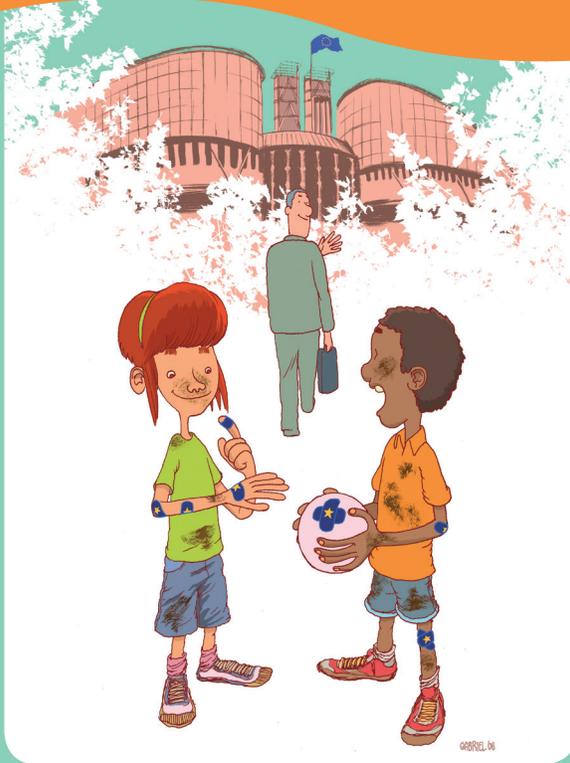




Off the books!

Guidance for Europe's parliaments on law reform to eliminate corporal punishment of children

BUILDING A EUROPE FOR AND WITH CHILDREN



Off the books!

Guidance for Europe's parliaments on law reform to eliminate corporal punishment of children

Building a Europe for and with children

www.coe.int/children

This text is an abridged and adapted version of *Prohibiting corporal punishment of children – A guide to legal reform*, produced by the Global Initiative to End All Corporal Punishment of Children.

The original text can be found at
www.endcorporalpunishment.org.

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French edition

Pour en finir avec les châtiments corporels

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Children are not mini-human beings with mini-human rights.

Just as the Council of Europe systematically campaigned to rid Europe of the death penalty, it is now pursuing its vision of a continent free of corporal punishment. Hitting people is wrong – and children are people too.

Children have the same rights as adults to respect for their human dignity and physical integrity and to equal protection under the law. The Council of Europe's 47 member states have immediate human rights obligations, under international and regional human rights instruments, to reform their laws and take education and other measures to prohibit and eliminate all forms of corporal punishment of children, including in the family home.

Parliaments across Europe have a crucial role to play in ridding states of corporal punishment. It is parliaments which must adopt the necessary law reforms; parliaments also monitor government activity and decide on allocation of financial resources. And parliamentarians, as national and community leaders, can raise awareness and promote changes in long-held traditional acceptance of violent discipline of children.

The Council of Europe's Parliamentary Assembly brings together representatives of the parliaments of the 47 member states. Noting the success of the Council of Europe in abolishing the death penalty, the Assembly called upon the Organisation to work in the

same way to abolish corporal punishment. In 2004, the Assembly adopted a recommendation calling for Europe to become a “corporal punishment-free zone” for children:

The Assembly considers that any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. Striking a human being is prohibited in European society and children are human beings. The social and legal acceptance of corporal punishment of children must be ended. (*Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment*)

The aim of this handbook is to brief parliamentarians and those who work with and for them on the legal and other measures needed to achieve the prohibition and elimination of all corporal punishment of children.



Human rights do not stop at the front door of your home.

First part

Legislative measures to prohibit corporal punishment



*Hitting adults is called assault.
Hitting animals is called cruelty.
Hitting children is "for their own good".*

The importance of national legislation

Effective prohibition of corporal punishment of children means that it is explicitly prohibited in laws affecting children's protection and that it applies to children everywhere – in the home, in schools, in penal systems and alternative care systems – and where ever else children are found.

Some people and governments believe in simply advising parents not to use corporal punishment. This is no more absurd that "advising" men against beating women or carers against beating older people. Full protection for children must be written into the law. If not, the idea will persist that breaching a child's human dignity and physical integrity is acceptable, normal or even – as some still suggest – "in their best interests", thus perpetuating children's status as objects or as property of their parents.

