

# Equal protection for children

**An overview of the experience of countries  
that accord children full legal protection  
from physical punishment**

**by Rowan Boyson  
Edited by Lucy Thorpe**

## About the authors

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## Note

The information in this report was correct at the time of going to press. However, this is an area where new developments occur frequently. For up-to-date information please refer to: <http://www.endcorporalpunishment.org>

## **Statement of the High Commissioner for Human Rights, Mrs Mary Robinson, on the occasion of the launch of the “Global Initiative to End All Corporal Punishment of Children”**

“I am particularly sensitive to the protection of the human rights of children, and the issue of corporal punishment is one of great importance to child rights.

“I am very supportive of this important initiative because I believe that physical punishment is a practice that sends the wrong message to children. It usually demonstrates the inability of adults to educate, and when necessary discipline, children by other means such as dialogue and discussion. It also shows adult ignorance of the capacity of children to understand and distinguish right from wrong, with proper guidance. The use of violence is a practice that can hamper the child’s development of his or her communication ability; it can encourage aggressive behaviour and can destroy the child’s self-confidence and internal value system. Physical punishment generates a destructive relationship based on force, between the adult and the young person; a relationship that can hinder trust within the family. Research shows that the use of physical punishment risks perpetuating the use of violence by successive generations.

“The recourse to physical punishment by adults reflects a denial of the recognition, by the Convention on the Rights of the Child, of the child as a subject of human rights. If we want to remain faithful to the spirit of the Convention, strongly based on the dignity of the child as a fully-fledged bearer of rights, then any act of violence against him or her must be banned, in accordance with articles 19 and 28.2 of the Convention.

“The Convention on the Rights of the Child offers valuable tools to combat the use of corporal punishment. It requires States parties to take all necessary legislative measures to prohibit all forms of violence. It also encourages States to take preventive action, including through human rights education and by creating an environment conducive to the administration of discipline ‘in a manner consistent with the child’s human dignity’.

“I believe that in addition to legal prohibition, sensitization of all actors of society – in particular parents and teachers – to the negative impact of physical violence is a key aspect of the process leading to a non-violent society. Violence should never be legitimized.

“Physical punishment denies children their fundamental right to grow up to become capable of making a responsible contribution to a free society. Children and adolescents deserve better than to be beaten for their so-called errors or disobedience. They deserve constant and quality guidance and attention; creative and enriching dialogue; and stimulating and challenging education. No form of violence, including physical, sexual or psychological, can ever be justified as being in the best interests of the child.”

# Foreword

The NSPCC has published this overview as a contribution towards informing the debate on physical punishment in the UK, and the need for children to be accorded the same right of legal protection from assault as adults. We believe it is important that those who are concerned about the way in which we bring up our children should be aware of the legislative approach taken in other countries, the reasons for such an approach, and the effect this has had on parents' perceptions of children and the best way to raise them.

In countries where such legislation has been enacted, its primary purpose has not been to punish parents, but to educate them, and society more broadly. It therefore aims to act as a normative influence on parenting practice, as well as fulfilling the need for children's equal right to protection. This symbolic, communicative power of the law has been well described by one German researcher, quoted in our report, as capable of 'shift[ing parents'] horizons, or the reference points of their perceptions'. A legal framework which states that parents must not use physical punishment provides a clear imperative for adopting and promoting helpful, positive and effective methods of child-rearing that can instil true lasting discipline, without compromising children's rights to dignity, and freedom from degrading and violent treatment.

In the UK, the current legal framework, dating back to 1860, neither provides children with adequate protection from physical force, nor gives a clear message that physical punishment is not an acceptable practice in a modern society. The defence of reasonable chastisement can work to undermine the efforts of those seeking to protect children, and our report provides many models for alternative approaches. When we have available to us a substantial body of research detailing the harm that physical punishment can do to children it is important that such change should become a priority. We recognise that these aims of protection and welfare are shared by those on both sides of the physical punishment debate, despite often emotive disagreements over how best to serve the interests of children and families. Policies on physical punishment should be reviewed and developed in open consultation and discussion, not least with children themselves, and any legislative change must be accompanied by widespread public education programmes and extensive provision of parenting and family support services. As our report demonstrates, it is this dual approach that has the best chance of changing parenting practices for the better.

**Mary Marsh**  
**Director and Chief Executive, NSPCC**

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# Research methodology

This study is based on information gathered from the available literature on the topic of legislation on physical punishment and through telephone interviews and email contact with individuals abroad. The research was undertaken and written up from January to October 2002.

Search strategy:

- article and book references supplied by specialists
- search of NSPCC and British Library holdings
- conference attendance – Children are unbeatable! Supporters' Conference, London (09.01.2002)
- internet searches (Google)
- specialist organisations: Research in Practice, World Health Organisation, Pan-Americas Health Organisation, Global Initiative to End all Corporal Punishment of Children and the Department of Health.

# People interviewed

The following people were kind enough to provide information on physical punishment legislation and prevalence in their country, ranging from policy statements and anecdotal evidence to criminal and child protection statistics:

## **Austria**

Martina Staffe, Head of Youth Welfare in the Federal Ministry for Social Security and Generations

Petra Smutny, Family Lawyer, Ministry of Justice

Paul Arzt, Salzburg Ombudsoffice for Children and Youth

## **Belgium**

Ankie Vanderkerckhove, Flemish Children's Rights Commissioner

## **Cyprus**

Maria Kapakioti, Executive Officer, Advisory Committee for the Prevention and Handling of Violence in the Family

## **Denmark**

Søren Gade Hansen, National Council for the Child

## **Finland**

Heikki Sariola, Researcher, Central Union for Child Welfare

## **France**

Patrice Blanc, Secrétaire Général, Défenseur des Enfants

## **Germany**

Joerg Maywald, Director, Deutsche Liga für das Kind

## **Iceland**

Ásta Sólveig Andrésdóttir, Lawyer, Ombudsman for Children

## **Israel**

Tali Gal, Legal Advisor, National Council for the Child

Elizabeth Levy, Director, National Council for the Child

## **Italy**

Arianna Saulini, Save the Children Italy

Ivana Roagna and Maria Casali, International Relations Officers, Telefono Azzurro

## **Latvia**

Andra Reinfelds, National Centre for the Rights of the Child

Inete Ielite, Director, National Centre for the Rights of the Child

**Norway**

Knut Haanes, Head of Division, Ministry for Children and Family Affairs

Marianne Kildedal Christie, Adviser, Norwegian Ministry of Children and Family Affairs

**Republic of Croatia**

Bozena Les, Lawyer, Croatian Embassy

Marija Stojeviae, Ministry of Labour and Social Welfare

Nino Žganec, Assistant Minister of Labour and Social Welfare

**Spain**

Pepa Horno, Co-ordinator of Spanish End-Corporal-Punishment campaign, Spanish Save the Children

**Sweden**

Staffan Janson, Assistant Professor, Karlstad University, Sweden

Gunvor Martinsson, Prosecution Authority

Agneta Björklund, Social Ministry

Lotta Persson, Statistics Sweden, Demographic Analysis and Gender Equality

Margareta Wiman, Ministry of Education and Science

**Switzerland**

Franz Ziegler, Kinderschutzbund

**UK**

Peter Newell, Global Initiative to End All Corporal Punishment of Children

Phil Taverner, Area Children's Services Manager, NSPCC

# Executive Summary

## Introduction

In the UK, the continued existence of the defence allowing parents to use ‘reasonable chastisement’ when disciplining their children remains a barrier to fully respecting children as human beings in their own right – developing citizens, the responsibility, and not the property, of their parents.

In common with many other professional organisations, the NSPCC believes that giving children equal protection with adults under the law on assault would make a significant contribution to the protection of children from physical danger, as well as according them their basic human right to freedom from physical violence. It would also encourage a culture of greater respect for children and help to promote the use of positive parenting techniques which would contribute to happier child-rearing experiences for both children and parents.

## Scope of the report

Over the last three decades, the movement against the physical punishment of children has brought about principled legal reform in ten countries: Sweden, Finland, Denmark, Norway, Austria, Cyprus, Latvia, Croatia, Germany and Israel, and a Supreme Court judgement in Italy has effectively banned the use of violent discipline. Many states have prohibited the use of physical punishment in the education system or are in the process of doing so.

Such reforms indicate the enormous change in attitudes towards physical punishment over the last century, from a time when regular and often severe violence was considered a natural and necessary part of child-rearing. Adults have hit children in the name of education, punishment and religion, as men were once entitled by English common law to beat wives and servants when ‘disciplining’ the household.<sup>1</sup>

This report seeks to provide an overview of the available evidence from other countries that have legislated against all physical punishment of children, as an important contribution to informing the debate around similar reform in the UK.

