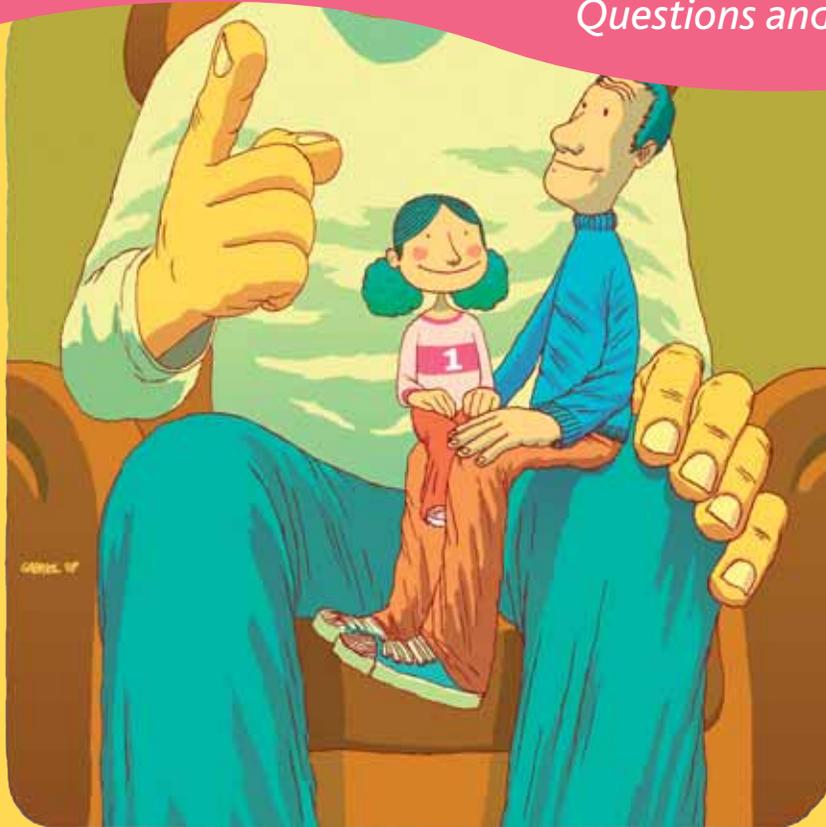




Abolishing corporal punishment of children

Questions and answers



BUILDING A EUROPE FOR AND WITH CHILDREN



Council of Europe Publishing
Editions du Conseil de l'Europe

Abolishing corporal punishment of children

Questions and answers

Building a Europe for and with children

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French edition

L'abolition des châtiments corporels à l'encontre des enfants

Questions et réponses

ISBN 978-92-871-6309-7

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This booklet was printed with the generous support of the Government of Finland.

Cover and layout: Document and Publications Production Department, Council of Europe

Illustrations by Gabriel Pagonis/© Council of Europe

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F-67075 Strasbourg Cedex

<http://book.coe.int>

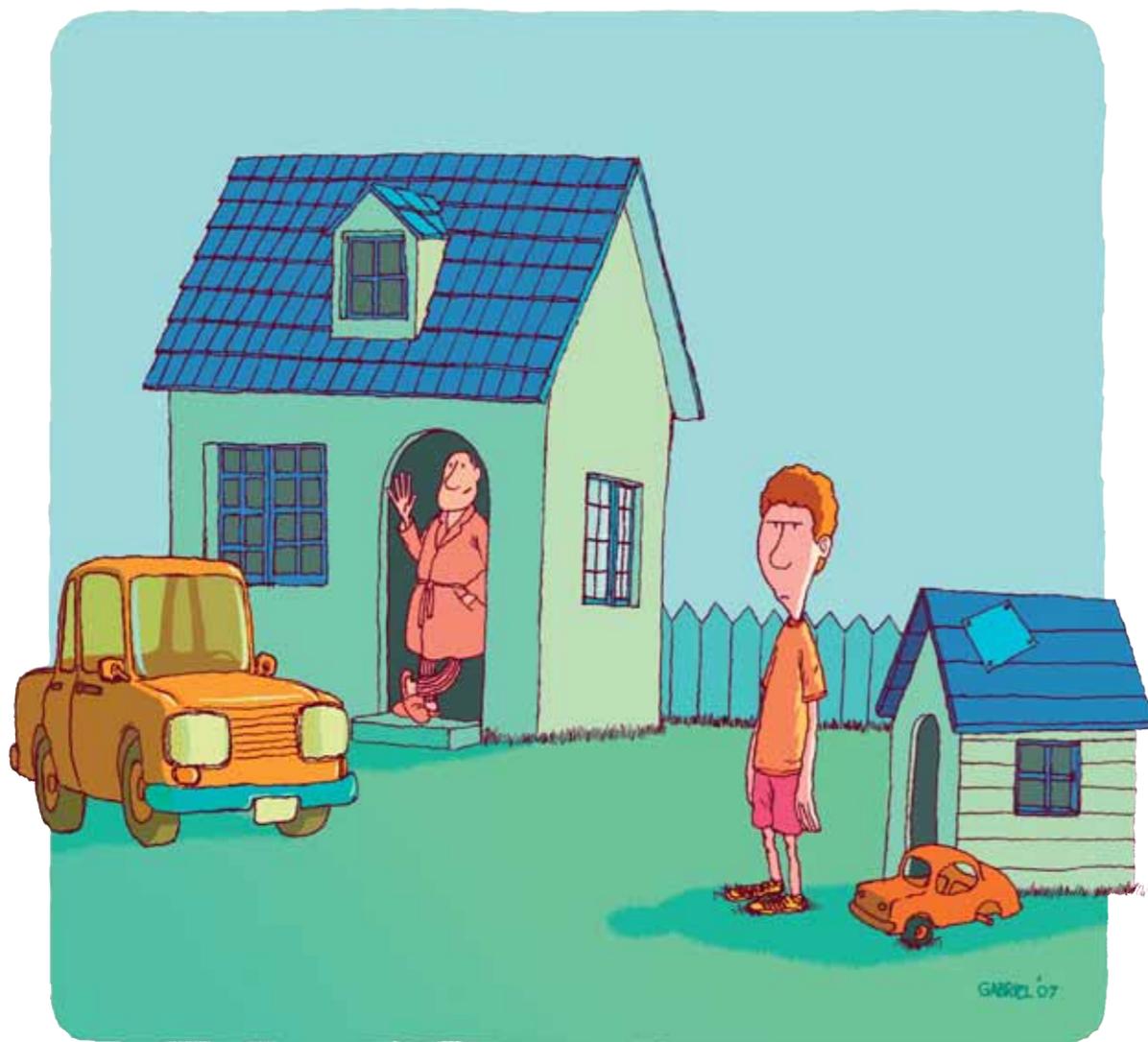
ISBN 978-92-871-6310-3

© Council of Europe, December 2007

Printed in France

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Introduction

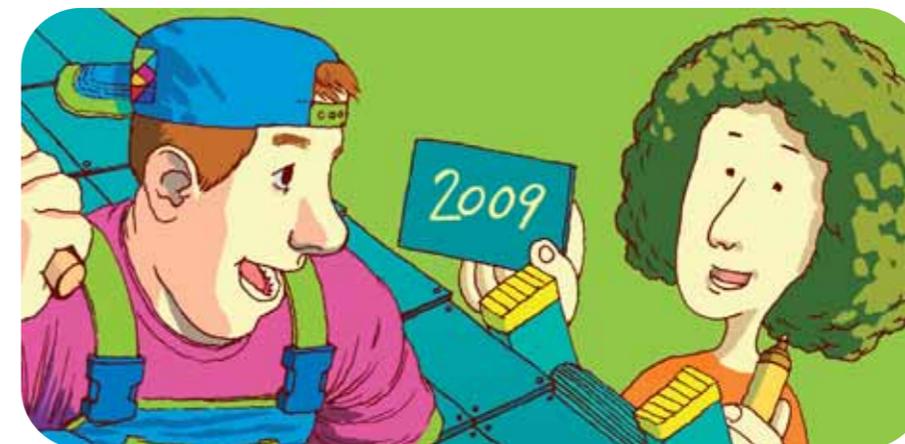


Children are not mini-human beings with mini-human rights.

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 47 member states of the Council of Europe have immediate human rights obligations, under international and regional human rights instruments, to reform their laws and take educational and other measures to prohibit and eliminate all corporal punishment of children, including within the family home.