National legislation must be changed for full prohibition of corporal punishment to be achieved. The fact that some high level national courts have recognised that all corporal punishment by parents and others is unconstitutional or incompatible with states' obligations under international or regional conventions *does not* guarantee prohibition. Until prohibition is achieved in national legislation, these judgments may be challenged and reversed by later judgments.

Criminal assault law – the need for a clear message

All countries have laws making assault a criminal offence. Logically, as children are people, these should apply to both adults and children. But this is not the case. Assault laws do not always protect children from violence because states in which it would be unthinkable to compromise protection for other vulnerable groups such as women or older people, do not fully apply assault laws to children.

In some states, exceptions to assault are written into the law, allowing parents and those acting in their capacity, to use “reasonable chastisement”, “lawful correction” and other such examples of assault that pass for discipline, thus denying children equal protection under the law. (See Box 1)

In other states, particularly those on a common law system, the right to use “reasonable” corporal punishment is not written into the law but has been established through case law. Courts have ruled that defendants charged with assault of children are not guilty because some types of punishment can be considered “reasonable” in childrearing. It is left to the courts to decide what is reasonable and what is not, thus sending out a confusing message about hitting and assaulting children, and confirming that some levels of violence in the name of discipline are acceptable.

In yet other states, the law is completely silent: exceptions to assault are neither written into law nor established through case law. But the right of parents and those with parental authority to use corporal punishment is an “assumed” right, firmly anchored in a traditional tolerance of it.

Box 1 – Legal defences for using corporal punishment

The following examples of legal defences are taken from legislation in all regions. Legal reform to prohibit corporal punishment must include the removal of these or similar provisions from law.

- Nothing in this Act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.
- Parents are authorised to reprimand and adequately and moderately correct their children.
- The law permits the types of discipline inflicted on children by their parents and teachers as sanctioned by general custom.
- Parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions.

Off the books – getting rid of corporal punishment’s legal defences

States first need to review all of their legislation, primary and secondary, any applicable customary or religious law, and case law (court judgements) and identify those which may affect children’s protection from corporal punishment and other cruel or degrading punishment.

Prohibition requires the removal of any legal defences or justifications in common (case) law and legislation. Laws authorising or regulating corporal punishment in education law or legislation applying to care or penal systems, must also be removed.

When the repeal of a defence is accompanied by the insertion of a statement which makes it clear that assault can no longer be justified as punishment or correction, explicit prohibition in legislation is achieved.

How to go about it

1. In states where corporal punishment administered by a parent or lawful authority is explicitly allowed by statements such as this:

Every parent of a child and every person in the place of the parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances ...

the defence can be repealed, and prohibition achieved, by legislation which states:

The purpose of this Act is to amend the principal Act to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction.

Section x is repealed.

In states where the right of parents to administer “reasonable chastisement” or a similar provision is recognised in more than one law, it is important that all relevant laws are amended and all references to this right repealed.

2. In states using a common law system, where there is no written law recognising the right of parents to use corporal punishment, but the courts have allowed adults charged with cruelty or assault to claim the “right” to administer “reasonable” punishment, and where case law has developed into justification for some level of violence against children, this common law defence can be removed in legislation by including the following statement:

Assault of a child cannot be justified in any proceedings on the grounds that it constituted reasonable punishment.

3. In states where the law is silent and there is no common law or legislative recognition of a “right to administer reasonable punishment”, but there is a traditional acceptance of corporal punishment, prohibition can be achieved only through the insertion of an explicit statement. It must be stated that prohibition in law applies to the family, schools, penal systems for children and to the laws and regulations governing all alternative care settings, including institutions, foster care and day care. (See Box 2 below)

Box 2 –

*Extracts of legislation and draft legislation
on explicit prohibition*

- Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.
- Disciplinary measures concerning the child can only be taken in accordance with the child's dignity, and, under no circumstances are physical punishments allowed, or punishments which relate to the child's physical and mental development or which may affect the child's emotional status.
- It is forbidden to enforce physical punishment of any kind or to deprive the child of his or her rights, which may result in endangerment of the life, the physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child, both within the family, as well as in any institution which ensures the protection, care and education of children.
- Nothing in this ordinance shall be construed as conferring the right on any parent, teacher or other person having lawful control or charge of a child to strike him or her or otherwise use force upon him or her for the purpose of discipline or punishment.