The report identifies and discusses key areas of commonality and contrast in the international experience of physical punishment legislation, together with their implications for policy and research. These are:

- a staged process of legal reform
- the influence of high-profile maltreatment cases

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<sup>1</sup>*Blackstone, Sir William, Commentaries on the Laws of England [A Facsimile of the First Edition of 1765-1769], Volume I, Chapter 15, Section III, page 432-433 University of Chicago Press, 1979: The husband also (by the old law) might give his wife moderate correction . . . in the same moderation that a man is allowed to correct his servants or children...*

- governments leading public opinion
- links with domestic violence
- involvement of children in the debate
- public education programmes
- a lack of comparative research.

## Key findings

Recent debates on physical punishment in the UK have revealed many concerns that inhibit progress towards the aim of equal protection for children. These include criticisms that the state has no right to involve itself with such matters; unfounded fears of parents being imprisoned by the hundred for minor transgressions of the law, and worries that children will be spoilt and/or become unmanageably anti-social beings.

This overview of the available evidence points in another direction. Physical punishment legislation has been widely accepted in the countries in which it has been introduced. No negative effects have been documented following legal reform, and such reform has helped to foster a culture in which children are accorded greater respect, have greater equality, and enjoy greater protection from violence.

In Sweden, where legal reform has been in place the longest, accompanied by widespread public education, only a minority of the population remains in favour of physical punishment, a group which tends to comprise members of the older generation and recent immigrants. There is no evidence that youth violence has increased, and drug and alcohol use among the young has in fact decreased. While it is not possible to attribute this solely to the prohibition of physical punishment, it has clearly not contributed to an increase in such harmful behaviours.

While it is far too soon to see an effect on parenting practice, the first evaluation of the impact of Germany's reform has found – among those parents aware of the new law – an increased consciousness among parents of what the law says on physical punishment, an increased perception and definition of physical chastisement as violence, and more frequent references to the new legal regulation in family communication.

Overall, however, there is a need for more formal evaluation both of the impact of legal reform in countries where it has been enacted, and the success of public education initiatives, as well as research that will enable more meaningful international comparisons of activity in this area.

## Recommendations

### 1. Evaluating the effects of legal reform

Now that ten countries have prohibited the use of physical punishment and other countries are moving towards this position, there is a clear need for governments and voluntary bodies in these countries to evaluate the impact of such reform. This evaluation should examine:

- the impact on child protection work: reductions in incidence of physical abuse and child deaths as a result of services focused more on prevention and earlier intervention
- parental use of physical punishment
- children's experience of discipline and family relationships
- public attitudes to physical punishment

- enforcement of the law
- the effectiveness of non-violent methods of disciplining children
- the effectiveness of public education programmes.

## 2. Agreeing an international definition of child physical punishment

An internationally accepted definition of child physical punishment should be developed, based on standardised notions of 'frequency' and 'severity' and perhaps taking the form of a World Health Organisation protocol. This would be of immense value in ascertaining prevalence across different countries and population groups.

## 3. Research issues

There are serious gaps in the literature on physical punishment, in particular its prevalence in different countries and the evaluation of physical punishment reform in countries other than Sweden.

3.1 Children's views have, in general, been absent from debate on this issue. Further research should be undertaken to deepen adults' understanding of how physical punishment affects children, and to ascertain their views on legal reform and their perspectives on alternative, more effective and more respectful forms of discipline. Most importantly, as a recent article on the topic has emphasised: 'investigating corporal punishment through the eyes of children rather than the adult is the single most pressing research need'.<sup>2</sup>

3.2 There should be wider dissemination of existing research on physical punishment, including a translation project, and funding for further meta-analytic studies, in order to create a better understanding of the rationales influencing legal reform.

3.3 Longitudinal studies of children in different countries should be undertaken to assess parental use of physical punishment and its relationship to child abuse and other possible outcomes, using standardised definitions of physical punishment where possible.

3.4 Funding for original research, translation and different means of collating statistics would develop our understanding of physical punishment and enhance public education initiatives.

## 4. Criminal assault statistics

Published criminal assault statistics, at a minimum, should include the age of the victim, their relationship to the perpetrator, and any conviction.

## 5. The role of public education

Unless public education is underpinned by legal reform it can only ever be partially convincing, and limited in its success. A retained defence of 'reasonable chastisement' serves to undermine professional arguments in favour of 'positive parenting' methods, and allows those wholly or partially committed to physical punishment a powerful reason not to adopt less harmful child-rearing practices.

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<sup>2</sup>Holden, George W. (2002) 'Perspectives on the Effects of Corporal Punishment: Comment on Gershoff', *Psychological Bulletin*, Vol. 128, No. 4, pp. 590-595.

Conversely, to introduce legal reform in the absence of sustained programmes of public education and family support for those in need of greater help would be unacceptable. Removing a parental right that has been accepted for centuries without helping parents to find effective and reliable alternatives helps neither parents nor their children; the evidence shows that attitudes and practices have shifted most in countries which have both reformed the law and invested in sustained public education, such as Sweden.

The cost of a widespread public education campaign in the UK has to be set against the financial as well as social benefits of a cultural change for children. If, as is hoped, successful public education initiatives, combined with clear normative legislation, enabled earlier intervention in borderline situations of child physical abuse, the cost to the state would be vastly reduced. In the UK, the current cost of child abuse to statutory and voluntary agencies is estimated at £1 billion a year, of which the large majority is spent on intervention services, not prevention<sup>3</sup>. The cost of all forms of child abuse and neglect in the US has been estimated at \$258 million per day<sup>4</sup>. This estimate brings together the direct costs associated with health care, hospitalisation, chronic ill-health, mental health, child welfare, law enforcement and the judicial system (\$66.8 million) and indirect costs: special education, mental health and health care, juvenile delinquency, lost productivity and adult criminality (\$190.9 million).

## 6. Collaborative work across the European Union

In order to understand best practice in protecting children from physical violence, European Union and Council of Europe Member States should gather and share information on physical punishment topics including:

- costing and targeting public education campaigns
- methods of public education and evaluation of their impact
- ways of researching children's views and involving them in the debate
- experience of introducing legal reform: political, public, financial and legal.

Appropriate forums for this exchange of information include:

- EU Ministers for Children, who meet annually to discuss children's issues at an expert and ministerial level. An Intergovernmental Experts Group meets bi-annually, to share good practice and prepare the ministerial meetings.
- The Children's Alliance, an all-party group of MEPs looking at children's issues.
- The planned Network of Observatories on Infancy<sup>5</sup> could examine the theme of physical punishment. These observatories are independent research centres in Member States, who will develop common statistical indicators on topics relating to children.
- The Council of Europe (not to be confused with the Council of the European Union), with responsibility for the European Court of Human Rights and, with 43 members, the European organisation with the widest representation.

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<sup>3</sup>Childhood Matters: Report of the National Commission of Inquiry into the Prevention of Child Abuse, Volume 1. (1996), London, The Stationery Office.

<sup>4</sup>Prevent Child Abuse America, Press Release, 2 April 2001, [www.preventchildabuse.org](http://www.preventchildabuse.org).

<sup>5</sup>The lead organisation for the Network is the UNICEF Innocenti Research Centre in Florence.

# 1 Introduction

The Committee on the Rights of the Child presented its Concluding Observations on South Africa in 2000. Under Section 28 (Corporal Punishment), the Committee stated:

‘... It is also recommended that the State party take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation.’<sup>6</sup>

The movement against the physical punishment of children has brought about principled legal reform in ten countries over the last three decades. A Supreme Court judgement in Italy has effectively banned the use of violent discipline. Many states have prohibited the use of physical punishment in the education system or are in the process of doing so. Such reforms indicate the enormous change in attitudes towards physical punishment over the last century, from a time when regular and often severe violence was considered a natural and necessary part of child-rearing. Adults have hit children in the name of education, punishment and religion, as men were once entitled by English common law to beat wives and servants when ‘disciplining’ the household.<sup>7</sup>

This paper provides details of this legislation and its background in each of the countries that have prohibited ‘smacking’,<sup>8</sup> and draws together the available evidence on the effects of anti-physical punishment laws. It is intended to help policy-makers and others with an interest in the subject to develop a position on this controversial issue that is informed by evidence from abroad. The experience of these eleven countries is perhaps of the greatest immediate interest for the UK jurisdictions currently considering reform. While the example of Sweden is sometimes cited in the context of the debate, a detailed discussion of international reform has not been published since Peter Newell’s 1989 report, *Children are People Too!* Public and parliamentary debate on the issue has too often been based on emotive assertions and speculation; the circumstances and effects of reform in other countries have been subject to distortion and misinterpretation. This paper presents the available evidence from other countries, which the NSPCC believes will strengthen the argument for UK legislation against all physical punishment of children and allay fears about the impact such legislation might have.