In 2006, this became not just a regional but a global goal. The *United Nations Secretary-General's study on violence against children*, in a report submitted to the UN General Assembly, has set 2009 as the target date for achieving universal abolition. Europe is well on the way: by October 2007, more than a third of member states had achieved prohibition, and at least eight others had committed themselves to full reform.



1. What is corporal punishment of children?



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

One way of defining corporal punishment is as any action taken to punish a child which, if directed at an adult, would constitute an unlawful assault. Adults have a great knack for inventing special words to make themselves feel more comfortable about hitting children – smacking, spanking, *donner des fessées*, *picchiare*, *dar un azote*. But the stark reality for the child is that all of this is violence.

The Committee on the Rights of the Child (CRC), the monitoring body of the United Nations Convention on the Rights of the Child (UNCRC) has emphasised that human rights require the elimination of all corporal punishment, however light, and all other cruel or degrading punishment. In a general comment (an authoritative interpretation of states' obligations under the CRC) issued in 2006, the committee defines corporal or physical punishment as:

any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.¹

2. Why should we abolish corporal punishment of children?



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

There are many good reasons why corporal punishment of children should be abolished. It:

- ▶ is a violation of children's rights to respect for physical integrity, human dignity and equal protection under the law. In many cases, corporal punishment can jeopardise children's rights to education, development, health and even their right to life;
- ▶ can cause serious physical and psychological harm to children;
- ▶ teaches children that violence is an acceptable and appropriate strategy for resolving conflict or getting people to do what they want;
- ▶ is ineffective as a means of discipline. There are positive ways to teach, correct or discipline children which are better for children's development and which contribute to building relationships based on trust and mutual respect;
- ▶ is difficult to protect children if corporal punishment is legitimate – this implies that some forms or levels of violence against children are acceptable.

The Council of Europe is based on the principles of respect for the rule of law and enjoyment by all peoples of human rights and fundamental freedoms. When member states ratify the European Convention on Human Rights and the European Social Charter or revised European Social Charter, they take on binding obligations to respect the human rights of all people within their jurisdictions – including all children. Over the last two decades, the Council of Europe's institutions have spoken with increasing force against corporal punishment of children.

The Committee of Ministers of the Council of Europe has condemned corporal punishment and proposed prohibition through a series of recommendations

dating back to 1985: recommendations on violence in the family (1985), on social measures concerning violence within the family (1990), on the medico-social aspects of child abuse (1993) and on policy to support positive parenting (2006).

In 2004, the Parliamentary Assembly called on the Committee of Ministers to launch urgently a co-ordinated and concerted campaign in all of the member states for the total abolition of corporal punishment of children. The Assembly, noting the success of the Council of Europe in abolishing the death penalty, now calls on it to make Europe, as soon as possible, a corporal punishment-free zone for children.

At their 3rd Summit in 2005, the Council of Europe heads of state and government renewed their commitment to children's rights. The programme "Building a Europe for and with children" is a response to the mandate assigned to the Organisation to guarantee an integrated approach to promoting children's rights and to the 3rd Summit decision to launch a programme covering the social, legal, educational and health dimensions of the various forms of violence against children.

In 2006, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published an issue paper on corporal punishment: "The right not to be hit, also a children's right".² In his 2007 address to the Parliamentary Assembly, he stated that "the first necessary step is to legally ban any kind of violence against children, whether it takes place in schools, in institutions or at home".

European human rights standards and corporal punishment

The dignity of each and every individual is the fundamental guiding principle of international human rights law. "All human beings are born free and equal in dignity and rights ..." begins Article 1 of the UN Universal Declaration of Human Rights. Building on this foundation, there is now a clear consensus that international and regional human rights instruments demand abolition and elimination of all corporal punishment of children.



Judgments of the European Court of Human Rights (the Court) have progressively condemned corporal punishment, first in penal systems and schools and more recently in the home. Other decisions have also made clear that banning all corporal punishment does not breach family privacy or religious rights. The Court increasingly applies the standards of the UN Convention on the Rights of the Child in judgments related to children.

Abolition does not infringe family rights or freedom of religion

In 1982, the European Commission of Human Rights declared an application by Swedish parents inadmissible. The parents alleged that the 1979 Swedish ban on parental physical punishment breached their right to respect for family life and to freedom of religion. Members of a Protestant free church congregation in Stockholm, they believed in the necessity of physical punishment, justifying their beliefs with references to biblical texts. The Commission concluded that the Swedish law on assault was not unusual or in any way draconian:

The fact that no distinction is made between the treatment of children by their parents and the same treatment applied to an adult stranger cannot, in the Commission's opinion, constitute "an interference" with respect for the applicant's private and family lives since the consequences of an assault are equated in both cases ... The Commission finds that the scope of the Swedish law of assault and molestation is a normal measure for the control of violence and that its extension to apply to the ordinary physical chastisement of children by their parents is intended to protect potentially weak and vulnerable members of society.³

In a similar decision in September 2000, the Court rejected unanimously and without a hearing an application by individuals associated with a group of Christian private schools in the United Kingdom, which had alleged that the implementation of a ban on corporal punishment in private schools breached parents' rights to freedom of religion and family life.

Reasonable chastisement by parents challenged

The European Court of Human Rights has challenged the concept of "reasonable" chastisement by parents. In September 1998, the Court unanimously found that corporal punishment of a young English boy by his stepfather was



Hello! Can you tell me what reasonable chastisement is?

degrading punishment in breach of Article 3 of the European Convention on Human Rights (*A v. United Kingdom*, 1998).⁴ Prosecution of the stepfather in a UK court had failed on the grounds that the punishment was "reasonable chastisement". The European Court found that the United Kingdom Government was responsible because the domestic law allowing "reasonable chastisement" failed to provide children with adequate protection, including "effective deterrence". The Court ordered the UK to pay £10 000 compensation to the boy, who had been repeatedly hit with a garden cane. The *A v. United Kingdom* judgment cites articles of the UN Convention on the Rights of the Child, including Article 19 which requires states to protect children from "all forms of physical or mental violence" while in the care of parents and others.

Case law of the European Committee of Social Rights, monitoring compliance with the European Social Charter and revised European Social Charter, requires all member states to prohibit all corporal punishment and other humiliating treatment or punishment of children and to promote other energetic administrative and educational measures to recognise and realise children's rights to protection.

In 2001, in a general observation, the committee stated that Article 17 of the Charters:

requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law. [The committee comments that it] does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.⁵

In 2005, the committee issued its decisions on collective complaints made against member states by the World Organisation against Torture. The committee found three states in breach of their obligations under the two Charters because they had not effectively prohibited corporal punishment in the family. In 2006 a fourth state was found to be in breach following a second complaint. During examination of reports under the Charters, it has found other states not in compliance for the same reason.

Universal human rights standards and corporal punishment

A total of 193 countries, including all Council of Europe member states, have ratified – committed themselves to respect – the United Nations Convention on the Rights of the Child. This convention includes the obligation to protect children from all forms of physical or mental violence while in the care of parents and others (Article 19). Its monitoring body, the Committee on the Rights of the Child, consistently interprets the convention as requiring the elimination of all corporal punishment.

Following examination of reports from states parties to the convention, the CRC has systematically recommended explicit prohibition in law, linked to awareness raising and public education.

In June 2006, the committee adopted a general comment on children's right to protection from corporal punishment and other cruel or degrading forms of punishment. The committee emphasises:

Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of states parties under the convention. It is also a key strategy for reducing and preventing all forms of violence in societies ...

Once visible, it is clear that the practice [of corporal punishment] directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.⁶

Other international human rights treaty bodies of the UN, including the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee against Torture have also condemned corporal punishment of children.



Hitting your children is a lesson in bad behaviour.

The UN Secretary-General's study on violence against children

The *UN Secretary-General's study on violence against children* (UN Study) seeks universal abolition by 2009. "No violence against children is justifiable; all violence against children is preventable": this is the key message of the report on the study, submitted to the UN General Assembly in October 2006.⁷

The independent expert Paulo Sérgio Pinheiro, appointed by Kofi Annan in 2003 to lead the UN Study, notes in the introduction that violence against children exists in every country of the world, cutting across culture, class, education, income and ethnic origin:

In every region, in contradiction to human rights obligations and children's developmental needs, violence against children is socially approved, and is frequently legal and state-authorized.