The only way to ensure clear, uncompromising prohibition of all corporal punishment is to use clear, uncompromising language in legislation – and to repeat it, for the benefit of all those living or working with or for children, in the legislation applying to the various settings of children's lives, in family law, education law and so on. Once corporal punishment is prohibited in legislation in all settings and in family law, education law, employment law and so on, there is no real need to provide for sanctions for breach of the prohibition. This is because – as noted above – once all defences and authorisations of assaults on children have been removed, the criminal law on assault will apply equally to punitive assaults on children in the course of "discipline". So if prosecution is necessary, it can be pursued under the criminal law on assault.

Many states also have a comprehensive child protection or children's rights law, which should include a provision recognising children's right to protection from all forms of violence, including all corporal punishment in all settings including within the family.



Increasingly, states have specific laws on “domestic” or “family” violence. These too should include a provision reflecting the prohibition of all corporal punishment.

As noted above, even where all defences and authorisations of corporal punishment have been removed, it may be advantageous to include explicit prohibition in the appropriate legislation.

It is also important to recognise that the prohibition should cover corporal punishment and all other cruel or degrading punishment. As the Committee on the Rights of the Child states:

... corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention [on the Rights of the Child]. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

Using force to protect children

Parents and carers often need to use some degree of physical force to protect children from harm, or to restrain children. Adults are expected to know the difference between punitive assault and protective action. Some states have found that parents are reassured if prohibition of all corporal punishment allows reasonable force to be used for protection. The following are two examples of how this may be provided for in legislation.

Assault on a child is not unlawful if the act amounts to the use of reasonable force in order to –

- a. avert an immediate danger to the child or any other person;
- b. avert an immediate danger to property; or
- c. prevent the commission of a crime, or an act which would be a crime if the child had reached the age of criminal responsibility.

Getting rid of language loopholes

Language loopholes can compromise prohibition. The language of the reform process must be explicit, unambiguous and leave no room for confusion. Prohibition of corporal punishment means all forms, from the mildest to the blatantly violent, and all occurrences, from the occasional to the repeated. If a provision does not explicitly refer to “corporal punishment and other humiliating and degrading treatment” – instead of prohibiting “all forms of violence” – it leaves room for doubt as to whether a “light smack” would be considered lawful.

This is true even if the intention of parliaments is to prohibit *all* forms of corporal punishment. Ultimately, it is the task of the courts to establish the meaning of written laws: the stated intentions of parliament in enacting those laws play a crucial role in such interpretation, but they are not the only factors that will be taken into account.

In recent years, some high level courts have excluded less severe forms of corporal punishment from “all forms of violence” in their interpretation of the law. This indicates how deeply ingrained traditional acceptance of punitive violence against children is in our societies.

Second part

Making law reform work – other key measures



Hello! Can you tell me what reasonable chastisement is?

After full prohibition is achieved in legislation, the law must be enforced. Three things must not be lost sight of.

- ▶ Every response to the law must be in the best interests of children and their family life.
- ▶ The first purpose of good law is not to punish crime but to prevent crime through education.
- ▶ Nothing should be allowed to undermine the basic message of the law – that it is as unlawful to hit a child as to hit anyone else, and that the law on assault will be upheld when it is necessary to protect children.

Governments must be able to provide a range of appropriate responses and policy measures to support the law, taking into account families, child service providers and protection agencies, including teachers, social workers, health workers, the police, prosecuting authorities and courts, and the general public.

Both laypeople and professionals must be aware that corporal punishment is now unlawful and they must understand the law's reasoning if attitudes are to evolve on a positive and constructive basis. Law reform cannot be successful if it is not understood and if attitudes are not changed. This calls for not only professional and family guidance, it also calls for sustainable awareness raising at all levels – family, professional and general public – about the ill effects of corporal punishment, non-violent parenting and children's human rights in general. The state must also be able to propose viable alternatives to disciplining children without violence, through professional training and above all educative support programmes for parents.

Making reform work in the family

- ▶ Prohibiting corporal punishment is not about putting parents in jail. Prosecuting parents for every case of corporal punishment would disrupt family life and relationships, and would compromise children's best interests. The law does not concern itself with trivial offences, and minor assaults against both adults and children seldom go to court.



Criminalising corporal punishment of children is not about putting parents in jail.

