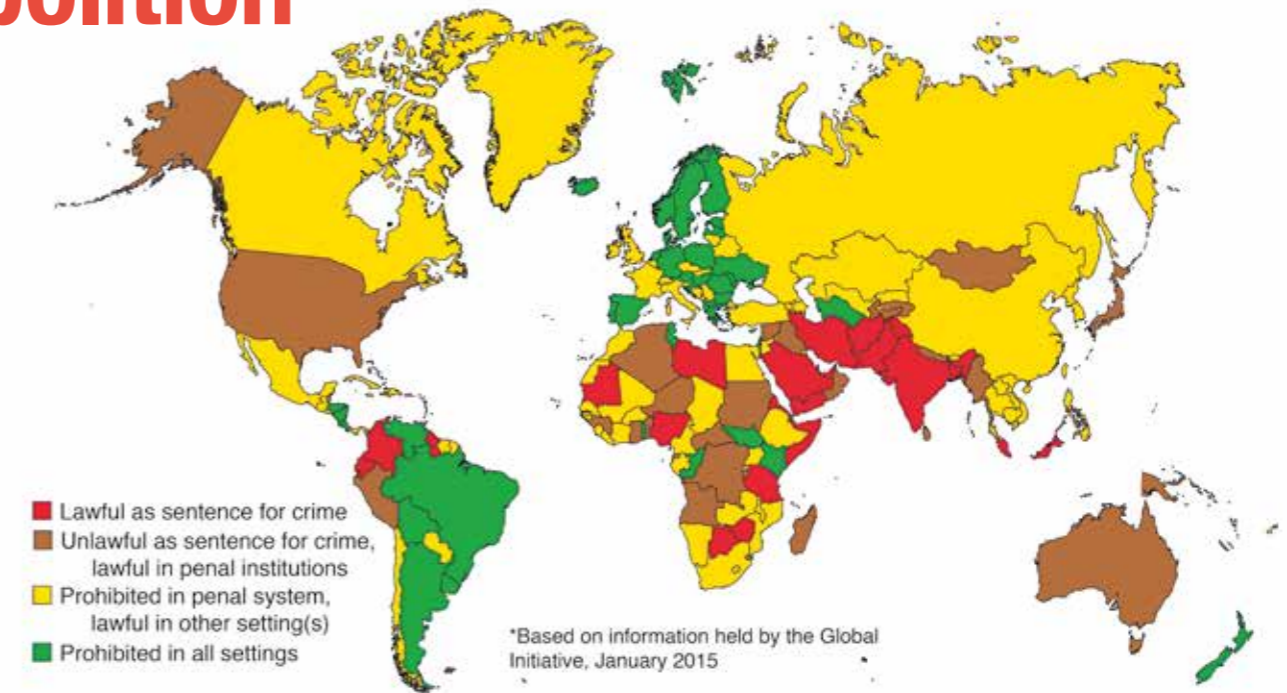
The UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”) all condemn corporal punishment. The Guidelines for Action on Children in the Criminal Justice System, adopted in 1997 to ensure implementation of the Convention on the Rights of the Child in relation to juvenile justice and the UN standards for juvenile justice, state clearly that “corporal punishment in the child justice and welfare systems should be prohibited” (para. 18). In November 2014, the UN General Assembly adopted guidelines on eliminating violence against children in justice systems which explicitly state that there should be no place for corporal punishment in juvenile justice.

“Recognising that no child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment, Member States are urged: (a) To review, evaluate and, where necessary, update their national laws to effectively prohibit sentences involving any form of corporal punishment for crimes committed by children ...”

“Recognising also that it is imperative to minimize the risk of violence against children in detention, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments: ... (e) To prohibit and effectively prevent the use of corporal punishment as a disciplinary measure, to adopt clear and transparent disciplinary policies and procedures that encourage the use of positive and educational forms of discipline and to establish in law the duty of managers and personnel of detention facilities to record, review and monitor every instance in which disciplinary measures or punishment are used ...”

(United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2014, paras. 36 and 39)

Progress towards universal abolition



The abolition of corporal punishment in penal systems across the world is at the forefront of progress towards universal prohibition of all violent punishment of children. As at January 2015, more states have prohibited corporal punishment as a sentence of the courts for juvenile offenders than have prohibited this form of violence against children in any other setting – 160 have now abolished judicial corporal punishment (whipping, flogging, caning) compared with 131 prohibiting physical punishment as a disciplinary measure in penal institutions, 122 in schools, 50 in alternative care and day care settings and just 44 in the home.

The drive to end penal corporal punishment of children is to be celebrated. But at a time when nearly all states have ratified the UN Convention on the Rights of the Child and when human rights treaty bodies are in agreement that all corporal punishment of children – wherever they are – should be prohibited and eliminated, why is it that there are still 67 states where children detained in penal institutions can lawfully be subjected to corporal punishment for breaches of discipline and 38 where juvenile offenders can be sentenced to be whipped, flogged or caned? Why is it that since the UN Study on Violence against Children concluded in 2006 that corporal punishment in all settings must be prohibited as a matter of urgency, the number of states prohibiting corporal punishment in the home has risen by 28, but the number prohibiting corporal punishment as a sentence of the courts has risen by only eight?