The study should mark a turning point – an end to adult justification of violence against children, whether accepted as "tradition" or disguised as "discipline". There can be no compromise in challenging violence against children. Children's uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.⁸

The report recommends prohibition of all forms of violence against children, in the family and all other settings, including all corporal punishment and all other cruel, inhuman or degrading forms of punishment. The UN Study considers violence against children in the various settings in which it occurs, starting with the home and family:

Violence against children in the family may frequently take place in the context of discipline and takes the form of physical, cruel or humiliating punishment. Harsh treatment and punishment in the family are common in both industrialised and developing countries. Children, as reported in studies and speaking for themselves during the study's regional consultations, highlighted the physical and psychological hurt they suffer as a result of these forms of treatment and proposed positive and effective alternative forms of discipline.⁹

The Council of Europe has played a key role in the UN Study process and is committed to ensuring follow-up to its recommendations in Europe. The Council of Europe initiative against corporal punishment aims to achieve a ban on all corporal punishment and promote positive parenting and a culture of non-violence to ensure a childhood free from violence for all children.



The target date for universal abolition.

3. How can we achieve abolition?



Abolishing corporal punishment means promoting positive parenting.

Eliminating all corporal punishment of children requires a combination of explicit law reform, protection and prevention policies, and other, primarily educational, measures to move societies on from accepting violent and humiliating punishment. Prohibition in law is essential but alone it is not enough to guarantee children's human rights. Professionals working with children, parents, children themselves and the public at large need to be informed of the law and of children's right to protection.

Abolishing corporal punishment therefore necessitates intensive work in at least three areas:

- ▶ legal reform;
- ▶ policy reform (in particular prevention and protection measures);
- ▶ awareness raising.

Legal reform

Abolishing corporal punishment entails setting up a legal framework which clearly prohibits corporal punishment and protects children from all kinds of assault including in the family setting.

All member states have laws prohibiting deliberate assault. The problem is that in many societies these laws do not provide children with as much protection as adults. Some states retain, either in statute or in case (common) law or both, special defences or justifications for hitting children – "reasonable punishment", "lawful correction" and so on. In other states, there is no justification written into the law, but traditional child-rearing practices, reflected in political attitudes and often in judicial decisions, condone assaults on children

disguised as discipline. Physical punishment of children takes place in various settings, including the home, schools, residential institutions, foster families, day care facilities, the justice system and in the context of child labour.

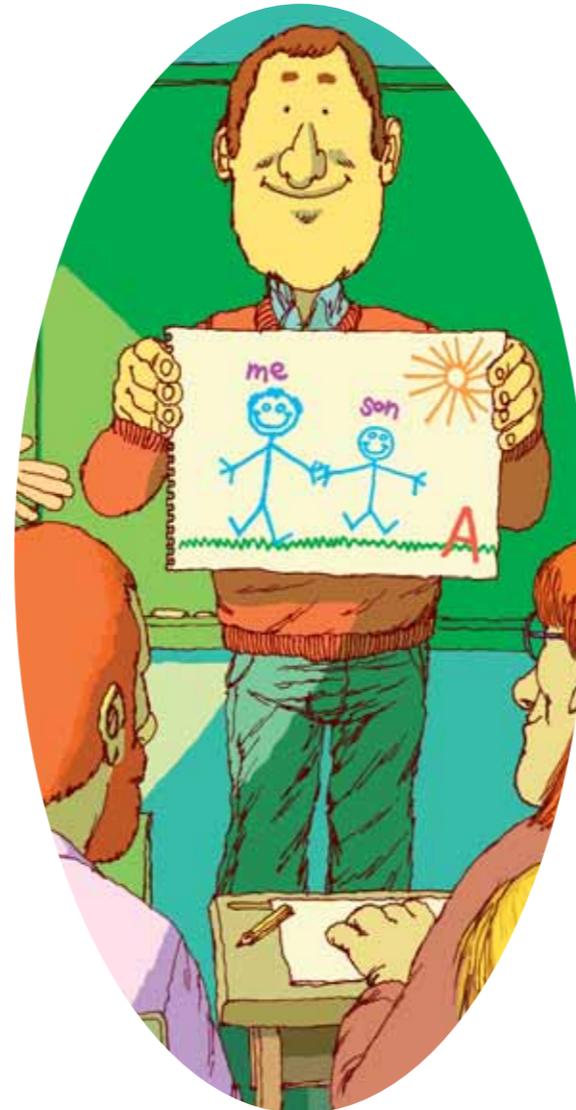
All states have laws prohibiting child cruelty or “abuse” but these are not interpreted as prohibiting all corporal punishment in all settings. All states have accepted the UN Convention on the Rights of the Child, and in some, the convention forms part of domestic law, but again, this is not adequate to ensure abolition.

Law reform needs to remove any existing justifications or defences that can prevent criminal assault laws from applying equally to punitive assaults on children. Explicit prohibition of corporal punishment and other cruel or degrading forms of punishment is needed to send a clear message to families and to society as a whole that it is no more acceptable or legal to hit a child than to hit anyone else.

It is not enough for states’ highest courts to rule that corporal punishment is unlawful: such judgments can be superseded by others condoning some level of corporal punishment. Prohibition must be clearly set out in legislation.

As the Committee on the Rights of the Child explains in its General Comment No. 8:

In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of states have recognised that simply repealing authorisation of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or “smack” or “spank” a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed “discipline” or “reasonable correction”.¹⁰



Resistance to banning corporal punishment in the family sometimes stems from the belief that it will lead to prosecution and imprisonment of thousands of parents. This would certainly not help children. The Committee on the Rights of the Child provides further advice to states:

The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

Children’s dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children’s best interests. It is the committee’s view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child’s views should be given due weight, according to his or her age and maturity.¹¹

By October 2007, more than half the member states of the Council of Europe had either achieved prohibition, or committed themselves to it in the near future. It is to be hoped that all other states will quickly review their legislation and put the necessary reforms before parliament. The process of law reform can in itself be educational, with the government, and political and community leaders using it to highlight children's right to equal protection of their human dignity.

Policy reform

States have an obligation to provide a comprehensive and multi-sectoral response to all forms of violence against children. Abolishing corporal punishment calls for the development of policies and services that prevent violence, effectively protect children and assist child victims.

Research shows that a variety of interventions can prevent violence. For instance, violence in the home setting can be reduced significantly by implementing laws, policies and measures to strengthen and support families, and which address the underlying community and societal factors that allow violence to thrive.

Policy to support positive parenting

The Council of Europe 2006 recommendation on policy to support positive parenting stresses the vital role of public authorities in promoting education on positive parenting and on children's rights. It provides guidelines to assist member states set up policies to help parents.

The contemporary family can be very different from the traditional nuclear family model of the past. Today's diversity of lifestyles has given rise to new concepts of forming partnerships and having children. Family units, whatever their composition, are confronted with new types of pressure brought on by rapid and profound changes in societies and to which they must adapt. Economic and social factors are often a source of stress for parents and may undermine their efforts at parenting and their own development as individuals.



The perception of children has also changed. No longer seen principally as "future adults", they are now recognised as having the potential to be active and contributing members to both family and society at large. Children are full rights holders, whose opinions should be given due weight in matters that directly affect them, and who should have full access to the information they need to be informed. It is parents' responsibility to help them realise this potential.

No one likes to think of themselves as a "negative" parent, but what does being a "positive parent" actually mean? Positive parenting refers to parental behaviour that is based on the best interests of the child: it provides nurturing, empowering, recognition and guidance, which involves the setting of boundaries to enable the full development of the child. Positive parenting is rooted in respect for children's human rights and thus a non-violent environment, where parents do not use corporal or psychologically demeaning punishment to resolve conflict or "teach" discipline and respect.

It provides alternatives to violence that depend on the individual child's maturity and the situation. These may range from calming younger children down with humour to asking older children to repair damages, or make amends for wrongdoings. If emotions are too high, parents can take a break from the situation and discuss it later. Most corporal punishment is dished out by overstressed parents who have simply lost control.

