

Prohibiting and eliminating all corporal punishment of children with disabilities



GLOBAL INITIATIVE TO
**End All Corporal
Punishment of Children**

Human Rights Council resolution 37/20

"Empowering children with disabilities for the enjoyment of their human rights, including through inclusive education".

1a. Please identify relevant national laws and policies intended to ensure the inclusion of children with disabilities in the general education system and the transition from segregated to inclusive settings.

Corporal punishment is the most common form of violence against children, and in the majority of countries worldwide, children with disabilities are especially vulnerable to treatment that constitutes corporal punishment. Research shows the particular vulnerability of children with disabilities to punitive violence from their teachers and caregivers, and this can present a significant barrier to their participation in school.

Prohibiting in law, and eliminating all corporal punishment of children in schools is a critical step to ensure access to inclusive education for children with disabilities, and through education, to enable their empowerment.

Treatment of children with disabilities in institutions and alternative care settings also gives an urgency to the need to ensure the transition to inclusive settings – but prohibition of, and elimination of corporal punishment in both inclusive and alternative settings remain a priority to protect all children with disabilities from abuse.

States have an obligation under international human rights law to legally prohibit all forms of violence including corporal punishment of children, in all settings. Therefore – to achieve the full reform of laws to protect children with disabilities from corporal punishment in schools and alternative settings, those working for the rights of children with disabilities are urged to highlight to governments their obligation under international human rights law to prohibit and eliminate all corporal punishment of children with disabilities.

The Committee on the Rights of Persons with Disabilities made clear in General Comment No. 4 on Inclusive Education that the right to inclusive education can only be enjoyed by protecting the right to be free of all forms of violence and abuse, and called on all signatory states to prohibit corporal punishment in all settings.¹ This call was reiterated in General Comment No. 6 on equality and non-discrimination, which again highlights states' obligation to guarantee the right of children with disabilities to be equally protected under the law from assault.²

¹ Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on "Article 24: Right to inclusive education", para. 51

² Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on "Equality and non-discrimination", para. 37

Background

Corporal punishment is a key issue for children with disabilities

Children with disabilities are especially likely to experience violence from adults³ including the most common form of violence against children – violent punishment by their parents, teachers, carers and others. All corporal punishment violates children’s rights to physical integrity and respect for their human dignity. Yet violent punishment remains lawful in the family home and other settings of children’s lives in a large majority of states worldwide (see Annex). In some states, legal defences, justifications or authorisations (for example, laws allowing so-called “reasonable punishment” or “moderate correction”) explicitly allow parents and others to use force to punish children, while in others, the law does not address corporal punishment.

The traditional social acceptance of violent punishment of children means that laws against violence and assault, including laws which aim to provide particular protection to people with disabilities, are not interpreted as prohibiting corporal punishment. Even where corporal punishment is prohibited, including in alternative settings and schools, treatment of children with disabilities is not necessarily viewed as ‘corporal punishment’. This is particularly important to stress, when corporal punishment as defined by the UN Committee on the Rights of the Child, includes “shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion” as well as “non-physical forms of punishment that are also cruel and degrading... These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”⁴

A study published in 2013, which used UNICEF data on more than 45,000 2-9 year olds from 17 countries, found that children with disabilities were more likely to be physically punished and more likely to experience severe physical punishment than children without disabilities. Caregivers of children with disabilities were more likely to believe that they needed to use physical punishment than caregivers of children without disabilities.⁵

Wherever corporal punishment is not prohibited, reform is required to ensure that the law clearly protects children with disabilities from all violent punishment; and where legal prohibition is in place, education and training for carers, parents, teachers and health professions is needed to ensure full understanding of, and adherence to the law.