- ▶ Child protection agencies need to be trained on how to inform parents, in case of intervention, about the dangers, negative effects and unlawfulness of corporal punishment. Their intervention should focus on providing constructive support for the family – both parents and children – through informing families about positive, non-violent parenting.
- ▶ Prosecution is the last resort and should be employed when support interventions have failed and children need protection from significant harm. When this is the case, it must be clear that the law on assault will be enforced. Child prosecution agencies need guidance setting out conditions and procedures for prosecution and other formal interventions if they become necessary.
- ▶ State services to combat domestic violence must broaden to include corporal and other humiliating forms of punishment of children. This is often omitted from the definition of domestic/family violence, because of the legality or tolerance of corporal punishment of children. All national and local strategies to counter domestic violence should now include children's protection from corporal punishment.

Making reform work outside the home

- ▶ All children's service providers working with children outside the home – schools, detention institutions, care settings, religious organisations, all private and public bodies dealing with children and so forth – should be obliged to commit themselves to not using corporal punishment or other cruel or degrading forms of punishment as a condition for employment. This should be integrated into their code of conduct. Guidance should be provided on using force to protect children (see p.16).

- ▶ Formal warning, suspension and ultimately dismissal should be used as deterrents.
- ▶ If the criminal assault law gives equal protection to children, it can be used to prosecute children's service providers who inflict corporal punishment on children.
- ▶ All children's service providers, including child protection agencies that intervene within the home should set up codes of conduct for staff that reinforce the prohibition of all corporal punishment for children.

Awareness raising on the law and children's right to protection

- ▶ The public, child professionals and children themselves must know when the prohibition of corporal punishment is achieved.
- ▶ Information on the reform should be provided wherever children are found – health centres, pre-school centres, schools, libraries, youth facilities and so forth.
- ▶ Awareness raising should not be one off but sustained in time.
- ▶ All members of society should be aware of the law, how the law will be enforced and children's rights in general.

Promotion of positive parenting and non-violent discipline of children

Governments and their partners need to actively promote:

- ▶ positive, non-violent and participatory approaches to discipline;
- ▶ education about the negative effects of corporal punishment, formally and informally in all contact between families and child

professionals, including pre-and post-natal healthcare settings, pre-school centres, schools and libraries, and through community/social service provision;

- ▶ the inclusion of positive discipline techniques into teacher training, and training for staff in institutions, both initial and in-service;
- ▶ the participation of children in the above when appropriate, and their views taken into account.



Positive parenting also means balancing family and professional life.