What children need

To help children fulfil their potential to the fullest, parents should provide their children with:

- ▶ *nurture*. Parents should respond to children's need for love and security;
- ▶ *structure and guidance*. This refers to setting and adhering to standards of appropriate behaviour, designating what inappropriate behaviour is, and providing a good role model for children. Children need boundaries and guidance for their own security and the development of their own values;
- ▶ *recognition*. Children need to be seen, heard and valued as persons. Parents need to show an interest in their children's daily experiences, listen to them and try to understand their viewpoints;
- ▶ *empowerment*. This means enhancing children's sense of competence, personal control and ability to affect the attitudes and behaviours of others.

To help children learn positive behaviour, parents can:

- ▶ provide regular, positive attention, at all ages. As children grow older this includes being aware of and interested in peer relationships and school performance;
- ▶ help them to understand the potential consequences of their choices;
- ▶ encourage good behaviours with attention and praise, and ignore minor misbehaviours;
- ▶ behave as they want their children to behave, communicate with them respectfully and demonstrate how to resolve conflicts constructively.



What parents need

All parents want to be a good mother or a good father to their child. This is sometimes difficult to achieve. Parenting, besides being a joyous and pleasurable experience, can also be a stressful one. Parents therefore need support to overcome stress, manage conflict and control anger.

Many parents divide their time and energy between different commitments (such as their job, caring for children, caring for elderly family members). Time with children is very precious – it passes quickly and will not come back. Positive parenting requires time to enable parents and children to be together. Whilst this is especially important in the earliest years of the child's life, we should not forget that teenagers also need their parents to be available to them.

It is also vital that parents find time to take care of themselves as adults, to pay attention to their own needs for intimacy, companionship and recreation. Parents need employment policies and child care provisions allowing them to reconcile family and professional life.

Parents can learn a great deal from discussing their experiences with other parents, friends and family. They can also use professional services that directly (such as parenting education) and indirectly (such as couple therapy) support them in their parenting role. Asking for help is a sign of responsibility, not of weakness. In order to be able to parent effectively, and to provide contact, support and guidance to children, parents need resources and support. States should make sure these are available to parents and professionals working with children, and that they are aware of them.

Positive parenting has many positive side-effects

Children get along better with others. Children have less disruptive behavioural and emotional problems, and are more outspoken about worry and anxiety. If they are treated with respect, the chances are they will treat others with respect, including their own children. Positive parenting helps children become positive parents themselves.

Parents have better relationships with their children, are more positive and consistent, more confident in themselves as parents, less stressed, depressed, explosive with their children and less at risk of abusing them. They are able to better balance family and work responsibilities and have less conflict with each other.

Supporting desirable behaviours and reducing undesirable ones is best done by parents who are respected by their children. This requires that parents recognise and acknowledge that they also make mistakes, whilst taking responsibility for their parenting behaviour and the quality of the relationship with their child (rather than blaming the child).

New Council of Europe resources – the 2006 recommendation on policy to support positive parenting, *Parenting in contemporary Europe – a positive approach* and *Views on positive parenting and non-violent upbringing*¹² –

discuss this new kind of parenting in detail and reflect the direction that work continues to take in this field. Even if these views on children have yet to be on all political agendas in Europe, their influence has been felt in professional circles for some time. They are steadily gaining ground, both legally and in practice, though in different degrees in different countries.

Awareness raising

Corporal punishment of children have received little media attention when compared with issues such as sexual violence and labour exploitation of children. As the UN Study underlines, the media play a central role in shaping opinions and influencing social norms that can also affect behaviour. The issue of corporal punishment should be brought into the public sphere; a space must be created to discuss the issues and to find solutions. Without awareness raising, it will be difficult to achieve large-scale, lasting prevention and behavioural change.



Children's rights concern us all.

The essential steps to achieve abolition – on paper and in practice

Law reform

- Ensuring there are no existing defences, in statute or common law, that justify corporal punishment by parents or others.
- Ensuring that the criminal law on assault applies equally to punitive assaults on children.
- Enacting an explicit prohibition of all corporal punishment and all other degrading or humiliating treatment or punishment of children, normally in civil law and applying to all the settings of children's lives.
- Providing guidance on appropriate enforcement of these laws which focuses on protection and promotion of the human rights of children in general and on the best interests of affected children in particular.

Awareness raising

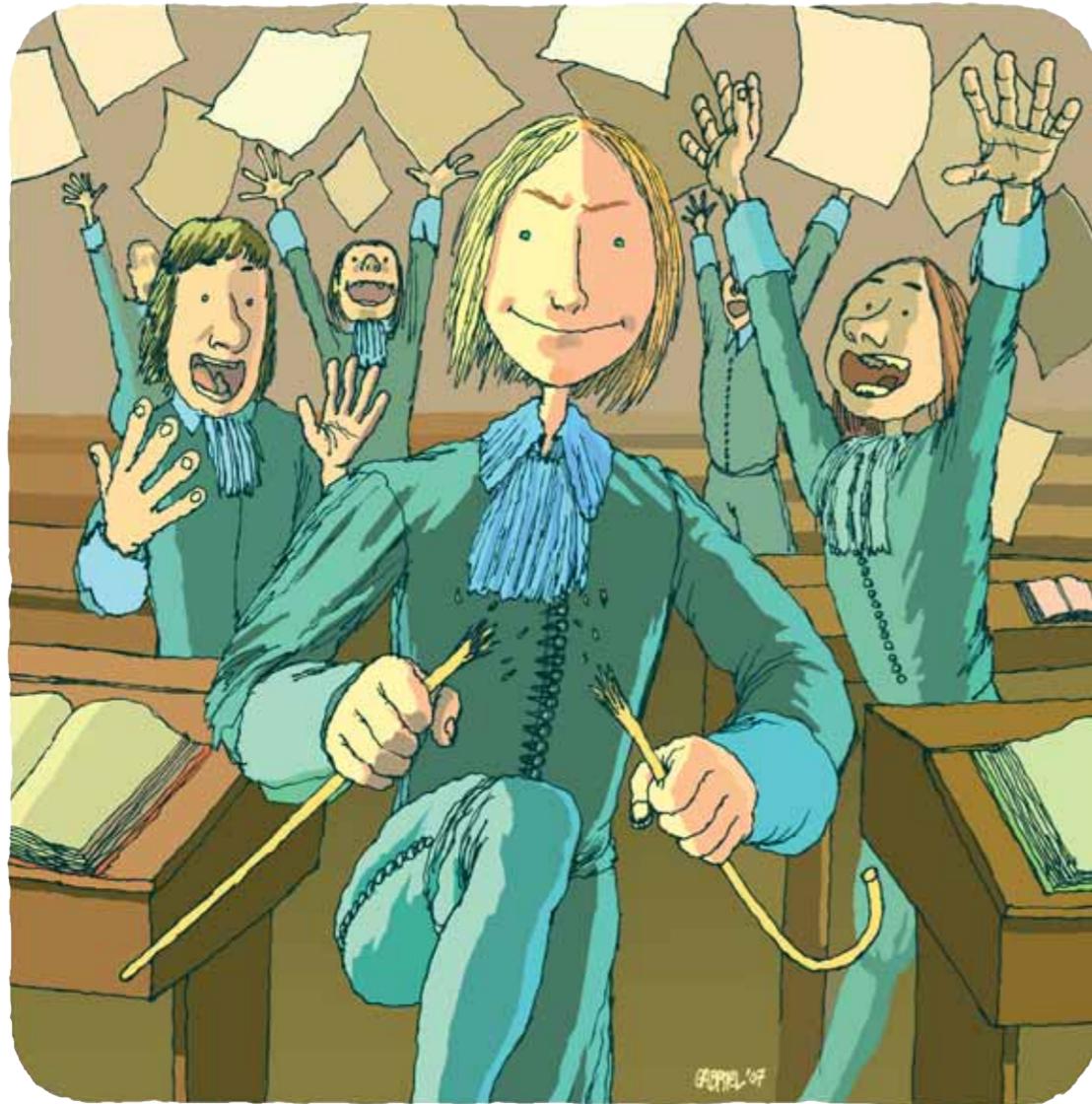
- Ensuring comprehensive awareness raising of the prohibition of all corporal punishment and other inhuman or degrading treatment and humiliation of children, among children and all who live and work with them, and among the general public.
- Ensuring comprehensive awareness raising of children's human rights, including the right to respect for their human dignity and physical integrity.

Policy measures

- Ensuring that comprehensive systems to prevent violence and protect children are implemented at different levels.