Children with disabilities are at increased risk of experiencing corporal punishment in schools and institutions

In 2009, a study by the American Civil Liberties Union (ACLU) and Human Rights Watch looked at corporal punishment of children with disabilities in American schools. The report shows that students with disabilities experience a high rate of “paddling” (beating with a wooden paddle). Students with disabilities were disproportionately affected, making up 18.8% of students who experienced this form of corporal punishment in schools in 2006-7 despite constituting only 13.7% of the total student population. In the states that use the most corporal punishment, students with disabilities were up to twice as likely as students without disabilities to experience this form of

³ Pinheiro, P. S. (2007), World Report on Violence Against Children

⁴ <http://www.refworld.org/docid/460bc7772.html>

⁵ Hendricks, C. et al (2014), “Associations Between Child Disabilities and Caregiver Discipline and Violence in Low- and Middle-Income Countries”, Child Development, published online 29 July 2013

corporal punishment. In addition to paddling, students with disabilities were also spanked, slapped, pinched, dragged across the floor and thrown to the floor. Most instances of corporal punishment uncovered by the report were in response to minor infractions of the rules such as lateness. Students with disabilities were also punished for behaviours connected to their disabilities: for example, students with autism were punished for rocking, spinning and other behaviours that were a direct result of their condition.⁶

Children with disabilities are also more likely to be in institutional care where they can often experience extreme violence, including corporal punishment.⁷ A 2014 report on orphanages in Russia documented widespread severe physical punishment of children with disabilities, including children being beaten and having cold water poured over their heads.⁸ Studies in Mexico⁹ and Serbia¹⁰ found that children with disabilities in psychiatric hospitals, institutions, care facilities and shelters were kept in permanent restraints, including being tied to chairs, tied up with bedsheets and kept in cribs. Faced with this evidence, the Committee on the Rights of Persons with Disabilities has already highlighted states' obligation to prevent and redress any violence and abuse committed against persons with disabilities living in institutional care.¹¹

This disproportionate mistreatment of children with disabilities, and the fact that they are often punished for behaviours linked to their disabilities, is clearly discriminatory – both directly and indirectly. Arbitrary discriminations within the broader social group of children with disabilities can also emerge. In the American state of Oklahoma for example, a law was passed in 2017 which prohibited the use of corporal punishment against “students identified with the most significant cognitive disabilities”.¹² In that particular case, there is a direct violation of article 5 of the Convention in that all children with disabilities are not treated as equal before the law and on an equal basis with others, and in particular other children with disabilities quantified as “more severe”. The prevalence of corporal punishment in educational settings also effectively curtails children with disabilities' right to education,¹³ in violation of the principle of non-discrimination¹⁴ according to which children with disabilities should be able to enjoy their fundamental rights on an equal basis with others.

Although all children, including children with disabilities, have the right to equal protection from assault under the law, corporal punishment can have particularly adverse consequences on children

⁶ Human Rights Watch & American Civil Liberties Union (2009), *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, www.hrw.org/node/84950

The report was based on data from 202 interviews with parents, students, teachers, administrators, and special education professionals, and 9 statistics from the Office for Civil Rights at the US Department of Education.

⁷ UNICEF (2013), *The State of the World's Children 2013: Children with Disabilities*, NY: UNICEF, pp. 42-43

⁸ Human Rights Watch (2014), *Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages*

⁹ Rosenthal, E. et al (2010), *Abandoned & Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities*, Mexico City: Disability Rights International & Comisión Mexicana de Defensa y Promoción de los Derechos Humanos

¹⁰ Ahern, L. et al (2007), *Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities*, Washington, DC: Mental Disability Rights International

¹¹ Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community, para. 84

¹² Oklahoma House of Representatives (2017), House Act 1623

¹³ Article 24 of the Convention on the Rights of Persons with Disabilities

¹⁴ Article 5(2) of the Convention on the Rights of Persons with Disabilities

with disabilities whose medical conditions can be aggravated from the punishment itself. Experiencing physical punishment can also trigger a phase of regression in developmental terms.¹⁵

“Children with disabilities, just as any other children, should enjoy a life free of all forms of violence. The international community and States must work together to guarantee that all children enjoy their right to dignity and integrity and are free of any form of corporal punishment.”