States where juvenile offenders may be sentenced to corporal punishment

Afghanistan, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Botswana, Brunei Darussalam, Colombia, Dominica, Ecuador, Eritrea, Grenada, Guyana, India, Indonesia, Iran, Kiribati, Libya, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Singapore, Somalia, St Kitts and Nevis, St Vincent and the Grenadines, State of Palestine, Tonga, Trinidad and Tobago, Tuvalu, United Arab Emirates, UR Tanzania, Vanuatu, Yemen, Zimbabwe

States where juvenile offenders in detention may be subjected to corporal punishment as a “disciplinary” measure

Afghanistan, Algeria, Angola, Antigua and Barbuda, Australia, Bahrain, Bangladesh, Barbados, Belize, Benin, Botswana, Brunei Darussalam, Burundi, Central African Republic, Comoros, Cook Islands, Djibouti, Dominica, DR Congo, Equatorial Guinea, Eritrea, Gambia, Ghana, Grenada, Guinea, Guyana, Iraq, Japan, Kiribati, Libya, Madagascar, Malaysia, Maldives, Marshall Islands, Mauritania, Mauritius, Micronesia, Mongolia, Myanmar, Nauru, Nepal, Niger, Nigeria, Oman, Pakistan, Palau, Papua New Guinea, Peru, Sao Tome and Principe, Saudi Arabia, Seychelles, Singapore, Somalia, Sri Lanka, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, State of Palestine, Sudan, Swaziland, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Tuvalu, UR Tanzania, USA, Zimbabwe

Making the violation visible through research



Corporal punishment of children in conflict with the law has been documented by research studies and investigations the world over. Most research reveals the shocking levels of violence inflicted on children in penal institutions. More difficult to expose is the extent to which judicial corporal punishment is inflicted on juveniles convicted of criminal offences.

Africa: Recent reports document torture and ill-treatment of children in detention in **Nigeria** (2014),¹ the subjection of girls to judicial flogging and other humiliating punishments in **Sudan** (2014),² and the caning of children in detention in **Uganda** (2010).³

Central Asia: Studies document the infliction of corporal punishment on children in juvenile justice settings in **Kyrgyzstan** (2012, 2013).⁴ The UN Special Rapporteur on torture has concluded that beatings of juveniles were common in police custody and in prisons in **Kazakhstan** (2009).⁵

East Asia and the Pacific: Investigations have uncovered beatings and other inhuman and degrading punishment in drug detention centres in **Cambodia, Lao PDR and Viet Nam** (2011, 2013),⁶ the infliction of physical punishment on children by community chiefs and people working in justice systems in **Fiji, Kiribati and Vanuatu** (2009)⁷ and beatings and other physical violence against child migrants in detention in **Indonesia** (2013).⁸ Official figures record 50 sentences of whipping carried out on children in **Malaysia** in the 10 years to April 2012 (31 under secular law and 19 under Islamic law),⁹ and 76 children under 16 sentenced to judicial caning in **Singapore** between 2003 and June 2007.¹⁰

Latin America: Severe corporal punishment was documented in juvenile detention centres in **Panama** (2011), and 35.8% of children interviewed in **Paraguay** reported violence by officials in the juvenile penal system (2010).¹¹

Middle East: Flogging has been documented as a common sentence for crime for children and as a punishment in detention centres for girls and boys in **Saudi Arabia** (2008).¹²

South Asia: The use of isolation for over a week as a punishment in a correctional training centre was documented in the Maldives (2011).¹³ In Pakistan, corporal punishment on children in pre-trial detention was reported (2012).¹⁴

1 Amnesty International (2014), *Welcome to Hell Fire: Torture and other ill-treatment in Nigeria*

2 Human Rights Watch (2014), *World Report 2014*

3 Moore, M. (2010), *Juvenile Detention in Uganda: Review of Ugandan Remand Homes and the National Rehabilitation Centre*, African Prisons Project

4 Utesheva, N. et al (2013), *Shadow report of NGOs on compliance of obligations under the UN Convention on the Rights of the Child by the Kyrgyz Republic*, Association of NGOs for the protection and promotion of child rights et al; Utesheva N. A. & Korzhova O. A. (2013), *Protecting children from torture and cruel treatment in the context of juvenile justice: research report 2012*, Bishkek: UNICEF

5 O'Donnell, D. (2012), *Juvenile Justice In Central Asia: Reform Achievements And Challenges In Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan And Uzbekistan*, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

6 Human Rights Watch (2013), *"They Treat Us Like Animals": Mistreatment of Drug Users and "Undesirables" in Cambodia's Drug Detention Centers*; Human Rights Watch (2011), *Somsanga's Secrets: Arbitrary Detention, Physical Abuse, and Suicide inside a Lao Drug Detention Center*; Human Rights Watch (2011), *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*

7 UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Fiji*; UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*; UNICEF & AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Vanuatu*

8 Human Rights Watch (2013), *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia*

9 Information provided to the Global Initiative by the Prison Department of Malaysia, 27 April 2012

10 Singapore's second/third periodic report to the Committee on the Rights of the Child (2009), para. 9.3

11 Defensa de Niñas y Niños Internacional Sección Paraguay (2012), *Situación de la Justicia Juvenil en Paraguay*

12 Human Rights Watch (2008), *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*

13 Naseem, A. (2011), *Child participation in the Maldives: An Assessment of Knowledge*, UNICEF & Human Rights Commission of the Maldives

14 Sheahan, S. & Randel, B. (2012), *A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries*, Penal Reform International & UKaid

Law reform to achieve abolition



Prohibiting corporal punishment of children in the penal system means ensuring legal clarity that persons convicted of crimes as juveniles cannot be sentenced to corporal punishment, whether under secular, religious or customary law, and that all institutions accommodating children in conflict with the law must not include corporal punishment among "disciplinary" measures. The following table sets out what this law reform entails.