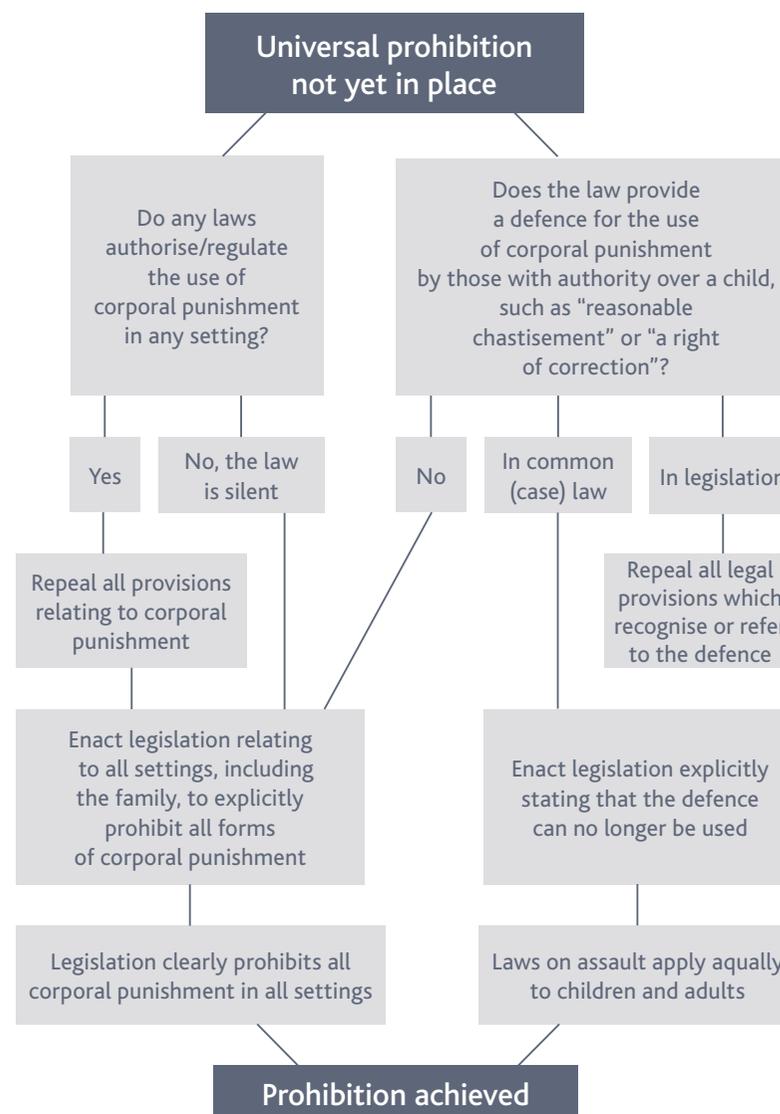
Monitoring

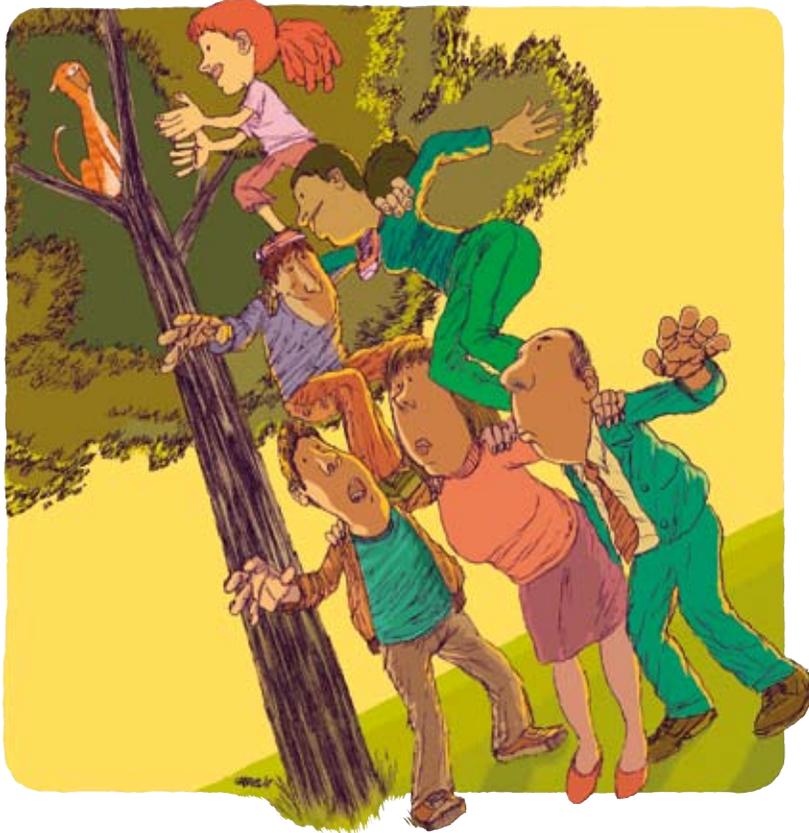
- ▶ Independent monitoring of all education, care, justice and employment settings should be set up. Inspectors should routinely talk to children in private and invite them to share any concerns.
- ▶ Child-sensitive and accessible complaints procedures should also be set up, including measures to protect those who report violence from reprisals.
- ▶ Children’s experiences within their family homes should be gathered. Other sources of information could include an analysis of the use of support services and statistics relating to reporting of violence against children.

Box 3 –

Key measures to support law reform

- awareness raising on the law and children’s right to protection
- promotion of positive, non-violent relationships between adults and children
- integration of prohibition into professional codes of conduct and conditions of work
- including strategies to eliminate corporal punishment within domestic violence strategies
- monitoring and evaluation of children’s experiences of corporal punishment and the effectiveness of the prohibition





Children's rights make Europe grow.

From the Council of Europe

Abolishing corporal punishment of children – Questions and answers, Council of Europe Publishing, Strasbourg, 2007

"Building a Europe for and with children" website <<http://www.coe.int/children>> for information on the Europe-wide initiative against corporal punishment of children

Committee of Ministers Recommendation Rec(2006)19 on policy to support positive parenting

Eliminating corporal punishment – a human rights imperative for Europe's children, Council of Europe Publishing, Strasbourg, 2007

Parenting in contemporary Europe – A positive approach, Council of Europe Publishing, Strasbourg, 2007

Parliamentary Assembly Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment

From the United Nations

Committee on the Rights of the Child, General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment

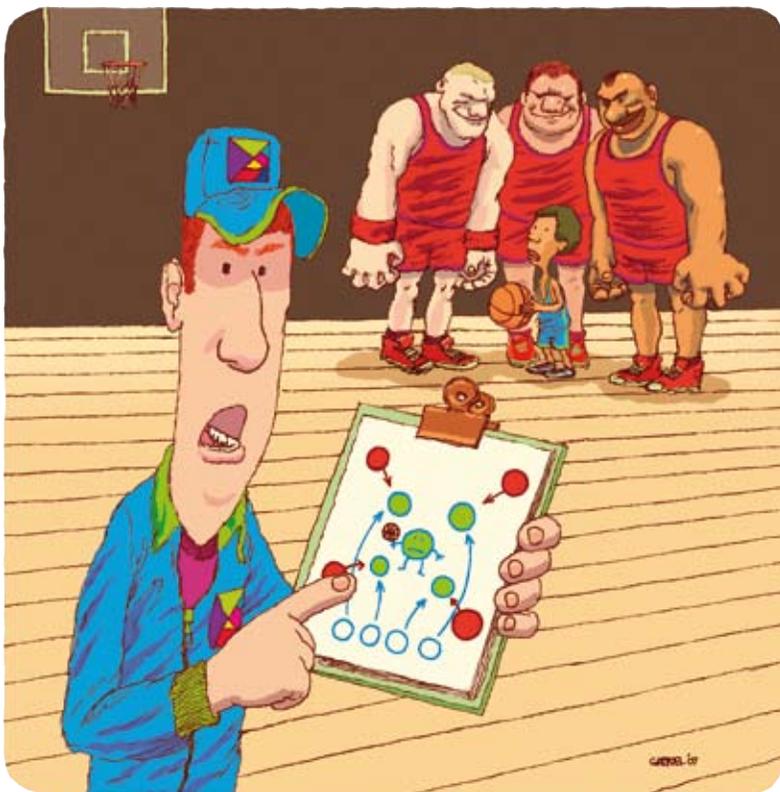
Eliminating violence against children – Handbook for parliamentarians, No. 13, Inter-Parliamentary Union and Unicef, 2007. Found at <<http://www.ipu.org/english/pblctns.htm>>

Pinheiro, Paulo Sérgio, *World report on violence against children*, United Nations Secretary-General's Study on Violence against Children, Geneva, 2006

United Nations Convention on the Rights of the Child

Other

Global Initiative to End All Corporal Punishment of Children:
<<http://www.endcorporalpunishment.org>>. Detailed information on all aspects of prohibiting corporal punishment is available on this website.



Protecting children calls for a strategic approach.



Publications

Building a Europe for and with children

*Eliminating corporal punishment –
A human rights imperative for Europe's children* (2007)
ISBN 978-92-871-6182-6 (new edition)

*Abolishing corporal punishment of children –
Questions and answers* (2007)
ISBN 978-92-871-6310-3

Parenting in contemporary Europe – A positive approach (2007)
ISBN 978-92-871-6135-2

Highlights (Monaco Conference) 2007

The Internet literacy handbook (2006)
ISBN 978-92-871-5939-7 / Also available in Russian

*Violence reduction in schools –
How to make a difference* (2006)
ISBN 978-92-871-5870-3 / Also available in Russian

Forthcoming in 2008 are publications on "children's access to international justice", and a Council of Europe training manual on violence reduction in schools.

The Council of Europe programme "Building a Europe for and with children" was launched to promote and secure respect for children's rights in Europe, and protect children from all forms of violence. Learn more at <<http://www.coe.int/children>>.

*ISBN titles may be ordered from Council of Europe Publishing,
<http://coe.int>.
For all others, contact: children@coe.int*

Off the books!

Guidance for Europe's parliaments on law reform to eliminate corporal punishment of children

In every nation in Europe it is illegal to hit people. Children are people too, yet in two thirds of Council of Europe member states, the criminal assault laws that protect adults from violence fall far short of protecting children. Everyday children are hit in the name of "educative" discipline and "reasonable chastisement".

Off the books! aims to brief parliamentarians and other lawmakers on the legal and support measures needed to achieve effective prohibition of all corporal punishment of children.

The first part provides guidance on analysing and improving national legislation. This may involve removing legal defences that allow corporal punishment to slip through the net. Or it may entail adding explicit provisions in child protection acts, civil and family codes, and so forth, clearly stating that neither parents nor other adults are allowed to use corporal punishment and other forms of humiliating treatment on children. The second part focuses on understanding and implementation. Once full prohibition is achieved in law, governments must raise awareness at all levels on children's human rights and implement policy measures to support prohibition, applying to both families and child professionals.



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