

Progress towards prohibiting all corporal punishment of children in ASEAN member states

October 2015

Summary

This briefing highlights the human rights imperative to prohibit all violent punishment of children in all ASEAN member states. It summarises progress so far towards prohibition in each state and what remains to be done. Aiming to promote national action for prohibition, it emphasises the many immediate opportunities for working to fulfil children's right to protection in law from all corporal punishment in all settings. Many ASEAN states are currently reforming legislation related to children, creating key opportunities to prohibit corporal punishment. Two states have publicly expressed a commitment to comprehensive prohibition, including within the family home. The adoption globally of the 2030 Agenda for Sustainable Development with its target of ending all violence against children provides an additional and immediate context for focussing attention on what can be done to speed progress towards fulfilling this most fundamental obligation under human rights law.

Why prohibit corporal punishment?

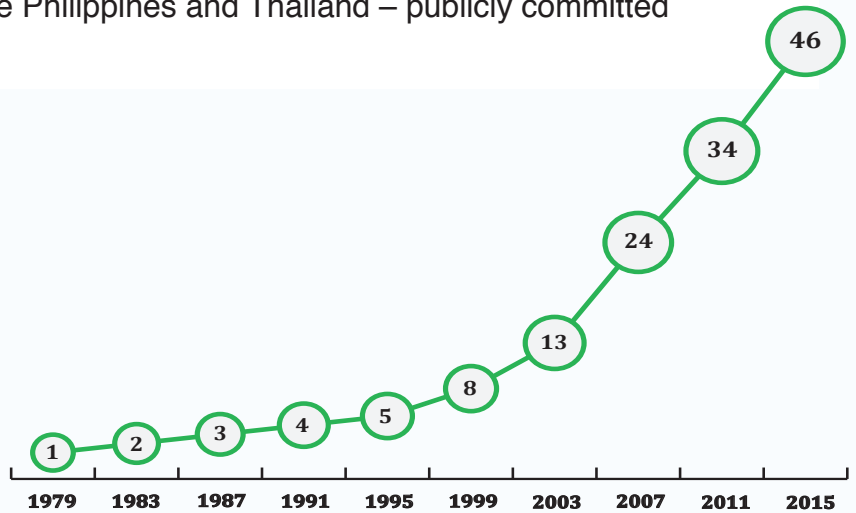
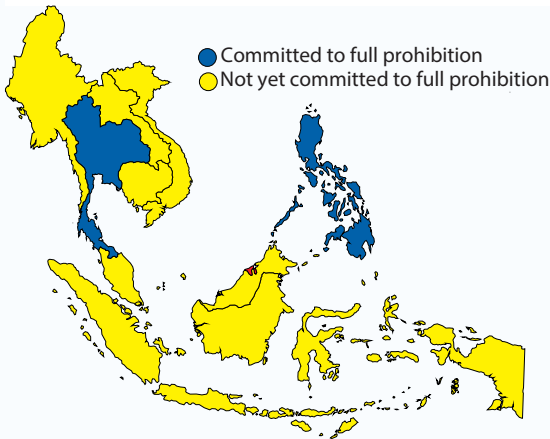
Everyone has a right to protection in law from being hit and hurt, regardless of where they are, who they are with or what the circumstances are. Children are particularly vulnerable to violence – and yet in so many states they are the last to receive this basic legal protection. In many societies, the belief that physical and other humiliating punishment is a necessary part of “disciplining” children is widely held. Some people view the use of violent punishment in childrearing and education as a religious imperative. But seeing children as human beings in their own right – and due the protection of their human rights in the same way that adults are – means that corporal punishment and other violations of their physical integrity and human dignity cannot be justified.

The UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised – in many cases repeatedly – in the examinations by UN treaty bodies of every ASEAN member state. Most have also received recommendations to prohibit corporal punishment during the Universal Periodic Review of their overall human rights records.