What prohibiting corporal punishment of children in the penal system means

... as a sentence for crime

- Repeal of all laws authorising courts to impose sentences of corporal punishment on persons found guilty of an offence committed when under 18*
- Repeal of all laws regulating how judicial corporal punishment is to be administered
- Prohibition of corporal punishment as a sentence for crime, including under religious and customary/traditional justice systems

* The prohibition should be applicable in cases where the offences were committed by persons below the age of 18, regardless of age at the time of trial and regardless of the minimum age of criminal responsibility in the particular state.

... as a "disciplinary" measure in penal institutions

- Repeal of all laws regulating how corporal punishment is to be inflicted
- Repeal of legal defences for physical punishment of children*
- Prohibition of corporal punishment in all penal institutions, including prisons, detention centres, education/correction institutions, pre-trial detention settings, etc
- Repeal of all laws providing for corporal punishment as a permitted measure of discipline/punishment

* Laws which provide a defence for parents and other adults to physically punish children ("reasonable chastisement", "right of correction", "use of force by way of correction", etc) may be applicable in penal institutions explicitly or implicitly. Reform requires that no legal loopholes remain which would allow punitive assaults on children in these settings.

It is crucial that prohibition of corporal punishment as a sentence for crime applies to religious and traditional/customary justice systems. In some states, legislation has been enacted which makes no provision for corporal punishment as a sentence of the courts and juveniles convicted of an offence may therefore not be sentenced to corporal punishment – but in these same states, Constitutional protection for indigenous communities has extended to allowing physical punishment of children found guilty of an offence.

Corporal punishment as a sanction in indigenous communities in Colombia

In Colombia, corporal punishment is unlawful as a sentence for crime under state law: there is no provision for judicial corporal punishment in the Criminal Code or in the Children and Adolescents Code 2006. But in relation to juvenile justice, article 156 of the Children and Adolescents Code 2006 states that adolescents in indigenous communities "will be judged according to the rules and procedures of their own communities according to the indigenous special legislation enshrined in article 246 of the Constitution, the international human rights treaties ratified by Colombia and the law. Provided that the penalty imposed is not contrary to their dignity, nor allows him/her to be subjected to abuse".

Under article 246 of the Constitution (on special jurisdictions), the authorities of indigenous peoples can exercise jurisdictional functions within their territory in accordance with their own rules and procedures, when these do not contravene the Constitution and the laws of the Republic. In 1997, a Constitutional Court judgment on a case concerning the sentence of whipping in the Paez indigenous community (Sentence T523/97) concluded that its infliction was symbolic, not degrading punishment and not severe enough to be torture, and therefore did not violate the prohibition of torture in the Constitution and international human rights instruments.

Among states which base their criminal law on Islamic Shari'a, some point to the strict evidential requirements for conviction of *hudud* crimes or report that Shari'a punishments (whether *had* or *Tazir*) are rarely imposed on children in practice. But from a human rights perspective there can be no justification for the existence of laws – whether codified or not – that contemplate the possibility of girls and boys from the onset of puberty facing the prospect of flogging, amputation and stoning.

Yet other states have inherited legislation from the time of British colonialism which provides for judicial whipping of child offenders. These laws not infrequently sit alongside systems of Islamic or customary systems of justice which condone cruel punishments. Reform of these old colonial laws is long overdue.

Multiple roots of judicial corporal punishment in Nigeria

The legal system in Nigeria is a mix of Islamic law, English common law and customary/native law. In the southern states, criminal laws dating from before Independence in 1960 remain in force; in the northern states, criminal laws enacted during the settlement of 1960 are still in force, together with Shari'a laws enacted following the adoption of the 1999 Constitution.

Law reform has not fully prohibited judicial corporal punishment of children. Article 221 of the Child Rights Act 2003 states that “no child shall be ordered to be subjected to corporal punishment”. In states which have adopted the Act without modification, it would be unlawful to sentence a person under 18 to corporal punishment. But at least two states have modified the definition of the child: in southern Akwa-Ibom, a child is defined as 16 and under, and older children are sentenced as adults, including to corporal punishment under the Criminal Code 1916 and the Criminal Procedure Act 1945. In northern Jigawa, a child is defined with reference to puberty, so a Muslim child from the age of puberty may be sentenced to corporal punishment under the Shari'a Penal Code 2000 and the Shari'a Criminal Procedure Code Law 2001.



“Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity. Freedom to practise one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.”