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<sup>6</sup>*Committee on the Rights of the Child, Report on South Africa (2000), available at:*

*<http://www.unhchr.ch/tbs/doc.nsf>*

<sup>7</sup>*Blackstone, Sir William, Commentaries on the Laws of England [A Facsimile of the First Edition of 1765-1769], Volume I, Chapter 15, Section III, page 432-433. University of Chicago Press, 1979: The husband also (by the old law) might give his wife moderate correction . . . in the same moderation that a man is allowed to correct his servants or children...’*

<sup>8</sup>*Physical punishment takes many forms, ranging on a continuum from ‘taps’, ‘slaps’ and ‘smacks’ to severe beatings and the use of implements. The term most commonly used in discussions on physical punishment in the UK is ‘smacking’: a term sometimes seen as sanitising the practice of hitting children. In this paper ‘physical punishment’ is the preferred term, and is understood to encompass all hitting of children from the so-called ‘trivial’ smack to use of implements and strong force for the ostensible purpose of discipline.*

The NSPCC maintains that using violence against children is inherently wrong and denies their rights as individuals to protection from violent, degrading and humiliating treatment and asserts that there should be principled law reform to afford children in the UK the same legal protection from assault as adults, as they are afforded in many other European countries. This is one of most powerful tools available to society for shifting cultural attitudes to children and increasing parents' and others' respect for their needs. To be supportive, reform must be accompanied by public education on children's right to protection and on alternatives to physical punishment. This policy has been adopted after careful consideration of the human rights context, evidence from numerous professional bodies on the damaging consequences of physical punishment and its ineffectiveness as a means of discipline, as well as detailed discussion within the organisation. Legal reform against physical punishment is far from unattainable, and the experience of other countries suggests that, on the contrary, children can successfully be given equal protection from assault, without adversely affecting family life or youth behaviour. Indeed, research studies have consistently shown that when children and young people experience regular physical punishment, their aggression towards others increases.<sup>9</sup> Those seeking reform of the law on physical punishment are not against discipline, however: this paper also seeks to show that parents in other countries have successfully developed non-violent ways of bringing up children, with no adverse impact on young people's behaviour.

## Why have other countries changed the law?

Where countries have initiated legislation against physical punishment, lawmakers have referred to a broadly similar set of justifications. One of the most influential reasons is the increasing recognition of children's rights in international law, and particularly Article 19 of the United Nations Convention on the Rights of the Child (see Appendix 2 for full details of relevant international and European legislation). The Committee on the Rights of the Child, the human rights Treaty Body which monitors implementation of the Convention, has formally recommended abolition of all corporal punishment to more than 100 countries – including the UK – in all continents. The growing body of evidence from medical, educational and psychological authorities on the negative effects of physical punishment and its ineffectiveness as a method of discipline has also been persuasive in bringing about legislation. Legal reform is recognised as a crucial adjunct to public education about positive, non-violent methods of bringing up children. Supportive public opinion has not been a prerequisite for legislating against physical punishment, a fact that is particularly significant in relation to the arguments advanced in the UK around the lack of popular support for a ban. In only one country, Finland, was there a majority in favour of reform before the law was changed.

However, in all these countries and in others, including the UK, gradual legislation against physical punishment in schools and in child care institutions represents a sea-change of attitudes towards violence against children. Domestic violence was once defensible in law: it now receives the most serious public attention in many countries; many people believe that the physical punishment of children should be regarded as part of the same continuum of family violence.

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<sup>9</sup>*Gershoff, Elizabeth Thompson (2002) 'Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review', Psychological Bulletin, Vol 128, no 4, pp539-579. This meta-analysis of 88 studies spanning the last 62 years concluded that corporal punishment was significantly associated with ten undesirable 'constructs' (possible effects) including childhood aggression, and one positive construct, namely immediate compliance.*

Countries have tended to adopt staged legal responses when reforming the law on physical punishment:

**1. Banning the use of physical punishment in schools and child care institutions.**

This has been law for many years in all European countries, and sometimes centuries: Poland abolished it in 1783, and a complete ban has been in place in England and Wales since 1999 (see Appendix 1). Similar bans are under consideration in many other states across the world.

**2. Removing any defence from the law on criminal assault and battery** that allows a parent accused of physically assaulting a child to defend him or herself on the basis that the assault was for ‘corrective’ or ‘disciplinary’ purposes. Removal of the defence ostensibly gives children the same protection under the law as adults. In many countries, deletion of the defence has long preceded an explicit legislative ban; some countries have never had such a defence.

**3. Explicitly prohibiting the use of violence against children, including physical punishment, usually by an addition to family law.** The point is frequently made that this step does not lead directly to the criminalisation of parents, as civil law does not have penalties attached. However, its purpose is to clarify that parental and other assaults of children in the name of ‘discipline’ are still assaults, prosecutable under the criminal law.

**For a summary of where the UK is in relation to these stages of reform see Appendix 1.**

## 2 Summary of international legal reform against physical punishment

Most of the world's children do not enjoy the same protection from physical assault as adults, and live under governments that sanction assault for corrective purposes by the judicial authorities, by teachers, and by parents and other carers. In states in every continent there have been moves to end corporal punishment in schools and penal systems (for example, in recent years in Ethiopia, South Africa, Thailand, Trinidad and Tobago, and Zimbabwe).

A majority of countries have now prohibited the use of physical punishment in the penal system (88 have banned it, 64 still allow it and for 60 there is no information). Most have also banned physical punishment in schools (90 states; 70 still permit it and for 52 there is no information). The few which have not include the US, Canada and parts of Australia. In the private context of the home, there has been principled legal reform in 10 countries, nine of which are European states; in addition a Supreme Court judgement in Italy has effectively banned the use of violent discipline.

**Table 1: Summary of international legal reform**

Country	Removed defence *	Explicit abolition	Date	Wording	Comments
<b>Sweden</b>	1966	Children and Parents Code (Civil Law)	1979	'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.' (1983 version)	The 1979 amendment was the first explicit prohibition of parental physical punishment in the world.
<b>Finland</b>	1969	Child Custody and Rights of Access Act (Family Law)	1983	'A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted.'	Part of an overhaul of children's law, the Finnish legislation gives a very full, positive statement on child-rearing.
<b>Denmark</b>		Majority Act	1985	'Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment'.	

<b>Denmark (Cont)</b>	1997	Parental Custody and Care Act	1997	'A child has the right to care and security. He or she shall be treated with respect as an individual and may not be subjected to corporal punishment or other degrading treatment.'				
<b>Norway</b>	1972	Parent and Child Act (Family law)	1987	'The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.'				
<b>Austria</b>	1975	Youth Welfare Act (Civil Law)	1989	'[In the implementation of the parents' orders to the child] the use of force and the infliction of physical or mental suffering are unlawful.'			Austria was the first non-Scandinavian country to introduce reform.	
<b>Cyprus</b>		Prevention of Violence in the Family and Protection of Victims Law	1994	Prohibits 'any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family...'			The Cypriot law is unique in including physical punishment under the aegis of domestic violence	
<b>Latvia</b>		On Children's Rights Protection	1998	1. A child has rights to his private life, secrecy of apartments and correspondence, personal inviolability and freedom 2. Cruel treatment of a child, physical punishment and offences against the child's honour and respect are not allowed.			A strong focus on children's right to respect for their individuality	
<b>Croatia</b>		The Family Act	1998	'Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse.'				
<b>Germany</b>		German Civil Law	2000	'Children have a right to be brought up without the use of force. Physical punishment, the causing of psychological harm and other degrading measures are forbidden.'			Affirmation of children's rights. German ' <i>Gewalt</i> ', 'force', extends beyond hitting to include various aggressive acts.	
<b>Israel</b>	2000	Supreme Court judgement	2000	'Parents are now forbidden to make use of corporal punishments or methods that demean and humiliate the child...'			The removal of the defence following the landmark decision gives children legal protection from assault.	

★ Removal of defence justifying physical punishment from criminal law



## 3 Country-by-country profiles

### The problems of evaluating physical punishment reform

As commentators on the physical punishment debate have noted, there is a dearth of reliable information on the effects of law reform in other countries.<sup>10</sup> This paper is intended as a preliminary effort in this respect, and recognises that there are serious gaps in knowledge. There are also significant translation issues: although some of the information from Scandinavia has been disseminated in English, it is much harder to obtain other material, for example, from Latvia, Israel or Cyprus. Much more challenging than translation issues are controversial questions over the effects of physical punishment itself and thus how to evaluate legal reform in this area. Physical punishment is a topic that polarises debate, for two main reasons. First, it continues to be culturally accepted and very widely practised, and is a direct part of the experience of the majority of people in English-speaking countries, and secondly because at its core is an apparent conflict between two sets of rights – the fundamental human rights of children, and the perceived ‘right’ of parents to chastise their children. Trying to assess whether a physical punishment ban has had an impact on rates of child abuse, as has been attempted in Sweden, is inflected by controversies over the relationship between the two.