- Ensuring that corporal punishment and other harmful and humiliating forms of discipline of children at home come within the definition of domestic or family violence and that strategies to eliminate punitive violence against children are built into strategies challenging domestic or family violence.
- Ensuring that family courts and other parts of the justice system are sensitive to the needs of children and their families.
- Building capacity among those who work with children and their families.
- Promoting positive, non-violent forms of child-rearing, conflict resolution and education for future parents, parents and other carers, teachers, and for the general public.
- Ensuring that advice and appropriate support is available for all parents and in particular for those who find child-rearing stressful.
- Ensuring that children have access to confidential advice and counselling as well as advocacy to challenge violence against them.
- Ensuring effective and appropriate forms of protection for children who may be particularly vulnerable to harmful and humiliating punishment – for example children with disabilities.
- Ensuring that children and young people have the opportunity to express their views and participate in planning and activities to eliminate corporal punishment.
- Monitoring the effectiveness of abolition by regular research into children's experiences of violence in their homes, schools and other settings. This should also include assessing the impact of abolition on child protection services and parents.

4. Questions, answers and debunked statements



1669: a lively boy revolts against school punishment and petitions the UK Parliament.

“Does it really hurt?”

Yes! Under Article 12 of the UN Convention on the Rights of the Child, children have a right to express their views on all matters that concern them, and to have their views given due weight. Children are beginning to tell us how much corporal punishment hurts them. As Paulo Sérgio Pinheiro explains in his report submitted to the UN General Assembly in October 2006:

Throughout the study process, children have consistently expressed the urgent need to stop all this violence. Children testify to the hurt – not only physical, but “the hurt inside” – which this violence causes them, compounded by adult acceptance, even approval, of it.

Governments need to accept that this is indeed an emergency, although it is not a new emergency. Children have suffered violence at the hands of adults unseen and unheard for centuries. But now that the scale and impact of violence against children is becoming visible, they cannot be kept waiting any longer for the effective protection to which they have an unqualified right”.¹³

There is a great volume of research into the effects of corporal punishment and it convincingly confirms its potential damage, short and long term. “Corporal punishment by parents and associated child behaviours and experiences”, a meta-analysis of 88 research studies, was published in 2002 and overwhelmingly testifies to the dangers.¹⁴ While the findings are unsurprising, they are also in a sense irrelevant. We would not look for research into the effects of hitting women or elderly people to justify prohibition: this is a matter of fundamental rights.

How far has abolition progressed across Europe?

Far but not far enough. The abolition of corporal punishment in Europe’s schools started centuries ago. Poland was the first country recorded as prohibiting

it – in 1783. By 1900, others including Austria, Belgium and Finland had followed, and the Soviet Union abolished it in 1917.

In the United Kingdom, the first recorded attempt to challenge school corporal punishment was in 1669, when a “lively boy” presented a petition to Parliament “on behalf of the children of this nation”, to protest against “that intolerable grievance our youth lie under, in the accustomed severities of the school discipline of this nation” – but it was more than three centuries before abolition was completed in all UK schools.

Now, virtually all Council of Europe member states have moved to end corporal punishment in schools. It has also been abolished in some countries in the wide range of institutions and alternative forms of care for children, provided both by the state and by private and voluntary bodies. But in some cases, prohibition has been by administrative regulation or guidance, rather than clear legislation. In many, enforcement is not yet rigorous and requires ongoing attention. In non-institutional forms of care, including foster-care and childminding, regulation varies and in some states carers are assumed to have the same rights as parents to use corporal punishment.

Reform to remove parents’ rights to use corporal punishment began in the 1950s. In Sweden, a provision which excused parents who caused minor injuries through corporal punishment was removed from the Criminal Code in 1957 and in 1966, another provision allowing “reprimands” was deleted from the Parenthood and Guardianship Code. From that point, Swedish law no longer authorised parental corporal punishment, and the criminal law on assault applied equally to “disciplinary” assaults on children.

But these “silent” reforms were not enough and in 1979 Sweden became the first country in the world to explicitly prohibit corporal punishment. The Parenthood Code now reads: “Children are entitled to care, security and a good upbringing. 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.”



Other countries have followed slowly over the last 25 years. By October 2007, 17 member states had completed legal reform to prohibit all corporal punishment of children. In these countries, children are protected by the law wherever they are and whoever the perpetrator – in their homes, on the streets, in day care, education and all institutions. In some but not yet all of these states, law reform has been accompanied by awareness raising and public education on children’s right to protection, and by the promotion of positive non-violent parenting and care. Given the deep traditional roots of the habit of hitting children, it is clear that the educational process has to be an ongoing one.

“Why is it so difficult to give up hitting children?”

Because many adults still confuse might with right. If adults, including politicians, found this issue easy, we would have accepted long ago that children have exactly the same right as the rest of us to respect for their human dignity and physical integrity and to equal protection under the law. In fact we would be likely to accept that children, who start off very small and very fragile, have a right to more protection than adults.

It is difficult for adults to give up what they still perceive of as a “right” to hit and hurt children in the name of “discipline” or control. This seems to stem from personal experience. Most people everywhere were hit as children by their parents. Most parents have hit their own children. None of us likes to think badly of our parents, or of our own parenting, and this makes it challenging for many people, including politicians and opinion leaders, and even those working in child protection, to perceive of corporal punishment as the fundamental issue of equality and human rights that it is. This is not a matter of blame – parents have acted in accordance with social expectations –

but the time has come to move on to positive, non-violent relationships with children.

In aiming to eliminate corporal punishment, we are simply extending to children the full protection from assault and other cruel or degrading punishment which we as adults take for granted for ourselves.

“Opinion polls say that most people are against a formal ban on corporal punishment”

The results of polls generally depend on how crudely questions are phrased and on how much information the respondents have. If people are fully informed about the issue, the existing inequality of protection for children and the purpose of a ban, they may well support it. But in any case, on this issue like others – violence against women, race discrimination – politicians have to lead, not follow public opinion, quoting their absolute human rights obligation to ensure that the law provides children, like adults, with full protection of their human dignity. Almost all the member states that have prohibited all corporal punishment have done so ahead of public opinion, but public opinion has quickly come round to support the change. In a few years time we will look back in wonder at the time when it was regarded as lawful and acceptable to hit children.

“If parents are forced to give up using corporal punishment, won't children end up spoilt and undisciplined?”

No! Real discipline is not based on force. It grows from understanding, mutual respect and tolerance. Babies start off completely dependent and as they grow, they rely on adults – especially their parents – to guide and support them towards self-disciplined maturity. Corporal punishment tells children nothing about how they should behave. On the contrary, hitting children is a lesson in bad behaviour. It teaches children that their parents, whom they hopefully love and respect, find it acceptable to use violence to sort out problems or conflicts. Children learn from what their parents do, not just

from what they say. Corporal punishment and other humiliating forms of punishment are no substitute for positive forms of discipline which, far from spoiling children, are designed to ensure that they learn to think about others and about the consequences of their actions. States have an obligation to support positive parenting. The Committee of Ministers recommendation (Rec(2006)19) on policy to support positive parenting gives them the guidelines to do so.

“I was hit as a child and it didn't do me any harm. In fact, I wouldn't be where I am today if it were not for my parents physically punishing me.”

How do you know this? None of us knows how we would have turned out if our parents had never hit or humiliated us. How many people, in saying it did them no harm, are denying the hurt they experienced when the adults closest to them thought they could only teach them by inflicting pain? People usually start hitting children because they themselves were hit as children, though, according to research, they often feel guilty about it afterwards. But they continue to hit their children especially when they are at the end of their tether. It is pointless to blame previous generations for hitting children because they were acting in accordance with the pervasive culture of the time.

But times change and societies move on. Recognition of children as right holders requires action to end the legality and social acceptance of violence against children, just as societies have moved to end acceptance of violence against women.

“Parents have a right to bring up their children as they see fit. They should be challenged only in extreme cases, such as child abuse.”

Human rights do not stop at the front door of your home. Children have the same right as all other family members to protection from being hit and it is no more invasive to insist that the law protect children in the home than to insist that men stop beating their wives. The UN Convention on the Rights of the Child has introduced the concept of “parental responsibilities”, with children’s best interests as parents’ basic concern. Children are not their parents’ property.

“There is a big difference between beating a child and a loving smack.”