(Committee on the Rights of the Child, 2006, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para. 29)

Immediate opportunities for prohibiting corporal punishment in penal systems

“Among the 78 states where corporal punishment is currently lawful in the penal system, at least 49 are undergoing processes of law reform which provide immediate opportunities for enacting prohibiting legislation.”

In many states, efforts are under way to develop juvenile justice systems aimed at fulfilling the range of obligations under human rights law which require sensitive and respectful treatment of children in conflict with the law. It is imperative that the legislation underpinning such systems includes prohibition of corporal punishment, both as a sentence of the courts and as a disciplinary measure in penal institutions.

Prohibiting corporal punishment of children in penal systems – as in other settings – is an immediate human rights obligation; it does not depend on the enactment of a comprehensive juvenile justice law but can be fulfilled whenever relevant laws are under review or being drafted, including constitutions, criminal codes and general laws relating to child protection or child rights. Among the 78 states where corporal punishment is currently lawful in the penal system, at least 49 are undergoing processes of law reform which provide immediate opportunities for enacting prohibiting legislation. Of the 38 states where corporal punishment is lawful as a sentence for crime, there are immediate opportunities for its abolition in 26 (see table below).

State	Immediate opportunities for abolition of corporal punishment
Afghanistan	Comprehensive Law on Children being drafted; Penal Code and Juvenile Code under review
Bahamas	Constitution under review
Barbados	Legislation relating to children under review
Comoros	Amendments to Criminal Code under discussion
Dominica	Juvenile Justice Bill under discussion
Eritrea	Draft Criminal Code under discussion; new Constitution being drafted
Grenada	Juvenile Justice Act and Child Protection Act under review; draft new Constitution under discussion
India	Juvenile Justice (Care and Protection of Children) Bill under discussion
Indonesia	Draft Criminal Code under discussion
Iran	Children and Adolescent Protection Bill, draft bills on Juvenile Justice and Child Protection and Draft Charter of Citizens' Rights under discussion
Kiribati	Juvenile Justice Bill under discussion
Libya	Draft Juvenile Justice Law under discussion; new Constitution being drafted
Malaysia	Child Act under review; Bills on implementation of Islamic (<i>hudud</i>) punishments at state level under discussion in Kota Baru and Kelantan
Maldives	Children Bill being drafted; draft Juvenile Justice Bill, Evidence Bill and draft Criminal Procedure Bill under discussion
Nauru	Constitution and Criminal Code under review

State	Immediate opportunities for abolition of corporal punishment
Nigeria	Administration of Criminal Justice Bill and Prison Reform Bill under discussion; child rights laws under consideration in some states; Children and Young Persons Law, Penal Code, Criminal Procedure Code and Shari'a Penal Code under review
Pakistan	Prohibition of Corporal Punishment Bill under discussion; Islamabad Capital Territory Child Protection System Bill, Punjab Prohibition of Corporal Punishment Bill, Balochistan Child Protection Bill and Balochistan Corporal Punishment Bill under discussion; Zina laws being reviewed
Qatar	Children Bill under discussion
Saudi Arabia	Regulations implementing Child Protection Act being drafted; draft Alternative Penalties Act under discussion
Somalia	Juvenile justice law being drafted
St Vincent and the Grenadines	Juvenile Justice Bill under discussion
State of Palestine	Draft Constitution, draft amendments to Child Law, draft Penal Code and draft Juvenile Justice Law under discussion
Sudan	Rules under Child Act 2010 being drafted
UR Tanzania	Draft Constitution under discussion
Vanuatu	Comprehensive law on children being drafted; Young Offenders Bill possibly under discussion
Yemen	Draft Child Rights Act under discussion; new Constitution being prepared

The Global Initiative is always pleased to offer advice and technical support in the drafting of prohibiting legislation: email info@endcorporalpunishment.org.

Advocacy for prohibition of corporal punishment in penal systems

International and national campaigns

The **Child Rights International Network** (www.crin.org) campaigns for an end to inhuman sentencing of children (sentences of life imprisonment, the death penalty and corporal punishment).

The **South Asia Initiative to End Violence Against Children** (www.saievac.org/cp), a SAARC Apex Body for Children, campaigns for an end to the legality, social acceptance and practice of corporal punishment in Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka. Corporal punishment is lawful in penal institutions and/or as a sentence for crime in seven of the eight states.

National organisations are working for prohibition of corporal punishment in states in which corporal punishment remains lawful in the penal system, including Save the Children in **Afghanistan**, the **Bangladesh** Legal Aid and Services Trust and Save the Children Bangladesh, the Child Protection Alliance in the **Gambia**, **India's** National Commission for Protection of Child Rights, the Child Rights Coalition **Malaysia**, the Ombudsman's Office in **Mauritius**, the Child Rights Network in **Nigeria**, the Society for the Protection of the Rights of the Child in **Pakistan** and **Sudan** Child Rights.

Taking legal action

Where states fail to meet their human rights obligations, advocates can use legal action to “force” them to prohibit all corporal punishment. Where legal action has been taken against corporal punishment it has often focused on judicial corporal punishment (see box). In many cases the legal action has led to law reform to prohibit corporal punishment in some or all settings of children's lives.