Furthermore, physical punishment research faces the same problems as research on child maltreatment and other controversial forms of private violence, with respect to the difficulty of obtaining an accurate picture of incidence and year-on-year change. Criminal statistics on assault and battery only rarely record the age of the victim or the relationship of the victim to the perpetrator. Prosecution rates bear little relation to the actual rates of physical punishment and abuse. Young children are unlikely to report; reports may not be pursued; reporting rates will increase as general awareness of and sensitivity to child maltreatment increases, perhaps disguising a decrease or consistency of prevalence in real terms. Physical punishment legislation is only one of a variety of measures that are essential to children’s rights and safety. Attempts to make direct links between the legislation and specific positive or negative effects must recognise a wider social context which includes other child protection legislation and the work of social services, general cultural attitudes to children and particular stresses, including poverty and immigration. Joan Durrant writes:

‘The Swedish corporal punishment law has been very effective in shaping a social consensus... However, the law’s implementation and the attitude shift that accompanied it cannot be viewed in isolation from the social context in which it developed.’<sup>11</sup>

<sup>10</sup>e.g., ‘Hopefully, better evaluations will be implemented for any future spanking bans so that we will have better information about the effects of such laws a decade or two after they are enacted.’ Larzelere, R E and Johnson, B (1999) ‘Evaluation of the effects of Sweden’s spanking ban on physical child abuse rates: a literature review’ *Psychological Reports*, 85, pp. 381-392.

<sup>11</sup>Durrant, Joan (1996) ‘The Swedish Ban on Corporal Punishment: Its History and Effects’. In Frehsee, D., Horn, W. and Bussmann, K. eds. *Family Violence Against Children*. Berlin, New York: Walter de Gruyter & Co.

In a foreword to a recent collection on child abuse around the world, David Finkelhor makes a more general comment:

‘Different countries have very different historical and institutional frameworks into which concern about child maltreatment gets assimilated...’<sup>12</sup>

These points must be remembered when attempting to make international comparisons on the subject of child physical punishment.

### The Scandinavian precedent

Four of the five Nordic countries were the first in the world to introduce anti-physical punishment legislation: Sweden (1979), Finland (1983), Denmark (1985; explicit prohibition clarified in 1997) and Norway (1987). The Scandinavian welfare systems are social democratic, and based on key principles of universalism and equality. High spending and high standards of services and benefits are dependent on high or full employment, and the state takes an active responsibility for the family and its members. The countries all have small populations and high per capita domestic product; child poverty levels are low. The high level of general education, women’s independence and the moral tone of the media have been cited as factors in the relatively low levels of child abuse in Finland and Sweden.<sup>13</sup> These aspects of Scandinavian society may have influenced the early adoption of physical punishment legislation, contributing to a culture in which children’s rights and respect for their individuality are of central importance.

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<sup>12</sup>Finkelhor, David (2001) *Foreword to Schwartz-Kenney B, McGauley M, and Epstein M (eds.) Child Abuse: A Global View Westport, Connecticut: Greenwood Press.*

<sup>13</sup>Harder and Pringle (1997) *Protecting Children in Europe: Towards a New Millennium Aalborg, Denmark: Aalborg University Press, p.94.*

*Information about the countries that have enacted reform is provided in chronological order, beginning with Sweden and ending with Germany.*

## 3.1 Sweden

**‘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 physical punishment or any other injurious or humiliating treatment.’**

(1983 amendment to the Children and Parent’s Code, Civil Law)

**Population:** 8.9 million (1998)

**Child population:** 1.9 million (1998)

**Children’s Ombudsman or Commissioner:** Children’s Ombudsman since 1993

**Legislative framework:** Social Services Act; Care of Young Persons Act, Parents’ Code

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Sweden was the first country in the world to enact an explicit and complete ban on the physical punishment of children, more than 20 years ago, in 1979. Because the law is relatively longstanding, and because detailed research has been carried out into the ban and its effects, it has been widely discussed in debates on physical punishment. As all commentators on the law have noted, the clear intention of the ban was to educate parents and not to punish them. No negative effects have been recorded as a result of the reform and non-violent parenting practices are now widely accepted as the most effective and only right way to bring up children.

### The cultural context of reform

#### A tradition of physical punishment

Sweden’s radical decision to legislate against hitting children contrasts with a strong cultural tradition of physical punishment. Regular beatings used to be an accepted part of family life, and the way in which children were thought of as property, not people, is suggested by a once-common phrase: ‘the will of the child is sitting in the birch’.<sup>14</sup> Books recommending physical punishment and advising on various implements with which to beat children were available at the start of the twentieth century. A strong religious belief in the parent’s duty to use force against a child’s naturally sinful will was related to literal interpretation of biblical injunctions

<sup>14</sup>Sverne, Tor ‘The Swedish Ban on Physical Punishment’ In: *Epoch Worldwide (1992) Ending Physical punishment of European Children.*, Final report from a two-day Seminar. London: *Epoch Worldwide and Swedish Save the Children.*

and Lutheran church teachings.<sup>15</sup>

A man's right to beat his wife and servants existed until 1920, when it was prohibited with legislation that nevertheless confirmed the right of parents to hit their children. In some areas, physical punishment was not widely practised, but in general strict discipline was a defining feature of the largely agrarian, poor society influenced by German militaristic social practices.<sup>16</sup>

### Economic and political change

Rapid industrialisation and urbanisation, along with a low fertility rate, brought about many changes in social and private life. In Sweden, the advent of social democracy (the Social Democratic Party was established in 1889) – and a famously strong commitment to equality have had a very significant impact on cultural attitudes towards children's rights.

### Family-friendly social policies

Family policy has been high on the agenda in Sweden since the 1930s, when the rapid and comprehensive development of a welfare state was triggered by world economic crises.<sup>17</sup> A family framework for social security programmes was part of the strategy for increasing the fertility rate,<sup>18</sup> as well as embodying the general principle of the state's role in protecting the rights of the individual that was also evident in the importance accorded to industrial relations in the same period.<sup>19</sup>

Maternity benefits, free pre-natal care and family housing subsidies were introduced before the Second World War.<sup>20</sup> Sweden now has an exceptional range of allowances and benefits for parents and children. Measures have been introduced in recent decades which give children statutory rights to government accountability through a Children's Ombudsman, to have their opinions given due consideration in familial decision making and divorce proceedings, and to grow up in an environment free of violence.<sup>21</sup> Accident prevention strategies (child-proofing homes, traffic areas, playgrounds and so on) resulted in a 75 per cent reduction in accidents between 1952 and 1992, and in 1997 Sweden had one of the lowest rates of serious childhood accidents in the world.<sup>22</sup> These policies reflect a recognition that children's rights and protection must be ensured by regulation.

Sweden has had a 'Children and Parents' Code' (*Föräldrabalken*) in its civil law since 1949. This covers many aspects of the relationship between children and their primary carers including

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<sup>15</sup>Hauser, Adrienne (1988). *Reducing Violence Towards US Children: Transferring Positive Innovations from Sweden*. University of Wisconsin, p.12.

<sup>16</sup>Hauser, Adrienne (1988), *op. cit.*

<sup>17</sup>Ziegert, Klaus A. (1987). 'Children's Rights and the Supportive Function of Law: The Case of Sweden' *Journal of Comparative Family Studies*. Vol 18, pp. 157-74, p.165.

<sup>18</sup>Durrant, Joan E. and Olsen, Gregg M. (1997) 'Parenting and public policy: contextualising the Swedish corporal punishment ban', *Journal of Social Welfare and Family Law*. Vol 19 (4) pp. 443 – 461, p.446.

<sup>19</sup>Ziegert (1987), *op. cit.* p.165.

<sup>20</sup>Durrant and Olsen (1997), *op. cit.*, p.446.

<sup>21</sup>Ziegert (1987), *op. cit.*, p.166.

<sup>22</sup>Durrant and Olsen (1997), *op. cit.*, p.448.

paternity, naming and custody, in which the ‘best interests of the child’ are asserted to be the primary consideration.

## Stages of reform

The legislation against physical punishment in 1979 was part of a series of reforms over 50 years that gradually closed all loopholes by which physical punishment could be justified. However, as the author of a recent Swedish government publication writes, ‘the task of making this known and of conditioning attitudes is a never-ending one.’<sup>23</sup>

- **1949 - Establishment of Children and Parents’ Code (*Föräldrabalken*)**, a civil code governing family law.
- **1957 - Legal defence for physical punishment of children removed from the Penal Code;** defence retained in civil code.
- **1962 - Corporal punishment banned in all schools and childcare settings**, completing a series of reforms from 1918 and following a 1959 pilot of non-violent disciplinary techniques in state schools.
- **1966 - Removal of a provision in the civil code allowing ‘petty reprimands.’** Smacking now effectively constituted assault, although there was a continued misperception that physical punishment was legal.<sup>24</sup>
- **1979 - Physical punishment was explicitly prohibited** through a provision added to the new Children and Parents’ Code: ‘The parent or guardian shall exercise necessary supervision in accordance with the child’s age and other circumstances. The child may not be subjected to physical punishment or any other injurious or humiliating treatment.’ Family law does not provide for sanctions but physical punishment falls under the laws on assault.<sup>25</sup> 1979 was the International Year of the Child and the legislation was discussed across the world.
- **1983 - Law extended to include a positive statement of children’s rights.** It 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.’