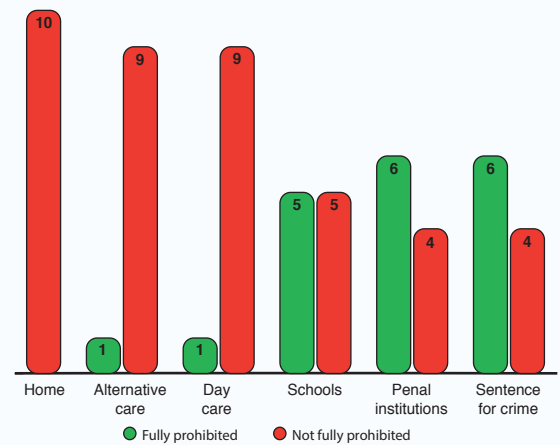
Legal protection from all corporal punishment is a right in itself. But prohibition is also critical for fulfilling children's rights to health, development and education. Experience of corporal punishment as a child is associated with poor mental health in childhood and adulthood. Physical punishment is linked to increased aggression and antisocial behaviour in children and an increased likelihood of perpetrating, experiencing and accepting violence as an adult. Corporal punishment damages family relationships and, far from teaching children how to behave, makes it less likely they will learn to behave as adults want them to.

Progress towards prohibition

Globally, progress towards prohibition is accelerating: 46 countries have prohibited all corporal punishment, including in the family home. Reform in some ASEAN member states is under way, with governments in two states – the Philippines and Thailand – publicly committed to enacting prohibiting legislation.



No ASEAN member state has yet achieved prohibition in all settings, including the home. Legislation prohibiting all corporal punishment has been enacted comprehensively in alternative care settings in only one state of the 10, in day care in one state, in all schools in five states and in all penal institutions in six states. In six states the law does not allow for children convicted of a criminal offence to be sentenced to corporal punishment.



Opportunities for achieving prohibition

Law reform to prohibit corporal punishment is achieved when legislation sends a clear message that all forms of corporal punishment, whatever their level of severity and regardless of their perceived impact in terms of “injury” or “harm”, are prohibited in all settings, including within the family home. The law must be absolutely clear that discipline of children must never involve physical punishment.

The deeply held view that some degree of violent punishment is necessary or even a duty in childrearing means it is not perceived as an abusive or violent act unless it reaches some level of severity. This is reflected in laws that authorise parents and others to impose “moderate” correction or “reasonable” punishment on children – provisions that typically constitute a legal defence against charges of assault. It is essential that these defences are explicitly repealed from the law or are amended so as to unequivocally rule out the use of corporal punishment as a “disciplinary” method. It is also vital to repeal all laws authorising or regulating corporal punishment such as caning and whipping in schools and other institutions and in penal systems. The right of freedom of religion does not justify violating a child’s right to respect for human dignity and physical and mental integrity.

The table opposite summarises the progress made towards prohibition in each of the 10 ASEAN member states and what remains to be done. Crucially, it identifies some immediate opportunities for drafting and introducing prohibiting legislation. The Global Initiative is pleased to offer technical advice and support on all aspects of drafting prohibiting legislation, and we welcome information on opportunities for action: email sharon@endcorporalpunishment.org.