The difference is irrelevant to the law. One hurts physically more than the other, but both are on a continuum of violence and both breach a child’s equal right to respect. Societies do not draw lines and try to justify any level of violence when challenging violence against women, or against elderly people. So why should they when it comes to children? And the dangers of making any connection between loving and hurting people should be obvious. A “loving smack” is a contradiction of the worst kind. This seemingly harmless term is a veil behind which rights violations can hide.

“I only smack my children to stop them from hurting themselves.”

Smacking is not protecting! Parents have to use physical actions to protect children – especially babies and young children – full time. It is a natural part of parenting. If a child is crawling towards a fire, or running into a dangerous road, of course parents use physical means to stop them – grab them, pick them up, show them and tell them about the danger. As the Committee on the Rights of the Child explains in its General Comment No. 8:



The committee recognises that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all states, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.¹⁵

“My religion requires me to use corporal punishment.”

Religious freedom cannot run counter to human rights. As the Committee on the Rights of the Child makes clear in General Comment No. 8:

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.¹⁶

Religious extremists who advocate ritualistic hitting of children with implements need to be condemned by mainstream religious opinion and by society as a whole. Leading faith figures are now joining the campaign for abolition of all corporal punishment. At the 2006 World Assembly of Religions for Peace in Kyoto, Japan, more than 800 faith leaders endorsed “a religious commitment to combat violence against children”, which urges governments to adopt laws in compliance with the Convention on the Rights of the Child and to prohibit all violence, including all corporal punishment.

“If corporal punishment of children is criminalised, thousands of parents will be prosecuted and many more children will be placed in state care.”

It is not about putting parents in jail. It is about learning positive parenting. There is no evidence of increased prosecution of parents from the growing number of countries where corporal punishment is criminalised. Banning corporal punishment fulfils member states’ human rights obligations to children. Its first purpose is educational and as mentioned above, to send a clear message into the “privacy” of the home that it is no more acceptable or lawful to hit a child than to hit anyone else. Guidance to all those involved in child protection, including the police and prosecuting authorities, should ensure that implementation of the law is focused on the best interests of the child. Prosecution and other formal interventions are unlikely to benefit children unless they are the only way to achieve necessary protection from significant harm.

“Banning physical punishment will just lead to children being treated in more horrible ways – emotional abuse, humiliation or locking them up.”

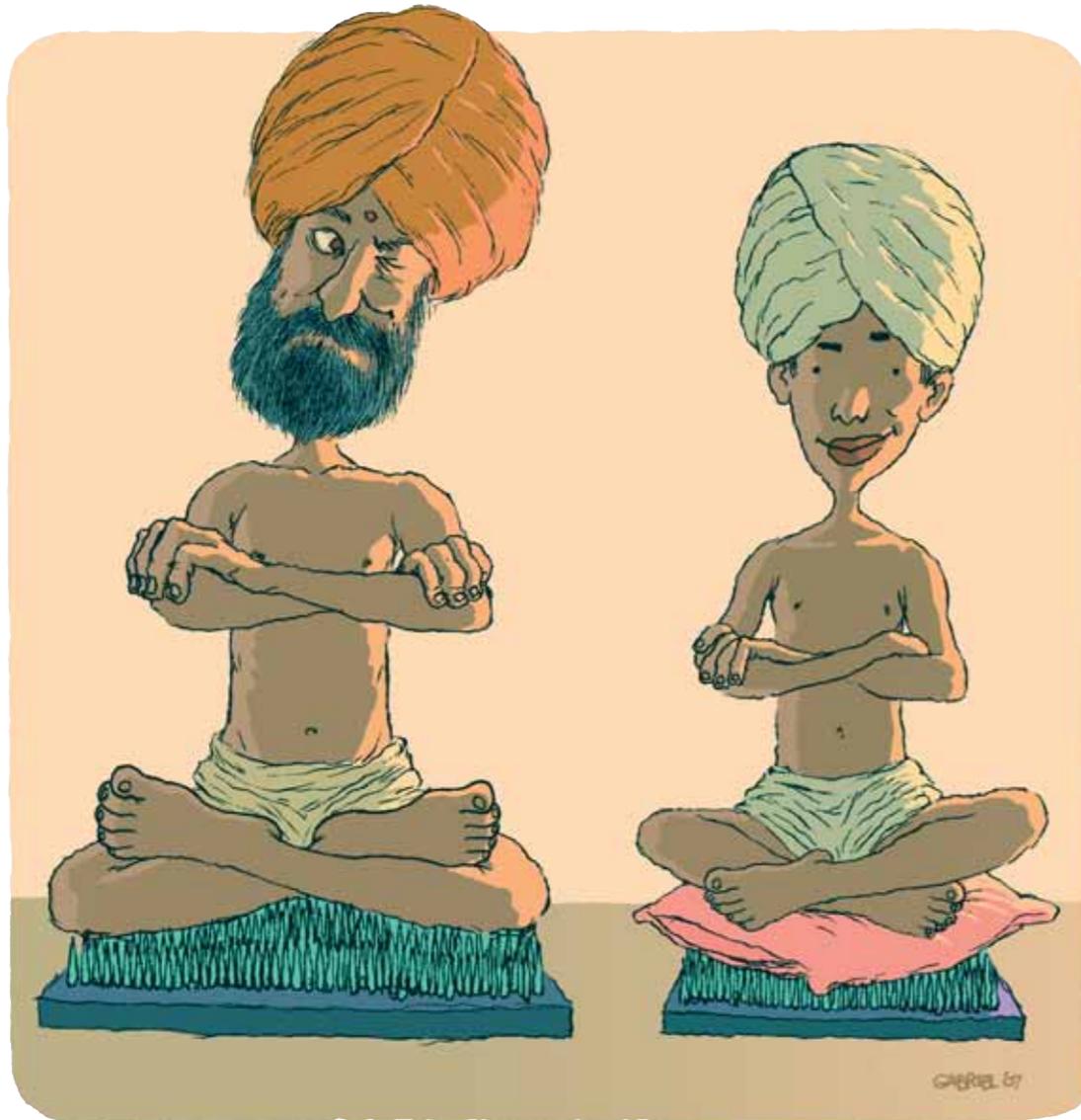
Children have a right to protection not only from corporal punishment, but also from all other forms of cruel or degrading punishment or treatment. Law reform needs to be linked to awareness raising and promotion of positive, non-violent relationships with children. Parents wish their children to have the best possible start in life. Parents who hit their children do not feel good about it – they generally feel upset and guilty. Most of them would therefore welcome advice on how to prevent and solve conflicts with their children. Positive parenting policies help parents enable their children to understand, accept and respect rules (discipline) without using any kind of violence, be it physical or emotional. Moving on from hitting and humiliating children to regarding them as people and rights-holders alongside the rest of us improves family life for everyone.

“Why bring the law into this? Why not just educate parents away from using corporal punishment?”

Abolition requires both. It is not a matter of choice: human rights demand that children have at least the same legal protection as adults – in the family and everywhere else – now. The law in itself is a powerful educational tool, and of course law reform banning corporal punishment needs to be linked to public and parent education. A ban will motivate parents to look into positive ways of educating their children and motivate professionals, politicians and media to resource and provide this education. The Council of Europe is prepared to help parents and professionals in this challenging job.