## Factors influencing reform

### Landmark cases

As in many countries world wide, child abuse came to serious public attention in Sweden in the 1960s and 70s. In 1971 a four-year-old-girl was battered to death by her stepfather, leading to a public outcry and the formation of Children’s Rights in Society (BRIS), an organisation which

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<sup>23</sup>Cited in Hindberg, Barbro (2001) *Ending Corporal Punishment, Stockholm, Sweden: Ministries of Health and Social Affairs and Foreign Affairs*, pp. 11.

<sup>24</sup>A 1972 survey revealed that only 40 per cent of the population knew that physical punishment was illegal. Newell (1989), *op. cit.*, p. 71.

<sup>25</sup>‘A person who inflicts bodily injury, illness or pain upon another or renders him unconscious or otherwise similarly helpless, shall be sentenced for assault to imprisonment for at most two years or, if the crime was petty, to pay a fine or to imprisonment for at most six months.’

campaigns on child protection and set up a helpline for children. In 1975, a man was acquitted after being tried for severely beating his daughter on the grounds that he had not exceeded his parental right to chastisement. Sixty thousand people attended a Stockholm art exhibition on child abuse that was prompted by outrage at the case. These events influenced the government's decision to establish a Children's Rights Commission in 1977.

### Role of the Children's Rights Commission

The Commission was comprised of lawyers, psychologists, psychiatrists, and politicians, and its remit was to look at better provisions for children's rights and welfare and to review the Parents' Code (see above). In 1978 it presented an interim report, '*Children's Rights: Prohibiting corporal punishment*', which argued that as society had changed, new democratic ideals of individual thinking and responsibility had come into play, and as such a new model of child education should be encouraged. It gave full support to the prohibition of physical punishment, and produced a proposal for amendments to the civil code governing family law in Sweden. The proposal was submitted to 30 organisations and bodies for approval, of whom an overwhelming majority were in support.

### Proposals for legal reform

As the Minister of Justice's comments<sup>26</sup> on the proposed bill in 1978 show, several arguments influenced the new legislation:

- the evidence from professionals: 'Child psychiatrists and child psychologists have long agreed that all corporal punishment of children is inappropriate. This view has steadily gained ground among the general public as well. Even mild forms of physical punishments can jeopardise the child's harmonic development.'
- the belief that child protection professionals could not work effectively with unclear legislation: 'Tackling real assault against children can be difficult so long as it is not perfectly clear that violence may not be used in any form.'
- the new law would be a natural reflection of the culture's attention to children's rights and individuality: 'A provision of this kind will mark the end of a process of legal development whereby society has increasingly turned against corporal punishment.'
- information and education were primary; legal reform was an adjunct: 'A clear prohibition would provide valuable pedagogical support for efforts to convince parents and others that no form of violence may be used in the upbringing of children.'

The prosecution of parents for petty incidents of physical punishment was not one of the intentions of the new law. It was firmly acknowledged that the legislation would be nothing more than 'a paper product' should it not be supported with 'effective, ongoing information'.<sup>27</sup> Legal reform alone would not change attitudes, but it was recognised to be both a symbolic step and a practical necessity of the process. The Conservative parliamentarian Sixten Pettersson argued: 'In a free democracy like our own we use words as arguments not blows. We talk to people not beat them. If we cannot convince our children with words, we shall never convince

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<sup>26</sup>Hindberg (2001), *op. cit* pp.11-12.

<sup>27</sup>Hindberg (2001), *op. cit* pp.13.

<sup>28</sup>Newell, Peter (1989), *Children are People Too! The Case against Physical Punishment*. London: Bedford Square Press, *op. cit* pp.72.

them with a beating.<sup>28</sup> The law was passed by 259 votes to 6.

The new law's main challenge came from seven parents, members of a Protestant Free Church congregation in Stockholm. Alleging that the legislation breached the right to respect for family life, they made an application to the European Commission of Human Rights in 1979. The application was declared inadmissible by the Commission, which judged that the legislation:

‘cannot be considered as an interference in the exercise of the parents’ right to respect for family life. Neither does the fact that corporal punishment of a child by his parents may expose the latter to criminal prosecution for assault, by the same standards as assault of a person outside the family, constitute an interference with the exercise of this right.’<sup>29</sup>

## Public education

As the Minister of Justice’s 1978 comments on the Bill make clear, it had always been the intention to accompany the Parent and Child Act’s amendments with **a large-scale public education campaign**. This was fulfilled with a 16-page colour booklet entitled ‘*Can you bring up children successfully without smacking and spanking?*’ Six hundred thousand copies were distributed to households with children, and made available in 10 minority languages.<sup>30</sup> The leaflet explains clearly the legal changes and their background, advice on non-violent ways to set limits on children’s behaviour and a guide to expectations of behaviour of children at different ages and the conflicts that parents may encounter. It was the most expensive pamphleteering campaign ever conducted in Sweden, and it paid great dividends in terms of public knowledge of the new law. Ninety-nine per cent of the population was aware of the law by 1981, a level of awareness never even approached for any other legislative change in any country.<sup>31</sup>

**Milk cartons** in Sweden also bore information about the new law for two months, with the intention that parents and children could become jointly informed, and perhaps enabling breakfast discussions on the topic of physical punishment! Children are themselves seen as having a key role in deterring physical punishment.<sup>32</sup> The formal legislation itself is conveniently short, and so has often been used in schools to teach children about the parliamentary process. Physical punishment was also used as a discussion topic in **English language exercises** in schools (involving a tape which presents an English man defending smacking). The law is discussed in the parenting and family life classes that Swedish children receive at school<sup>33</sup>, and children are highly aware of their civil rights. Rather than feeling that their children are ‘out to get them’, parents see this educative work as teaching children not to use violence themselves.

## Recent initiatives

The 2001 report of the Swedish Parliamentary Committee on Child Abuse, has emphasised the

<sup>29</sup>*European Commission of Human Rights, decision on admissibility of Application 8811.79: Seven Individuals v. Sweden, 13 May, 1982.*

<sup>30</sup>*Newell (1989), op. cit., p.74.*

<sup>31</sup>*Ziegert (1983), ‘The Swedish Prohibition of Corporal Punishment: A Preliminary Report’ Journal of Marriage and the Family November, pp. 917–926, p.922.*

<sup>32</sup>*Haeuser (1988), op. cit., p.27.*

<sup>33</sup>*Haeuser (1988), op. cit., p.19.*

importance of preventive measures. Its directives include engaging in active and outreach work, and it has targeted three groups: parents and guardians; children and young people; and professionals.

For parents the Committee produced *'A Book for Parents' (Föräldraboken)*, which purports to offer 'some help and encouragement for parents who feel that is what they need.' The pocket-sized, turquoise book tells six 'stories' of physical punishment and emotional maltreatment in the family, including: single mother Martina who hits her little boy when at the end of her tether; and truant teenager Johanna whose parents lock her in her room over dinner. It ends with 'Sixteen pieces of advice to anyone who finds it difficult being a parent sometimes', emphasising the importance of talking to your children about their and your problems. Half a million copies were distributed via pharmacies, child health-care centres and post offices. Schools and social services have ordered copies for use in discussions and courses for parents. Translated into Arabic, English, two Kurdish languages, Persian, Somali, Spanish and Turkish as well as a simplified English version, it has been supported by a video and other teaching materials.

The 'Get a Grip' campaign is another aspect of the public education programme, aimed at Sweden's 453,000 ten to 13-year-olds. It aims to strengthen children's self-esteem and inform them of ways of seeking help and advice if in distress or at risk of harm. The campaign was a collaboration between the Government and BRIS (Children's Rights in Society), Save the Children Sweden, The Co-operation Group for Immigrant Organisations and Young Eagles (a child and youth organisation). A rap song on the theme of children's rights was recorded, and distributed to schools with teaching materials, and an accompanying music video was shown in cinemas around the country. The CD won a gold award from the Advertising Association of Sweden in 2000.

The third campaign, 'Suspecting Child Abuse', was directed at professionals working with under-10s, to educate them about signs of abuse and make them aware of their reporting obligations. Around 70,000 packs have been distributed, comprising dramatisations of situations causing professional suspicion and booklets on 'Signs of Child Abuse and Neglect' and 'Helping Children at Risk'. The campaign was undertaken with the Swedish Trade Union Confederation, the Confederation of Professional Associations and the Central Organisation of Salaried Employees in Sweden.