<i>State</i>	<i>Corporal punishment not fully prohibited</i>	<i>Opportunities for law reform and progress towards prohibition</i>	<i>Immediate action required to achieve full prohibition</i>
Brunei Darussalam	Home, alternative care, day care, schools, penal system	No known current opportunities or moves towards drafting prohibiting legislation; Government rejected 2014 UPR recommendations to prohibit.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all defences/authorisations for its use.
Cambodia	Home, alternative care, day care	Law on Child Protection being drafted; draft Juvenile Justice Law under discussion; no known proposals for prohibition of corporal punishment.	Ensure draft Law on Child Protection and draft Juvenile Justice Law include clear prohibition of corporal punishment and repeal of parental authority to discipline.
Indonesia	Home, alternative care, day care, schools, penal system	In 2010 Government stated it had programme to prohibit in home and schools, but rejected 2012 UPR recommendations to prohibit; draft Criminal Code authorises corporal punishment; new Aceh Criminal Code provides for judicial corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting all corporal punishment of children and repealing all laws and bylaws authorising it, including under Shari'a law in Aceh province.
Lao PDR	Home, alternative care, day care	Constitution and Penal Code being amended; no known proposals to prohibit corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment.
Malaysia	Home, alternative care, day care, schools, penal system	Child Act under review; no known moves towards drafting prohibiting legislation; at 2009 UPR Government stated intention to abolish judicial corporal punishment for children, but rejected 2013 UPR recommendations to prohibit.	Ensure revisions to Child Act include clear prohibition of corporal punishment, repeal of legal defences for its use in childrearing and of all provisions authorising caning/whipping.
Myanmar	Home, alternative care, day care, schools, penal institutions	Child Law under review; Government/UNICEF analysis highlighted need for prohibition of corporal punishment and removal of provision for "admonition" of child; Government rejected 2011 UPR recommendation to prohibit.	Ensure revised Child Law includes clear prohibition of all corporal punishment and repeal of all legal defences for its use in childrearing and of provisions for whipping in penal system.
Philippines	Home	Government indicated commitment to prohibition by accepting 2012 UPR recommendation; Anti-Corporal Punishment Bill and other Bills which would prohibit under discussion.	Ensure Anti-Corporal Punishment Bill clearly prohibits all corporal punishment and repeals all legal defences for its use in childrearing, and expedite its passage through Parliament.
Singapore	Home, alternative care, day care, schools, penal system	No known current opportunities; law reform in 2010/2011 specifically authorised caning in children's homes, penal institutions and as a sentence for crime; Government rejected 2011 UPR recommendations to prohibit.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all legal defences and authorisations for corporal punishment.
Thailand	Home, alternative care, day care	Government stated commitment to prohibition in response to 2011 UPR recommendations; Child Protection Act under review.	Ensure revised Child Protection Act prohibits all corporal punishment and repeals right to administer "reasonable" punishment and provisions authorising flogging.
Viet Nam	Home, alternative care, day care	Draft amendment to Law on the Protection, Care and Education of Children under discussion; Government has stated intention to address corporal punishment.	Ensure amendments to Law on the Protection, Care and Education of Children include clear prohibition of corporal punishment.

Taking action for children

Research in many ASEAN states attests to the widespread infliction of physical and other humiliating punishment on children in the guise of “discipline”. Reforming legislation to prohibit corporal punishment provides a firm foundation for eliminating its use and transforming the lives of children. Many opportunities for prohibition exist in ASEAN states. Whenever relevant laws (e.g. on children, domestic violence, juvenile justice, education) are introduced or reviewed, the opportunities afforded to prohibit corporal punishment should not be missed. When these opportunities arise, it is vital to propose that prohibition – including the repeal of all legal defences/authorisations for the use of corporal punishment – is included in the laws and retained as the legislation passes through parliament. Every opportunity to prohibit represents a chance to fulfil children’s right to legal protection, stopping children from being hit and hurt by their parents and others.

Moving swiftly from discussion to action is key. National attention to corporal punishment (e.g. through government consultations, new research, media reports, etc) can be used to promote prohibition: proposals for law reform must be made and followed through. Given children’s clear and immediate human right to protection, it is not necessary to consult on the issue, nor is it justifiable to wait for public attitudes to change before reforming the law.

By prohibiting corporal punishment, governments and parliaments can lead the way. All over the world there is some opposition to prohibition, but the experiences of states which have achieved prohibition show that on this issue those in power must lead rather than follow public opinion. Prohibition, accompanied by appropriate measures to raise awareness of and implement the law, together with promotion of positive, non-violent forms of discipline, is the most efficient way to change attitudes and the only way to fulfil children’s right to protection in law and practice.

ASEAN Declaration on Human Rights, adopted by the Association of Southeast Asian Nations, November 2012

Art. 1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.

Art. 2. Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.

Art. 4. The rights of women, children, the elderly, persons with disabilities, migrant workers, and vulnerable and marginalised groups are an inalienable, integral and indivisible part of human rights and fundamental freedoms.

Art. 14. No person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

“... eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties....”

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 (arts. 19; 28, para. 2; and 37, inter alia)”



Global Initiative to
End All Corporal Punishment
of Children

The Global Initiative to End All Corporal Punishment of Children promotes universal prohibition and elimination of corporal punishment.

www.endcorporalpunishment.org



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

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