Legalistic action may involve threatening to make or making applications to national courts on children's right to protection from all corporal punishment and using available international and regional human rights mechanisms – courts and communications/complaints procedures. Advocates should consider the possibility of taking legal action as part of a broader strategy to achieve prohibition, even though going to court or submitting a communication may remain rare.

Penal Reform International (www.penalreform.org) advocates for child-friendly justice which recognises the right of children to special protection, including through its Ten-Point Plan for Fair and Effective Criminal Justice for Children, which calls for prohibition of corporal punishment for children deprived of their liberty.

The **Caribbean Coalition for the Abolition of Corporal Punishment of Children** (www.endcorporalpunishmentcaribbean.org) advocates for prohibition and elimination of corporal punishment of children across the Caribbean, where corporal punishment is lawful in the penal system in many states.

High level court rulings against corporal punishment

The progressive condemnation of corporal punishment of children in a series of judgments by the European Court of Human Rights began with the case of a 15-year-old boy in the Isle of Man (*Tyrer v The United Kingdom, Application No. 5856/72*). The Court ruled that the judicial “birching” to which the boy had been subjected constituted “degrading punishment” within the meaning of article 3 of the Convention.

National high level court rulings declaring corporal punishment unconstitutional and condemning it in penal systems have been made in the following states:

Bangladesh – corporal punishment in schools and all settings (*13 January 2011, Writ Petition No. 5684 of 2010*)

Fiji – school and judicial corporal punishment (*Naushad Ali v State, Criminal Appeal No. HAA 0083 of 2001*)

Namibia – corporal punishment in schools and the penal system (*Ex parte Attorney General, Namibia: in Re Corporal Punishment by Organs of State, 1991(3)SA 76*)

Supreme Court rulings in other states have condemned corporal punishment of children in settings outside the penal system – **Costa Rica** (corporal punishment by parents), **India** (schools), **Israel** (parents), **Italy** (parents), **Nepal** (parents and teachers).

South Africa – judicial corporal punishment of juveniles (*The State v Williams et al, case no. CCT/20/94*)

Zambia – judicial corporal punishment (*Banda v The People (2002) AHRLR 260 (ZaHC 1999)*)

Zimbabwe – judicial corporal punishment of adults (*S v Ncube 1988 (2) S. A. 702; [1988] L. R. C. (Const.) 442*), and of juveniles (*Juvenile V The State S. C. 64/89*)

Unethical involvement of medical practitioners in penal corporal punishment

In many states, the law requires medical practitioners to be involved in the administration of corporal punishment as a sentence for crime. For example, doctors may be required to examine victims before whipping, flogging or caning and assess their “fitness” to be punished, to witness the administration of the punishment and to examine victims after the punishment. In some cases doctors are required to perform amputation of limbs.

Medical practitioners' involvement in judicial corporal punishment violates international human rights law (see p. 4), as well as internationally agreed standards on medical ethics and the right to health. UN principles state that it is against medical ethics for health personnel to certify the fitness of detainees for any “treatment or punishment that may adversely affect their physical or mental health” or to be in any relationship with detainees “the purpose of which is not solely to evaluate, protect or improve their physical and mental health” (UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982).

Medical opposition to corporal punishment

In 1975, the World Medical Association adopted a declaration (the Declaration of Tokyo) prohibiting doctors from participating in, or being present during, torture or other cruel, inhuman or degrading treatment and from providing the knowledge to facilitate such acts. It has also called on national medical associations to advocate for legislation against corporal punishment of children (Resolution on Violence against Women and Girls, 2010). In 2013, nine major international health organisations issued a statement of support for prohibition of corporal punishment of children in all settings and calling on all governments to work for the prohibition and elimination of all corporal punishment and on all organisations working for health to include the issue in their work (for the full statement, see <http://bit.ly/1yqJFp0>).

“The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

“The physician shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment. ...

“The physician shall not be present during any procedure during which torture or any other forms of cruel, inhuman or degrading treatment is used or threatened.”

(WMA Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, 1975, articles 1, 2 and 4)

“As a society we must come to the place where we can learn that hitting someone, child or teenager, is not a useful form of instruction.... Legally sanction[ed] hitting of children must stop. Secondly no doctor should be party to or be required to support any physical punishment of children....”

(Dr Amar-Singh HSS, a paediatrician, on his involvement in the infliction of a sentence of corporal punishment on a child offender in Malaysia, *The Malay Mail*, 19 November 2014)

The Global Initiative is interested in supporting legal action to speed prohibition of corporal punishment in any state and may be able to provide support and technical assistance; email info@endcorporalpunishment.org.

Legality of corporal punishment of children in penal systems (January 2015)

Corporal punishment prohibited in the penal system and all other settings

In the following 44 states, corporal punishment of children is prohibited in all settings: Albania, Argentina, Austria, Bolivia, Brazil, Bulgaria, Cabo Verde, Congo (Republic of), Costa Rica, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Honduras, Hungary, Iceland, Israel, Kenya, Latvia, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, South Sudan, Spain, Sweden, TFYR Macedonia, Togo, Tunisia, Turkmenistan, Ukraine, Uruguay, Venezuela

Corporal punishment lawful in penal system

In 78 states, corporal punishment is lawful as a sentence for crime and/or as a disciplinary measure in institutions accommodating children in conflict with the law. Many Governments (coloured blue below) have made a commitment to prohibition in all settings by clearly accepting recommendations made during the Universal Periodic Review of their overall human rights records and/or in other contexts.