## Effects of reform

### Child Protection

#### Fewer children are physically punished

The prevalence of physical punishment in Sweden has greatly reduced, as has the severity of its forms. The report of the Committee on Child Abuse states that levels of physical punishment have gone from being a 'commonplace' experience in the 1960s, to affecting around a fifth of the child population in the 1990s. Parental interviews carried out in 1980 and 2000 also indicate that physical punishment has decreased significantly, particularly the use of implements, fists and spanking. Only 8.3 per cent of parents in 2000 stated having used any form of physical punishment in the last year, compared with 51.3 per cent in 1980.<sup>34</sup> A questionnaire completed

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<sup>34</sup>*Swedish Committee on Child Abuse and Related Issues (2001). Child Abuse – Prevention and Protection (English translation: Summary), Chapter 4.*

by 1,800 school children revealed that 86 per cent have never experienced physical punishment.<sup>35</sup> Though these levels are very low, it has not been eliminated completely: around four per cent of children aged 10–12 and seven per cent of young adults state that they have experienced more severe corporal punishment (with an instrument) on at least one occasion in their lives.<sup>36</sup>

### Reporting of abuse has increased

Over the last three decades, greatly increased sensitivity to violence against children has led to increased reporting in all nations, and an increase in reports would be expected to follow the physical punishment legislation in Sweden. Reports to the police of assaults committed against children aged 0–6 years by someone known to them (ie relatives, friends and carers) have risen from 99 in 1981 to 583 in 1994 (no statistics were available before 1981).<sup>37</sup> The reasons for this could include changes in reporting mechanisms, and recording of reports, an actual increase in incidence, or a stronger willingness to report incidents as awareness of child abuse has grown.

The Government's Committee on Child Abuse and Related Issues was established in 1998, to investigate this apparent surge in reports. An analysis of cases involving children aged 0–6 years during the 1990s revealed that there has been 'no concomitant increase in real physical abuse of pre-school children in Sweden during the period'. This conclusion was reached from the substantial decrease in serious injuries in proportion to milder cases and cases without any established injury. Biting, which was not categorised before the 1990s, accounted for the small absolute increase in cases involving severe injury: other forms of serious injury did not increase. The reporting of new sections of the population (the wealthy middle classes) was thought to point to greater sensitivity to the issue, whereas increased incidence might be expected to show an increase across all sectors (and possibly poorer sectors in particular given recent economic difficulties).<sup>34</sup> Reports of assaults have never exceeded 2.8 per 1,000 population.

### Low rate of child deaths from physical abuse

A direct link between the physical punishment law and fewer child deaths from presumed physical abuse cannot be proven, especially when the numbers involved in Sweden are so small, and other factors, such as the rate of child poverty and high spending on public services, are also influential. However, the increased sensitivity to milder forms of physical abuse and professionals' greater confidence in dealing with physical punishment as a result of the legislation may encourage earlier intervention in risk families, as indicated below.

Infant deaths from presumed abuse – considered by the World Health Organisation as the most reliable indicator currently available for the rate of child abuse and neglect in a nation<sup>39</sup> – have been consistently low in Sweden. The rates are calculated by totalling the deaths from homicide and 'undetermined external causes', and give Sweden a rate of 0.9 per 100,000 live births, from

<sup>35</sup>Hindberg (2001), *op. cit.*, p.16

<sup>36</sup>Janson, Staffan (2000). Children and abuse – corporal punishment and other forms of child abuse in Sweden at the end of the second millennium (*English summary of report produced for the Committee on Child Abuse and Related Issues, Ministry of Health and Social Affairs, Sweden*), p.2.

<sup>37</sup>Wittrock U. (1995). Barnmisshandel I kriminalstatistiken 1981-1991 [*Violent crimes against children in criminal statistics, 1981-1991*], available at <http://people.biola.edu/faculty/paulp/sweden81.html>.

<sup>38</sup>Janson (2002), *op. cit.*

<sup>39</sup>UNICEF (1994) *The Progress of Nations (New York: UNICEF) 'New child abuse index proposed'*, p.4.

1985 to 1990. This is one of the lowest in the world, and compares to a figure of 3.9 in the UK and 9.8 in the US.<sup>40</sup>

Five children died in Sweden between 1971 and 1975 from physical abuse in incidents related to parent's supposed disciplinary intention.<sup>41</sup> Over the following 15 years, not one child was known to have died from physical abuse in Sweden. Between 1990 and 1996, four children were known to have died as a consequence of physical abuse: only one death was at the hands of a parent. In the UK, one to two children are killed each week by their parents and carers.

### Social Services: involvement with families

There has been a small increase in the number of children receiving any kind of government care or support measures since the early 1980s. This corresponds to the increased reporting of assaults. Of these measures, the proportion that is compulsory has declined by 46 per cent since 1982. Despite the increase in social services' involvement, the total number of out of home placements (foster home, children's home, private care home or psychiatric clinic) fell by more than a quarter between 1982 and 1995, and out-of-home placements are increasingly short-rather than long-term.<sup>42</sup> Rather than imposing coercive measures, the ban on physical punishment, alongside other changes in the welfare system (such as the Social Services Act 1982) appears to have encouraged the development of child protection practice that is based on earlier, less drastic and more consensual intervention.

### Youth risk-taking behaviour

Young people's use of alcohol and drugs has declined since the enactment of the ban. The number of 15 to 17 year olds found guilty of a criminal offence remained steady between 1983 and 1996, and for certain crimes (theft, narcotic possession and trafficking, and rape) the proportion of convicts aged 15-17 has declined over the same period. There has however been an increase in the number of reports of youth violence against peers. This is to be understood within the context of Sweden's general measures against violence and heightened sensitivity to all forms of violence. Bullying, for example, has received much attention and police officers work actively in schools, registering all incidents of inter-personal violence. Joan Durrant concludes from several data sources that 'the apparent increase in youth violence is largely accounted for by a recent school enforcement wave,'<sup>43</sup> that is to say, the more stringent official attention to bullying.

## Enforcement and prosecutions

The ban on physical punishment has not led to parents being prosecuted in droves for 'trivial' incidents of assault. As there are no sanctions in the Parents' Code, prosecution can only proceed under the terms that define assault for adults and children alike, namely there must be evidence of bodily injury, illness or pain. As with adult cases of assault, prosecutors exercise restraint and would not generally pursue a case that was to all extents and purposes considered petty.

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<sup>40</sup>Belsey, Mark A. (1993), 'Child abuse: measuring a global problem', *World Health Statistics Quarterly*, 46, p. 74.

<sup>41</sup>Durrant, Joan (2000). *A Generation Without Smacking – the impact of Sweden's ban on physical punishment* London: *Save the Children*, p. 17.

<sup>42</sup>Durrant (2000), *op. cit.*, pp. 18-21.

<sup>43</sup>Durrant (2000), *op. cit.*, pp. 22-25.

After a report of a suspected assault has been made, the police and prosecutor join forces with social welfare and medical services. The prosecutor leads the investigation, in which the child will be questioned by specially trained staff, and is entitled to the presence of a support person or special representative, and a public counsel. The suspect or his defence may present advance questions to the child. A medical examination of the suspected victim must take place and in some cases an expert may be appointed to assess the child's credibility. The video-recorded questioning is played in court so that for the most part, a child under 15 need not attend in person. Objectivity and the rights of the suspect are fundamental principles in the investigation.<sup>44</sup>

The report of the Swedish Committee on Child Abuse<sup>45</sup> concludes that no further criminalisation of child abuse is warranted nor is an alteration of the sanctions of the Penal Code required. It has proposed, however, that special provisions be made for more severe penalties when an offender is a close relative of the child, on the grounds that the emotional ties make the injury more severe.

## Public attitudes

There is no doubt that the legislation against physical punishment has played an important role in Sweden's rejection of physical punishment. Public opinion polls can be difficult to draw conclusions from, because of the effects that question formulation can have on responses to these very emotive issues.<sup>46</sup> There is little doubt, however, that Swedish opinion has moved strongly against the use of physical punishment, a change that began in the 1950s and the first legislative moves against smacking.<sup>47</sup>

One large survey of public opinion was commissioned by the Department of Social Welfare and undertaken by Statistics Sweden in 1994.<sup>48</sup> They surveyed a large national sample of adults and middle-school students (aged 13-15) on their opinions, knowledge and experience of physical punishment. Only a small minority of the population claimed to be **'positively inclined' to milder forms of physical punishment**: 10 per cent of all adults and six per cent of younger people aged 18-34 and 13-15. A third of adult respondents thought that **smacking was 'sometimes necessary'** if employed as a carefully considered aspect of child-rearing, not out of anger. However, only four per cent of the middle-school students reported being **physically punished 'now and then'** in their earlier childhood, suggesting that adults' views may be influenced by sympathy for those who end up employing physical punishment, rather than

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<sup>44</sup>Prosecutorial information: personal correspondence with Gunvor Martinsson, Public Prosecutor.

<sup>45</sup>Swedish Committee on Child Abuse and Related Issues (2001), *op. cit.*

<sup>46</sup>Swedish public attitudes have been subject to some debate. Compare, for example Durrant (2000), *op. cit.*, pp. 9-10 and Roberts, Julian V. (2000) 'Changing Public Attitudes towards Corporal Punishment: The Effects of Statutory Reform in Sweden' in *Child Abuse and Neglect*, Vol. 24, No. 8, pp. 1030-1032.