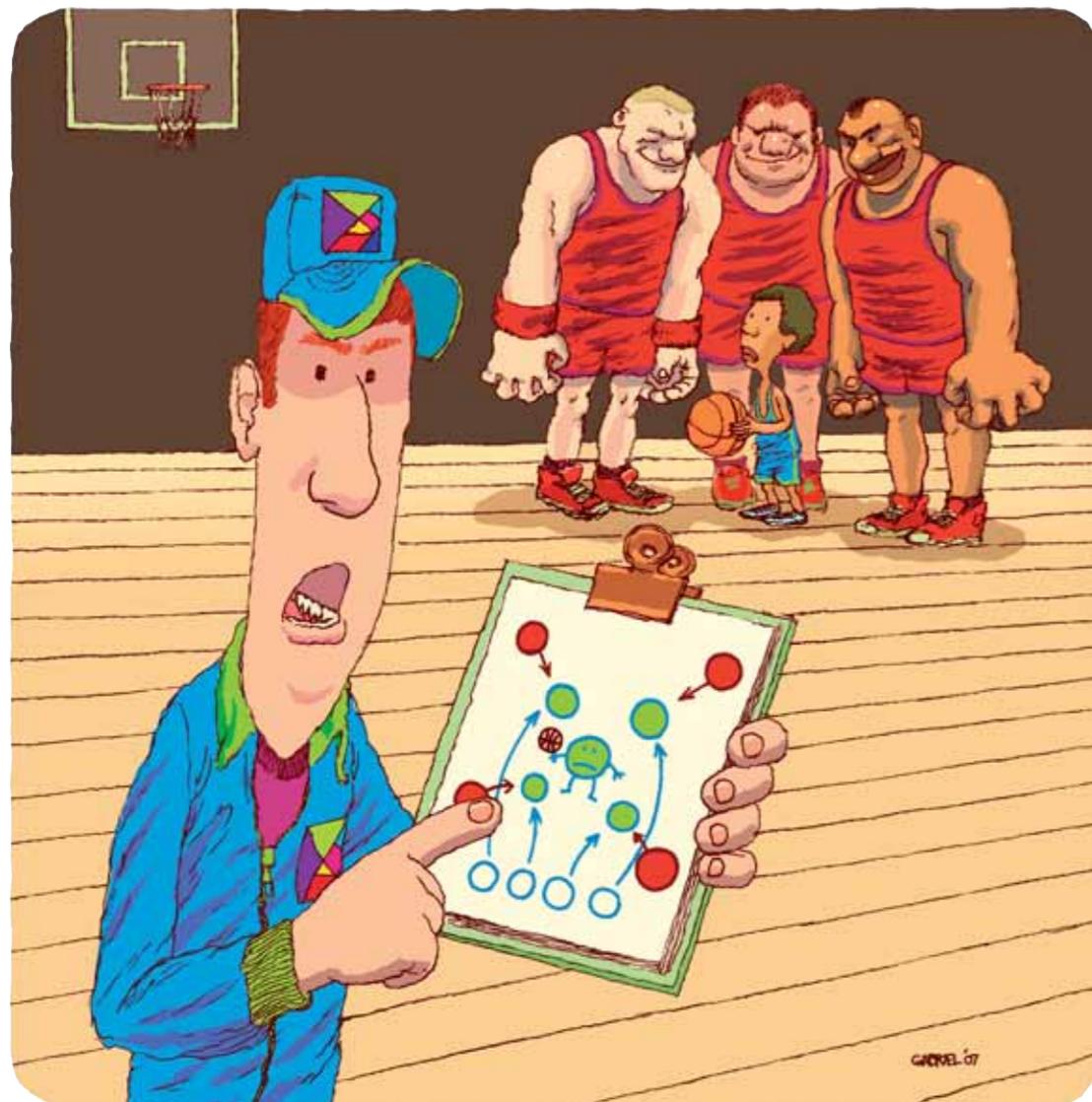


Children are not the property of their parents.



Children need more protection not less.

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4. European Court of Human Rights, *A v. United Kingdom*, 1998. See <<http://www.echr.coe.int/echr>>.
5. Council of Europe: European Committee of Social Rights, General Observation regarding Articles 7 (paragraph 10) and 17, *Conclusions XV-2, Vol. 1*, General Introduction, p. 26.
6. United Nations Committee on the Rights of the Child, op. cit., paragraphs 3 and 21.
7. Report of the independent expert for the *United Nations study on violence against children*: Introduction, paragraph 1. See: <<http://www.violencestudy.org/IMG/pdf/English.pdf>>.
8. Ibid., paragraphs 1-2.
9. Ibid., paragraph 41.
10. United Nations Committee on the Rights of the Child, op. cit., paragraph 34.
11. Ibid., paragraphs 40-41.
12. *Parenting in contemporary Europe – a positive approach and Views on positive parenting and non-violent upbringing*, Council of Europe Publishing, 2007.
13. Paulo Sérgio Pinheiro, *World report on violence against children*, p. 5. United Nations Secretary-General's study on violence against children, Geneva, 2006.
14. Elizabeth Thompson Gershoff, "Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review" in *Psychological Bulletin*, 2002, Vol. 128, No. 4, 539-79.
15. United Nations Committee on the Rights of the Child, op.cit., paragraph 14.
16. Ibid., paragraph 29.



Protecting children calls for a strategic approach.

About the Council of Europe – its bodies and institutions

The Council of Europe was founded in 1949 and is the oldest pan-European human rights organisation in Europe. It seeks to develop common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. For information on its membership, history, bodies and institutions, and current activities, see its home page: <<http://www.coe/int>>.

"Building a Europe for and with children" is a comprehensive programme set up to promote children's rights and protect children from all forms of violence. Its website provides information on major Council of Europe activities, documents, legal texts and news concerning children's rights, including the programme's Europe-wide information campaign against corporal punishment of children (2008). Visitors may access information, regularly updated by the Global Initiative to End all Corporal Punishment of Children, on the legal status of corporal punishment in the 47 member states. See: <<http://www.coe.int/children>>.

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg. It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings. See: <<http://www.coe.int/t/cm>>.

Relevant Committee of Ministers recommendations

- ▶ Recommendation Rec(2006)19 on policy to support positive parenting, and its explanatory report

- ▶ Recommendation Rec(2005)5 on the rights of children living in residential institutions
- ▶ Recommendation No. R (93) 2 on the medico-social aspects of child abuse
- ▶ Recommendation No. R (90) 2 on social measures concerning violence in the family
- ▶ Recommendation No. R (85) 4 on violence in the family

All Committee of Ministers legal texts may be accessed on the Committee's website or on that of "Building a Europe for and with children" at <<http://www.coe.int/children>> (key legal texts).

The Parliamentary Assembly is composed of members of national parliaments from the Council of Europe's 47 member states. They meet four times a year to discuss topical issues, ask states to take initiatives and report back. These elected parliamentarians broach the issues of their choice and the governments of European countries – represented at the Council of Europe by the Committee of Ministers – are obliged to respond. See: <<http://assembly.coe.int>>.

Relevant Parliamentary Assembly recommendations

- ▶ Recommendation 1778 (2007) on child victims: stamping out all forms of violence, exploitation and abuse
- ▶ Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment

All Parliamentary Assembly legal texts may be accessed on the Assembly website, or that of "Building a Europe for and with children" at <<http://www.coe.int/children>> (key legal texts).

The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote the awareness of and respect for human rights in the member states. The Commissioner co-operates with a broad range of international and national institutions as well as human rights monitoring mechanisms. The Commissioner's most important inter-governmental partners include the United Nations and its specialised agencies, the European Union, and the Organization for Security and Co-operation in Europe. The Commissioner also co-operates closely with leading human rights non-governmental organisations (NGOs), universities and think-tanks. See: <<http://www.coe.int/t/commissioner>>.

The Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 005), known by its short title, the **European Convention on Human Rights** (ECHR) entered into force on September 1953. The ECHR lays out the civil and political rights and freedoms that form the basis for human rights in Europe. Unlike the UN Convention on the Rights of the Child, the ECHR has no provisions relating specifically to children and young people, even if some rights, such as the right to education apply particularly to children. However, Article 1 of the Convention provides that states "shall secure" – and not "undertake to secure" as is the wording in most international treaties – "to everyone the rights and freedoms" defined therein. Children are therefore entitled to the protection of their human rights. All Council of Europe member states are bound by this Convention. It may be accessed via the Treaty Office, using the Council of Europe European Treaty Series number given above. See: <<http://conventions.coe.int>>.