Not prohibited as a sentence for crime or as a disciplinary measure in penal institutions (27 states)

State	Corporal punishment lawful in penal institutions and as sentence for crime
Afghanistan	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Shari'a law
Antigua and Barbuda	<i>Penal institutions:</i> Lawful under Corporal Punishment Act 1949, Prison Act 1956, Training Schools Act 1891, Juvenile Act 1951 <i>Sentence:</i> Lawful under Corporal Punishment Act 1949, Offences Against the Person Act 1873, Criminal Law Amendment Act 1887, Railways Offences Act 1927, Magistrates Code of Procedure Act 1892, Juvenile Act 1951
Bangladesh	<i>Penal institutions:</i> Lawful under Children Rules 1976 <i>Sentence:</i> Lawful under Code of Criminal Procedure 1898, Whipping Act 1909, Cantonments Pure Food Act 1966, Suppression of Immoral Traffic Act 1933, Railways Act 1890; also used in traditional justice systems
Barbados	<i>Penal institutions:</i> Lawful under Reformatory and Industrial Schools Act 1926, Prisons Act 1964 <i>Sentence:</i> Lawful under Magistrate's Courts Act 2001, Juvenile Offenders Act 1932, Corporal Punishment Act 1899
Botswana	<i>Penal institutions:</i> Lawful under Prisons Act 1890, Prisons Regulations 1965, Children's Act 2009 <i>Sentence:</i> Lawful under Penal Code 1964, Magistrates' Courts Act 1974, Customary Courts Act 1961, Criminal Procedure and Evidence Act 1939, Criminal Procedure (Corporal Punishment) Regulations 1969, Corporal Punishment (Designation of Places for Administering) Order 1982, Customary Courts (Corporal Punishment) Rules 1972, Children's Act 2009

State	Corporal punishment lawful in penal institutions and as sentence for crime
Brunei Darussalam	<i>Penal institutions:</i> Lawful under Youthful Offenders (Places of Detention) Rules 2001, Children and Young Persons Act 2006, Intoxicating Substances Act 1992 <i>Sentence:</i> Lawful under Penal Code 1951, Criminal Procedure Code 1951, Children and Young Persons Act 2006, Women and Girls Protection Act 1973, Misuse of Drugs Act 1978, Arms and Explosives Act 1927 and Rules 1928, Public Order Act 1983, Kidnapping Act 1992, Unlawful Carnal Knowledge Act 1938, Common Gaming Houses Act 1920, Sharia Penal Code 2013
Dominica	<i>Penal institutions:</i> Lawful under Prisons Act 1877, Prison Rules 1956 <i>Sentence:</i> Lawful under Juvenile Offenders Punishment Act 1881, Corporal Punishment Act 1987, Magistrate's Code of Procedure Act 1961, Offences Against the Person Act 1873
Eritrea	<i>Penal institutions:</i> No prohibition in law (unconfirmed) <i>Sentence:</i> Lawful under Penal Code 1957, Transitional Criminal Procedure Code (unconfirmed)
Grenada	<i>Penal institutions:</i> Lawful under Criminal Code 1958, Prisons Act 1980, Prisons Rules 1980 <i>Sentence:</i> Lawful under Criminal Code 1958, Corporal Punishment (Caning) Ordinance 1960; Juvenile Justice Act 2012 would prohibit but not yet in force
Guyana	<i>Penal institutions:</i> Lawful for 17 year olds under Prison Act 1957 <i>Sentence:</i> Lawful for 17 year olds under Criminal Law (Offences) Act 1894, Summary Jurisdiction (Offences) Act 1894, Whipping and Flogging Act 1922
Kiribati	<i>Penal institutions:</i> Lawful under Penal Code 1977 <i>Sentence:</i> Lawful by order of Island Councils under Penal Code 1977
Libya	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Law No. 70 of 1973 on the Establishment of the <i>Had of Zina</i> and the Amendment of several articles of the Penal Code 1953, Law No. 13 of 1995 on Theft and <i>haraba</i> , Law No. 52 of 1974
Malaysia	<i>Penal institutions:</i> Lawful under Prison Act 1995 <i>Sentence:</i> Lawful under Child Act 2001, Criminal Procedure Code 1976, Penal Code 1936, Sharia Courts (Criminal Jurisdiction) Act 1965, Sharia Criminal Offences (Federal Territories) Act 1997, Sharia Criminal Procedure (Federal Territories) Act 1997, Kota Baru Hudud Syariah Criminal Code
Maldives	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Shari'a law, Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors 2006, Disobedience Law
Mauritania	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Criminal Code
Nigeria	<i>Penal institutions:</i> Prohibited in Child Rights Act 2003 but this not enacted in all states <i>Sentence:</i> Prohibited in Child Rights Act 2003 but this not enacted in all states; lawful under Criminal Code 1916, Criminal Procedure Code 1945, Shari'a Penal Code 2000, Shari'a Criminal Procedure Code Law 2001, Children and Young Persons Law, Shari'a Penal Codes in northern states, Penal Code 1960, Criminal Procedure Code 1960
Pakistan	<i>Penal institutions:</i> Prohibited in Juvenile Justice System Ordinance 2000 but this not applicable in all areas; lawful under Prisons Act 1894, Punjab Borstal Act 1926 <i>Sentence:</i> Prohibited in Juvenile Justice System Ordinance 2000 but this not applicable in all areas; lawful under Offence of <i>Qazf</i> (Enforcement of <i>Hadd</i>) Ordinance 1979, Offence of <i>Zina</i> (Enforcement of <i>Huhood</i>) Ordinance 1979, Prohibition (Enforcement of <i>Hadd</i>) Ordinance 1979, Offences Against Property (Enforcement of <i>Hudood</i>) Ordinance 1979, Penal Code 1860, Criminal Procedure Code 1898
Saudi Arabia	<i>Penal institutions:</i> Lawful under Detention and Imprisonment Regulations 1977, Imprisonment and Detention Law 1978, Ministerial Decree 1354 of 1395 (1975), Ministerial Decree 2083 of 1396 (1976) <i>Sentence:</i> Lawful under Shari'a law, Juvenile Justice Act 1975, Law of Criminal Procedure 2001