<sup>47</sup>Julian V. Roberts argues that 'Support for physical punishment began declining years before the reform was passed and the decline was in no way accelerated by the law reform'. He neglects to note that a ban was effectively introduced in 1957 in Sweden when the reasonable chastisement defence was removed from the civil code, and that the 1979 reform was seen at the time as supporting the growing rejection of physical punishment.

<sup>48</sup>Statistics Sweden (1996) Spanking and Other Forms of Physical Punishment *Demografiska Rapport: 1.2*, Stockholm, Sweden: Statistics Sweden. Around a thousand adults were surveyed by questionnaire and telephone interviews, and 80 middle-school classes from the whole country were involved. Further details obtained by correspondence with Lotta Persson, Statistics Sweden, 25.01.02.

simply a reflection of their own use of it.

The most recent surveys (research carried out by the Committee on Child Abuse<sup>49</sup> and a 1999 Gothenburg study) indicate a positive attitude towards the use of physical punishment in only around 10 per cent of the population. A comparable survey in the 1960s showed that over half the population was strongly in favour of physical punishment.<sup>50</sup> The Committee on Child Abuse states there has been ‘a sharp and consistent decrease in positive attitudes to spanking over a 40-year period.’<sup>51</sup>

Sweden has led the world in taking action against public and private violence, and its experience of physical punishment legislation has been immensely important for anyone interested in the issue of children’s rights. Although it cannot be claimed single-handedly to have changed the way in which children are treated – as this legislation alone is not responsible for a culture in which children are, by and large, both safe and respected – there is no doubt that the legislation has met its key objectives and is now embraced by both professionals and the public.

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<sup>49</sup>*The Committee on Child Abuse and Related Issues carried out surveys of parents, children (aged 11-13) and young adults (20 years old) in Spring 2000. The total sample size was nearly 5000 (out of 6,750 intended) and the methods used were interviews, classroom questionnaires and a postal survey.*

<sup>50</sup>*A 1965 Swedish Opinion Research Institute poll revealed 53 per cent of the population believed ‘A child has to be given corporal punishment from time to time.’ This figure dropped steadily through the 1970s and 80s. Ziegert (1983), op. cit., p. 921.*

<sup>51</sup>*Janson (2000), op. cit., pp 3.*

## 3.2 Finland

**‘A child shall be brought up in a spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. The growth of a child towards independence, responsibility and adulthood shall be supported and encouraged’** (Child Custody and Rights of Access Act, 1983)

**Population:** 5.2 million (1998)

**Child population:** 1.2 million (1998)

**Children’s Ombudsman or Commissioner:** NGO Ombudsman run by Mannerheim League since 1981; plans for a national Ombudsman to be appointed

**Framework for children’s legislation:** Child Welfare Act (1983); Child Custody and Rights of Access Act (1983)

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Finland legislated against the physical punishment of children in 1983, with unanimous approval from Parliament and a striking declaration of ‘positive’ guidelines for parenting. As with other countries that have enacted legislation against smacking, the legislation forms part of family law. If a parent violates the ban, in any way that would constitute a criminal offence if committed against an adult, they are liable to prosecution for assault under the Criminal Code. It goes further in explicitly prohibiting any degrading treatment. The ban was part of an overhaul of children’s custody law in Finland, which put children’s rights centre-stage.

### Stages of reform

- **1914 - Corporal punishment banned in schools.** Decrees outlawing physical punishment in schools date back to the 15th century
- **1957 - Act on Primary Schools** confirms prohibition of physical punishment in education system
- **1969 - Defence of ‘lawful chastisement’ removed from the Criminal code:** however confusion was apparent amongst professionals and the public – 40 per cent of parents in 1978 still believed physical punishment to be legal<sup>52</sup>
- **1983 - Child Welfare Act,** which radically overhauled the law dating from 1937, emphasising primary prevention and non-institutional social care
- **1983 - Explicit prohibition of physical punishment written into the Child Custody**

<sup>52</sup>Peltonieni, Teuvo (1983) ‘Child Abuse and Physical punishment of children in Finland’ *In Child Abuse and Neglect, Vol. 7 pp.33-36, p.36.*

**and Rights of Access Act:** ‘A child shall be brought up in a spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted’

- **1985 - Act on Comprehensive Schools** reinforces prohibition of physical punishment

## Factors influencing reform

### Research findings linking physical punishment and child abuse

Research undertaken in the late 1970s showed that half of the ‘battered child’ cases in Finnish and Swedish courts had started as physical punishment. In the great majority of abuse cases in Helsinki Children’s Hospital in 1970–76, the perpetrators insisted they had not exceeded their right to chastise their child.<sup>53</sup> However, child abuse did not receive much attention in Finland until the 1990s, in contrast to the attention given to it in other western nations over the preceding decades.

### Major reform of private law emphasises children’s rights

Legislation relating to children and families underwent wide-ranging reform in the 1970s and 1980s. The child was redefined as a rights-holding independent subject and the principle of the child’s best interests was of central importance. Along with the law against physical punishment, the child’s right to self-determination and his or her right to be heard were extended.<sup>54</sup> The emphasis of child protection moved from institutional and foster care to more preventive social work and the provision of services to families.

### Public opinion ready to follow the lead of Sweden

In 1981, the Finnish population was asked: ‘After long debate, the physical punishment of children was banned by the Swedish Parliament. In your opinion, should a similar law be passed in Finland too?’ Sixty per cent of respondents – and 72 per cent of those aged 15 to 24 – agreed, making Finland the only country to introduce legal reform with majority public support.<sup>55</sup>

## Public education

‘*What is Good Upbringing?*’, a leaflet on parent-child relationships, was produced by the Ministry of Justice and the National Board of Social Affairs and distributed in health clinics and social welfare offices. The Central Union for Child Welfare in Finland organised an education campaign in 1981, distributing 200,000 leaflets entitled ‘*When you can’t cope, seek help, don’t hit the child*’. Prime-time television slots urged the use of discussion and reasoning techniques. Public awareness of the law is now at a high level, but overall the public education campaigns were more modest than those in Sweden. Education against physical punishment is still an important aspect of the work of all child welfare organisations. The issue is widely discussed in women’s

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<sup>53</sup>Peltoniemi (1983). *op. cit.*, p.34.

<sup>54</sup>Ruxton, Sandy (1996). *Children in Europe London: NCH*, p.44.

<sup>55</sup>Newell (1989), *op. cit.*, p.90.

and family magazines, with the emphasis on strategies to avoid physical punishment and no support for the view that it has a place in child-rearing.

## Effects of reform

### Child protection

The most recent large-scale survey on family violence against children was published in 1992. It showed a fairly high prevalence of mild physical punishment in the six years following the 1983 ban, although only a small percentage of the respondents reported having experienced any violence in the preceding 12 months.<sup>56</sup> A questionnaire completed by 7,400 school-students aged 15-16 revealed that 72 per cent of respondents had 'sometimes' experienced mild violence ('traditional punishment') at the hands of a mother or father during their childhood. This covered a spectrum from pushing and shoving, hair-pulling and slapping to beating with a switch and the Finnish *selkasauna* (roughly, a combination of these actions). Hair-pulling was reported as the most common form of mild violence (65 per cent), although switching was experienced by a substantial proportion (35 per cent). More severe violence (using other implements, hitting with fist or kicking, threats with weapons) was reported by eight per cent of the young people.

Statistics were not differentiated for family violence against children until 1996. The numbers of all reported assaults against children in the family has increased in the last few years (69 in 1996 to 137 cases in 2000), but this is thought to arise from increased vigilance rather than a real increase in violence.<sup>57</sup>

Infanticides have ranged from zero to seven deaths a year since 1980, a consistently low rate. In the period 1981 to 1990, there were 37 infanticides, and in the period 1991 to 2000, only 10. In the 1990s, the number of children murdered (under 15 years) has been five to six each year, with the exception of 1993 when eleven children were killed. Such variation is likely to represent exceptional incidents or changing definitions rather than being attributable in any way to the ban on physical punishment.<sup>58</sup>

### Public opinion

Correspondence with the Central Union for Child Welfare in Finland indicates that professionals are unanimous in their support of the legislation and that parents in general are against physical punishment,<sup>59</sup> although there are no recent statistical surveys of public opinion in Finland. Around the time of the 1983 legislation, the acceptance of physical punishment was roughly equivalent to levels of support in Sweden in the late 1960s: 47 per cent of respondents in a 1981 Gallup poll in Finland stated that physical punishment was acceptable in special circumstances.<sup>60</sup>

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<sup>56</sup>Sariola, Heikki and Uutela, Antti (1992) 'The Prevalence and Context of Family Violence Against Children in Finland', *Child Abuse and Neglect*. Vol. 16, pp.823-832.