(Catalina Devandas Aguilar, Special Rapporteur on the rights of persons with disabilities, 2014).

About the Global Initiative to End All Corporal Punishment of Children

Launched in 2001, the Global Initiative to End All Corporal Punishment of Children¹⁶ promotes universal prohibition and elimination of corporal punishment of children in fulfilment of states’ obligations under the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and other international treaties. It freely offers technical support and advice on all aspects of law reform and regularly briefs several UN treaty bodies on this issue, including the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities. Our aims are supported by UNICEF, UNESCO, the International Disability Alliance, Disability Rights International, Inclusion International, and many other international and national NGOs.

In October 2018, 54 states across the world have prohibited all corporal punishment of children, including school and in the family home; 61 have prohibited corporal punishment in all forms of alternative care, and 131 have prohibited all school corporal punishment (see Annex).

<https://endcorporalpunishment.org/>

¹⁵ Human Rights Watch & American Civil Liberties Union (2009), Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools, www.hrw.org/node/84950

¹⁶ www.endcorporalpunishment.org, info@endcorporalpunishment.org

Annex: Global progress towards prohibiting all corporal punishment in schools

States where corporal punishment is prohibited in all settings

The following 54 states have prohibited corporal punishment in all settings, including the home and in all schools:

Albania, Andorra, Argentina, Austria, Benin, Bolivia, Brazil, Bulgaria, Cabo Verde, Congo (Rep.), Costa Rica, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Honduras, Hungary, Iceland, Ireland, Israel, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mongolia, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Peru, Poland, Portugal, Republic of Moldova, Romania, San Marino, Slovenia, South Sudan, Spain, Sweden, TFYR Macedonia, Togo, Tunisia, Turkmenistan, Ukraine, Uruguay, Venezuela.

States where corporal punishment is prohibited in schools but not in all other settings

In the following 77 states, corporal punishment is prohibited in all schools but it is not yet prohibited in all other settings, including the home:

Afghanistan, Algeria, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Belize, Bosnia and Herzegovina, Burundi, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Cook Islands, Cuba, Czech Republic, Djibouti, Dominican Republic, DR Congo, Ecuador, El Salvador, Ethiopia, Fiji, France, Gabon, Georgia, Guinea-Bissau, Haiti, Italy, Japan, Jordan, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Lao PDR, Libya, Madagascar, Malawi, Mali, Marshall Islands, Mauritius, Mexico, Micronesia, Monaco, Namibia, Nauru, Oman, Philippines, Republic of Kosovo, Russian Federation, Rwanda, Sao Tome and Principe, Serbia, Seychelles, Slovakia, South Africa, Switzerland, Taiwan, Tajikistan, Thailand, Tonga, Trinidad and Tobago, Turkey, Uganda, UK, United Arab Emirates, Uzbekistan, Vanuatu, Viet Nam, Yemen, Zambia

States where corporal punishment is not yet fully prohibited in schools

In 68 states, corporal punishment is not prohibited by law in all schools. In some of these states there is policy which advises against corporal punishment, and in some others there is legislation prohibiting corporal punishment in some education institution (e.g. in primary schools, or in pre-schools), but full legal prohibition has not yet been achieved:

Angola, Antigua and Barbuda, Australia, Bahamas, Barbados, Bhutan, Botswana, Brunei Darussalam, Burkina Faso, Central African Republic, Comoros, Cote d'Ivoire, Dominica, DPR Korea, Egypt, Equatorial Guinea, Eritrea, Gambia, Ghana, Grenada, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Lebanon, Lesotho, Liberia, Malaysia, Maldives, Mauritania, Morocco, Mozambique, Myanmar, Niger, Nigeria, Niue, Pakistan, Palau, Panama, Papua New Guinea, Qatar, Republic of Korea, Samoa, Saudi Arabia, Senegal, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, State of Palestine, Sudan, Suriname, Swaziland, Syrian Arab Republic, Timor-Leste, Tuvalu, UR Tanzania, USA, Western Sahara, Zimbabwe