State	Corporal punishment lawful in penal institutions and as sentence for crime
Singapore	<i>Penal institutions:</i> Lawful under Children and Young Persons Act 1993, Children and Young Persons (Remand Home) Regulations 1993, Prisons Act 1939, Criminal Procedure Code (Corrective Training and Preventive Detention) Regulations 2010, Intoxicating Substances (Discipline in Approved Centres) Regulations 1987, Misuse of Drugs (Approved Institutions) (Discipline) Regulations 1979 <i>Sentence:</i> Lawful under Children and Young Persons Act 1993, Criminal Procedure Code 2010, Penal Code 1872, Misuse of Drugs Act 1973, Piracy Act 1993, Arms Offences Act 1973, Explosive Substances Act 1924, Corrosive and Explosive Substances and Offensive Weapons Act 1973, Vandalism Act 1966, Immigration Act 1989, Dangerous Fireworks Act 1988, Kidnapping Act 1961, Women's Charter 1961, Public Order (Preservation) Act 1958, Railways Act 1905, Road Traffic Act 1993
Somalia	<i>Penal institutions:</i> No prohibition in law (except in Somaliland) <i>Sentence:</i> Lawful under Shari'a law (except possibly in Somaliland)
St Kitts and Nevis	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Magistrate's Code of Procedure 1961, Offences Against the Person Act 1861, Corporal Punishment Act 1967
St Vincent and the Grenadines	<i>Penal institutions:</i> Lawful under Juveniles Act 1952, Juveniles (Approved Schools) Rules 1952 <i>Sentence:</i> Lawful under Corporal Punishment of Juveniles Act
State of Palestine	<i>Penal institutions:</i> No prohibition in law <i>Sentence:</i> Lawful under Juvenile Offenders Ordinance 1937 (Gaza)
Trinidad and Tobago	<i>Penal institutions:</i> Lawful under Young Offenders (Male) Detention Regulations, Children Act 1925; Children Act 2012 would prohibit but not yet in force. <i>Sentence:</i> Lawful under Children Act 1925; Children (Amendment) Act 2000 would prohibit but not in force; Children Act 2012 would prohibit but not yet in force
Tuvalu	<i>Penal institutions:</i> Prohibited in police custody but otherwise lawful under Penal Code 1965 <i>Sentence:</i> Lawful under Island Courts Act 1965
UR Tanzania	<i>Penal institutions:</i> No prohibition in law in mainland Tanzania; prohibited in Zanzibar <i>Sentence:</i> Lawful in mainland Tanzania under Corporal Punishment Ordinance 1930, Minimum Sentences Act 1963, Sexual Offences (Special Provisions) Act 1998, Penal Code 1981, Criminal Procedure Code 1985; prohibited in Zanzibar
Zimbabwe	<i>Penal institutions:</i> Lawful under Criminal Law (Codification and Reform) Act 2004, Children's Act 1972 <i>Sentence:</i> Lawful under Criminal Procedure and Evidence Act 1927, Prisons Act, Children's Act 1972

Not prohibited as a sentence for crime, prohibited in penal institutions (11 states)

State	Corporal punishment lawful as sentence for crime
Bahamas	Lawful under Criminal Law (Measures) Act 1991, Magistrates Act 1896, Penal Code 1873, Criminal Procedure Code 1968
Colombia	No provision for judicial corporal punishment in state law but lawful in indigenous communities under Constitution 1991
Ecuador	No provision for judicial corporal punishment in state law but lawful in indigenous communities under Constitution 2008
India	No provision for judicial corporal punishment in state law but lawful in traditional justice systems
Indonesia	No provision for judicial corporal punishment in Law on the Juvenile Justice System 2012 but lawful under Shari'a law in Aceh province and in regional regulations based on Shari'a law in other areas

Iran	Lawful under Islamic Penal Code 1991, Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging 2003, Penal Code 2013
Qatar	Lawful under Shari'a law
Tonga	Lawful under Criminal Offences Act 1926, Magistrates' Courts Act 1919
United Arab Emirates	Lawful under Shari'a law, Sharia Courts Act 1996
Vanuatu	No provision for judicial corporal punishment in state law except possibly Larceny Act 1916; permitted in rural areas under customary justice systems
Yemen	Lawful under Criminal Code 1994, Code of Criminal Procedure 1994