The European Court of Human Rights was founded in 1959. The Court is the supervision machinery set up by the European Convention on Human Rights to ensure compliance with states' commitments under the Convention. Its 47 judges (corresponding to the number of states parties to the Convention) sit in an individual capacity and represent no state. Article 34 provides that the Court may receive applications from "any person" claiming to be the victim of a violation of the rights guaranteed by the Convention. There is no distinction made between men and women, foreigners and nationals, adults and minors: thus a child not of full age may apply directly to the European Court of Human Rights. The Court has made landmark decisions on violence against children, including corporal punishment. A selection of case law relevant to children's rights can be found on the "Building a Europe for and with children" website given above and all decisions and judgments can be accessed using Hudoc, the Court's online data base. Hearings may be followed

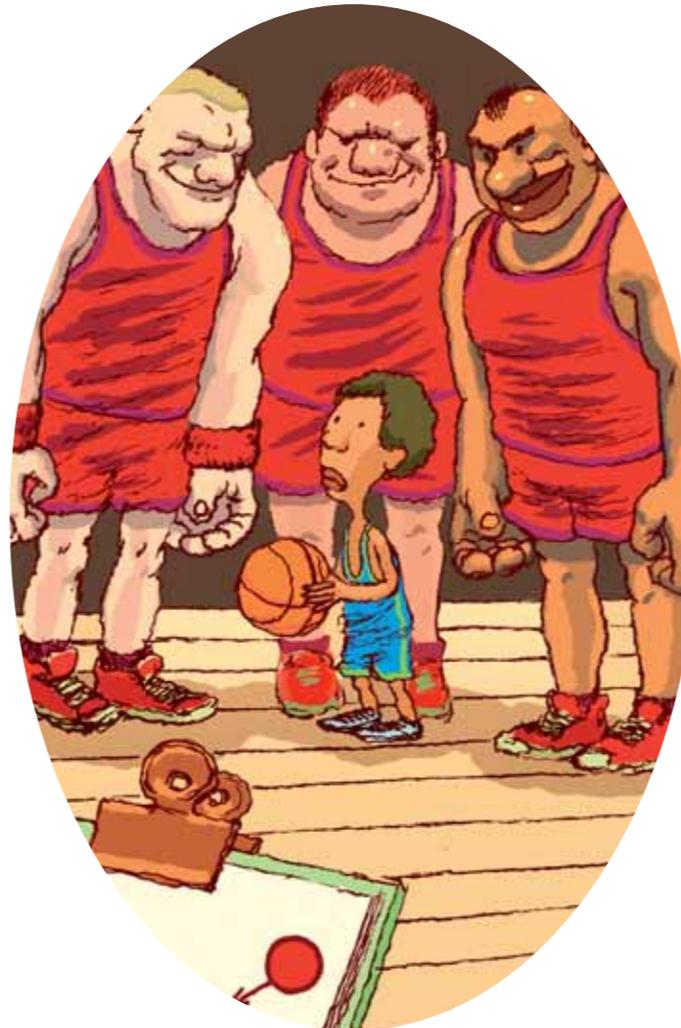
via webcast. For all information about the Court's history and organisation, case processing and case law, see: <<http://www.echr.coe.int>>.

The European Social Charter (1961, CETS No. 035) and the **revised European Social Charter** (1996, CETS No. 163) guarantee economic and social human rights, and are complementary to the ECHR. Many of the rights guaranteed by the two Charters apply to children, and in several cases, secure their rights from birth to adulthood. The revised Charter includes provisions with specific relevance to children, and which protect children as family members. The Charters may be accessed via the Treaty Office, using their CETS numbers given above. See: <<http://conventions.coe.int>>.

The European Committee of Social Rights (ECSR) monitors compliance of law and practice with the European Social Charter and the revised European Social Charter. It adopts conclusions with regard to national reports and decisions on collective complaints. Since a 1995 protocol, collective complaints may be lodged to the ECSR by certain international organisations of employers and trade unions, certain NGOs, and employers' organisations and trade unions in the country concerned. The collective complaints procedure is particularly effective in protecting the rights of children as complaints may be lodged on their behalf. For complete information on the ECSR, access its website via the Council of Europe homepage at <<http://www.coe.int>> (human rights).

About the United Nations

The United Nations (UN) was founded in 1945 and almost every recognised state in the world is a member. Since the Universal Declaration of Human Rights was adopted in 1948, the United Nations has drawn up over 60 treaties addressing concerns such as slavery, the administration of justice, genocide, the status of refugees and minorities, and human rights. Each of these treaties is grounded in the concepts of non-discrimination, equality and recognition of the dignity of each and every individual, thus making it clear that they apply to everyone, including children. Children are therefore entitled to the rights and protections set out in the United Nations Convention on the Rights of the Child as well as all other human rights treaties.



The United Nations Convention on the Rights of the Child (UNCRC) is the first legally-binding instrument to incorporate a full range of human rights for children – political, civil, social, cultural, economic. The four core principles of the convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the convention is inherent to the human dignity and harmonious development of every child. The UNCRC is the most ratified international treaty in existence, but it is often referred to as the most violated one. See: <www.ohchr.org/english/law/crc.htm>.

The United Nations Committee on the Rights of the Child (CRC) is a body of 18 independent experts that monitors implementation of the UNCRC by states parties. It publishes its interpretation of the convention's provisions in the form of general comments on thematic issues, adopts concluding observations and decisions in the form of recommendations, and holds an annual discussion day to foster a deeper understanding of the convention and its implications. See: <www.ohchr.org/english/bodies/crc/comments.htm>.

United Nations Secretary-General's study on violence against children is a global effort to paint a detailed picture of the nature, extent and causes of violence against children, and to propose clear recommendations for action to prevent and respond to it. See: <<http://www.violencestudy.org>>.

About governmental and non-governmental action

By October 2007, seventeen Council of Europe member states had changed their legislation to prohibit all corporal punishment of children. These are: Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Latvia, Netherlands, Norway, Portugal, Romania, Sweden and Ukraine.

Many of these governments launched information and awareness-raising campaigns to help shift public attitudes away from this widespread means of discipline and to gain acceptance of the new law. Crucial ground work was carried out by non-governmental organisations (NGOs), ombudspersons for children, governments themselves and many others. Some countries even set up help lines for both parents and children. There are also many ongoing activities and campaigns which aim to change legislation, attitudes and behaviours in countries where corporal punishment is still legal. This has resulted in a wide range of resource material for parents and children themselves, and all professionals working with children, regardless of the legal status of corporal punishment in a given country.

"Building a Europe for and with children" invites you to explore some of the resources available in your own country and beyond. The Council of Europe partners listed below can be used as a starting point. A key word search for "corporal punishment" on all of their websites will yield a wealth of material from around the world – viewpoints, campaigns, packs for educators, legal updates, publications, toolkits, statistics, information on positive parenting and non-violent discipline, and so forth. You will also find useful links to other websites.

The Child Rights Information Network (CRIN) is a global network that disseminates information about the UN Convention on the Rights of the Child and children's rights to NGOs, United Nations agencies, inter-governmental organisations, educational institutions, and other child rights experts. See: <<http://www.crin.org>>.

The European Network of Ombudspersons for Children (ENOC) is a not-for-profit association of independent children's rights institutions. Its aims are to encourage the fullest implementation possible of the UN Convention on the Rights of the Child, support collective lobbying for children's rights, share information, approaches and strategies and promote independent offices for children. See: <<http://www.ombudsnet.org/enoc>>.

The Global Initiative to End all Corporal Punishment of Children is an NGO that provides information on relevant human rights standards, key judgments, global progress towards abolition, research and links to materials on positive,

non-violent relationships with children. It has developed web resources for parents and teachers on discipline without corporal punishment. See: <<http://www.endcorporalpunishment.org>>.

Save the Children is an independent global organisation that campaigns for long-term change and improvement in children's lives. It reaches over 120 countries and encourages its supporters to put pressure on decision makers and opinion formers to change policies and practices, locally and globally, to ensure children's rights become reality. Save the Children is campaigning against corporal punishment in many countries and has developed very useful campaign material. See: <<http://www.savethechildren.net>>.

The National Society for the Prevention of Cruelty to Children (NSPCC) was founded in 1884 and is a United Kingdom based charity. Its core values are based on the United Nations Convention on the Rights of the Child and its aim is to end all cruelty towards children through helplines, supporting vulnerable families, campaigning for changes to the law, and awareness raising about abuse. The NSPCC has run excellent campaigns against child abuse and publishes the parenting magazine "Your Family". See: <<http://www.nspcc.org.uk>>.

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Children's rights make Europe grow.

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Abolishing corporal punishment of children

Questions and answers

Why should it be made illegal to hit children for disciplinary reasons? What right does the state have to interfere in the way children are raised? How can public attitudes be shifted towards positive and non-violent parenting? These and many other issues are discussed in this booklet, intended for parents, policy makers, lawyers, children's advocates and other people working with children, all of whom have a vested interest in their well-being.

Divided into four main parts, this booklet defines corporal punishment of children; gives reasons, based on international law, why corporal punishment should be abolished; discusses how abolition can be achieved; and debunks myths and public fears hovering around the issue. Punishing children physically is an act of violence and a violation of children's human rights. Every nation in Europe has a legal obligation to join the 17 European nations that have already enacted a total ban on corporal punishment of children.



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ISBN 978-92-871-6310-3



9 789287 163103

€12/US\$18

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