Not prohibited in penal institutions, prohibited as sentence for crime (40 states)

Law authorises/justifies corporal punishment in penal institutions

Belize	Prison Rules 2000, Certified Institutions (Children's Reformation) Rules 1990, Juvenile Offenders Act 1936
Myanmar	Prisons Act, Child Law 1993, Penal Code
Palau	Penal Code 2013
Seychelles	Children Act 1982
St Lucia	Statutory Rules and Orders No. 23 1976 (Boys Training Centre), Prison Rules and Orders 1964
Swaziland	Prisons Act 1964, Constitution 2005, ?Reformatories Act 1921
Tajikistan	Code on Execution of Criminal Sanctions 2004

No clear prohibition of corporal punishment in all penal institutions and no indication that law is interpreted as prohibiting

Algeria, Angola, Australia, Benin, Burundi, Central African Republic, Comoros, Djibouti, DR Congo, Equatorial Guinea, Gambia, Ghana, Guinea, Iraq, Japan, Madagascar, Marshall Islands, Mauritius, Micronesia, Mongolia, Nauru, Nepal, Niger, Oman, Papua New Guinea, Peru, Sao Tome and Principe, Sri Lanka, Sudan, Syrian Arab Republic, USA

Corporal punishment fully prohibited in penal system but lawful in other setting(s)

In 76 states corporal punishment is unlawful as a disciplinary measure in penal institutions and as a sentence for crime, but it is not prohibited in all other settings. In a small minority, some penal legislation is still to be formally repealed. States in blue are committed to prohibiting corporal punishment in all settings. For states in square brackets, full legal information is still to be confirmed but current information indicates corporal punishment is unlawful in the penal system.

Law prohibits corporal punishment in penal system

Andorra, Armenia, Azerbaijan, Belarus, Belgium, [Bhutan], Bosnia and Herzegovina, [Burkina Faso], Cambodia, [Cameroon], Canada, [Chad], Chile, China, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, [DPR Korea], [Egypt], El Salvador, Ethiopia, Fiji, France, Gabon, Georgia, Guatemala, [Guinea-Bissau], Haiti, Ireland, Italy, Jamaica, [Jordan], Kazakhstan, [Kuwait], [Kyrgyzstan], Lao PDR, [Lebanon], Lesotho, Liberia, Lithuania, Malawi, Mali, Mexico, Monaco, [Montenegro], Morocco, Mozambique, [Niue], Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Rwanda, Samoa, [Senegal], Serbia, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Suriname, Switzerland, Taiwan, Timor-Leste, Turkey, Uganda, UK, Uzbekistan, Viet Nam, [Western Sahara]

Law prohibits in penal system but some legislation still to be repealed

Namibia, Thailand, Zambia

AFGHANISTAN
ANTIGUA AND BARBUDA
BAHAMAS
BANGLADESH
BARBADOS
BOTSWANA
BRUNEI DARUSSALAM
COLOMBIA
DOMINICA
ECUADOR
ERITREA
GRENADA
GUYANA
INDIA
INDONESIA
IRAN
KIRIBATI
LIBYA
MALAYSIA
MALDIVES
MAURITANIA
NIGERIA
PAKISTAN
QATAR
SAUDI ARABIA
SINGAPORE
SOMALIA
ST KITTS AND NEVIS
ST VINCENT AND THE
GRENADINES
STATE OF PALESTINE
TONGA
TRINIDAD AND TOBAGO
TUVALU
UNITED ARAB EMIRATES
UR TANZANIA
VANUATU
YEMEN
ZIMBABWE

Antigua and Barbuda Corporal Punishment Act 1949, Bangladesh Whipping Act 1909, Barbados Corporal Punishment Act 1899, Botswana Children's Act 2009, Brunei Darussalam Sharia Penal Code 2013, Dominica Corporal Punishment Act 1987, Guyana Whipping and Flogging Act 1922, Nigeria Shari'a Penal Code 2000, Saudi Arabia Juvenile Justice Act 1975, Singapore Criminal Procedure Code 2010, Tuvalu Island Courts Act 1965, Tanzania Corporal Punishment Ordinance 1930 ...

These are some of the many laws in the 38 states listed here which still authorise judicial corporal punishment of children. This report by the Global Initiative to End All Corporal Punishment of Children identifies many more, exposing the shocking level of state sanctioned flogging, whipping and caning of children under secular, religious and/or customary systems of justice. It also identifies the immediate opportunities for abolition of this inhuman and degrading treatment in a majority of the states concerned. Urgent action is needed to achieve this long overdue reform of societies' treatment of children in conflict with the law.



Global Initiative to
End All Corporal Punishment
of Children

The Global Initiative to End All Corporal Punishment of Children promotes universal prohibition and elimination of corporal punishment and freely offers technical support and advice on all aspects of law reform.

www.endcorporalpunishment.org

Save the Children opposes all corporal punishment and other humiliating punishment of children and works for its universal prohibition and elimination.

resourcecentre.savethechildren.se



Save the Children