<sup>57</sup>Correspondence with Heikki Sariola.

<sup>58</sup>Statistics Finland, figures available at [http://statfin.stat.fi/Statweb/index\\_ENG.stm](http://statfin.stat.fi/Statweb/index_ENG.stm).

<sup>59</sup>Correspondence with Heikki Sariola.

<sup>60</sup>Peltoniemi (1983), *op. cit.*, p.35.

A similar figure of around 45 per cent support for physical punishment was found in other opinion polls in the 1970s and early 80s, and in a survey of teenagers in 1988. However, only five per cent of these young people thought they would use physical punishment on their own children.<sup>61</sup> There have been no moves to repeal the legislation.

### Enforcement and prosecution

As in other countries, the legislation in civil law has no sanctions attached; this is left to the criminal law. Supportive social work interventions, rather than prosecutions, are generally considered the appropriate response for cases of child maltreatment.<sup>62</sup>

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<sup>61</sup>Newell (1989), *op. cit.*, p.90.

<sup>62</sup>Epoch Worldwide (1992), *op. cit.*, p. 27.

## 3.3 Norway

**‘The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental development’** (Parent and Child Act, 1987 amendment)

**Population:** 4.4 million (1998)

**Child population:** 1.0 million (1998)

**Children’s Ombudsman or Commissioner:** Ombudsman since 1981

**Framework for children’s legislation:** Ombudsman for Children Act; Parent and Child Act; Children’s Act; no common (case) law

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

When physical punishment was finally prohibited in Norway in 1987, after several attempts in the Norwegian Parliament, the Minister of Justice stated that the reform aimed to clarify the status of parents’ and children’s rights following the uncertain measures taken in 1972. There was near-unanimous support for the legislation.

### Stages of reform

- **1936 - Corporal punishment prohibited in schools**
- **1972 – Parents’ right to use moderate physical punishment removed from criminal code on assault**
- **1981 - Ombudsman for Children Act; Parent and Child Act**, which refers to parental ‘responsibilities’ not ‘rights’, and uses the term ‘the rights of the child’ with respect to custody arrangements
- **1987 - Prohibition of physical punishment** through an amendment to the Parent and Child Act: ‘The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental development’. Physical restraint is permissible if the child risks injury to him or herself or another.

### Factors influencing reform

#### Confusion over half-measure on smacking and work of children’s authorities

In 1972 an amendment to prohibit physical punishment was proposed in the Norwegian *Storting* (Parliament), which in fact resulted in a less clear action, namely the removal of the

1926 defence which permitted parental physical punishment. This came to be regarded as unsatisfactory and confusing. In 1979, the International Year of the Child, an official committee was appointed to examine the issue of child abuse and neglect. The Committee concluded that the law on physical punishment should be changed to include a specific prohibition of smacking. The recommendation went to the Ministry of Justice, which proposed an addition to the Parent and Child Act.

### Public controversy

At the same time as the child abuse committee was recommending a change to the law (1982), a Fundamentalist minister stated on television his approval of physical punishment and his use of it on his children, claiming divine guidance. Målfrid Grude Flekkoy, first Ombudsman for Children (*Barneombudet*), appeared on television the next day to argue against his viewpoint on ethical and legal grounds: charges were filed against the clergyman but dropped because of the confusion over the legal status of physical punishment. The incidents led to widespread public debate. The Bill was put to the Norwegian government but failed twice (1983 and 1984). The Social Democrats were returned to power in 1985, with a large number of women cabinet members, and they gave the new law near-unanimous approval.

### Role of the Children's Ombudsman

The Ombudsman for Children Act was passed in 1981, making Norway the first country in the world to appoint an independent watchdog for children. The new ombudsman played a central role in lobbying for legislation, keeping the issue alive in Parliament and the media and attempting to ensure that the final amendment did clearly and positively protect children's rights to physical integrity.

### Public education

Public education on the law and alternatives to physical punishment have not been as extensive as that in Sweden. A leaflet entitled '*I know I need limits, but do you need to knock them into me?*' was published by a voluntary organisation and 150,000 copies were distributed. Advertisements were also placed in national newspapers. Norway has a 'Parental Guidance Programme', 'designed to provide meeting places where parents can talk about their own experience with professionals from various fields and discuss childcare and the upbringing of their own children. The programme includes special groups for fathers...'<sup>63</sup>

Despite the modest scale of the campaigning, recent correspondence with the Office of the Ombudsman for Children indicates that there is a very high awareness of the law, on the part of adults and children alike. The ombudsman appears on a weekly television programme to discuss children's queries. Norwegians are said to be shocked, when travelling abroad, to witness the public maltreatment of children that is evident in countries such as the UK.<sup>64</sup>

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<sup>63</sup>Conference of European Ministers Responsible for Family Affairs (1999) XXVI Session Stockholm, 14-16 June 1999 'Towards a child-friendly society: National reports – Summary', p. 16.

<sup>64</sup>Correspondence with Knut Haanes.

## Effects of reform

### Child protection

No research has been undertaken on the effects of the legislation on child protection work.<sup>65</sup>

### Public opinion

Popular support for the use of physical punishment had begun to decline in the 1970s, although even by 1983 a significant majority of the population was still against the banning of all forms of physical punishment.<sup>66</sup> There have been no evaluations of public attitudes towards physical punishment since that time. However, the Office of the Children's Ombudsman states that physical punishment is socially unacceptable: 'There is never any doubt as to whether it is all right or not with "just a little pinch" or "a little push" as parents and children are aware of the law.'<sup>67</sup>

### Enforcement and prosecutions

Cases of parental violence towards children are handled by the child protection system. Parents who physically punish their children may be prosecuted under the criminal code for assault, and there may also be recourse to justice under the statutory prohibitions against neglect or maltreatment. A tort (civil) action may be brought on behalf of a child for injuries they have sustained, although there is no evidence that this has ever happened. Use of physical punishment may influence the outcome of custody cases.<sup>68</sup> The low profile of physical punishment legislation in Norway ('this has not been a major issue in the last decade,' states the *Barneombudet*, or Office of the Ombudsman for Children) points to an absence of high-profile prosecutions and a general acceptance of the ruling.

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<sup>65</sup>Correspondence with Marianne Kildedal Christie, Adviser, Norwegian Ministry of Children and Family Affairs.

<sup>66</sup>Norwegian Ministry of Justice proposal in 1986, cited in Newell, Peter (1989), *op. cit.*

<sup>67</sup>Correspondence with Knut Haanes.

<sup>68</sup>Bitensky, Susan H. (1998) 'Spare the Rod, Embrace Our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children' *University of Michigan Journal of Law Reform* Volume 31, Issue 2, p. 375.

## 3.4 Austria

**‘The minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering (*Leid*) are not permitted’** (Section 146a, General Civil Code, 1989)

**Population:** 8.1 million (1998)

**Child population:** 1.7 million (1998)

**Children’s Ombudsman or Commissioner:** Each Länder has a children’s ombudsman, who joins others to comment on federal issues at a conference of ombudsman. There has been a Federal Ombudsman since 1986, who is a government official

**Framework for children’s legislation:** Youth Welfare Law and General Civil Code

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Austria was the fifth country, and the first non-Scandinavian country, to introduce legislation prohibiting physical punishment. It is a federal republic with a population of eight million, the same size as Sweden, and a child poverty rate of 13.5 per cent which puts it in the middle of advanced industrialised countries – higher than Nordic countries and Germany, but lower than the UK, the US and Canada. It is described as a ‘conservative’ corporatist welfare state, similar to the Netherlands.<sup>69</sup> The population is mainly Catholic.

### Stages of Reform

- **1974 - Physical punishment banned in all schools.**
- **1975 - Reform of Family Law** states that children have to follow parents’ regulations, around which the age, development and personality of the child have to be taken into consideration. Amendments were also made to the Youth Welfare Act to entitle authorities to intervene in family affairs when the child’s welfare is at stake.
- **1977 - Defence of ‘reasonable’ punishment removed from the law on assault.**
- **1989 - Amendment (146a) to Civil Code: bringing up children ‘using violence and inflicting physical or mental suffering is unlawful’.** This was part of a substantial reform of the child welfare law and provisions in the civil code dealing with the welfare of children. The reforms were unanimously approved.
- **1989 - Ombudsman for children appointed** through the Federal Youth Welfare Act.

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<sup>69</sup>Source: Columbia University Clearinghouse on International Developments in Child, Youth and Family Policies [www.childpolicyintl.org](http://www.childpolicyintl.org)

There are now publicly-funded ombudsmen in all 9 *Länder* (regions) of Austria, and a Federal Ombudsman was appointed in 1991.

- **1997 - Law on violence in the family** allows injunctions to be taken out on a man or woman committing violence, removing them from the household. Amendment to Security Police Law includes provisions for victim welfare centres for women and children facing violence.

## Factors influencing reform

### All-party commitment

Support for legislation against physical punishment came from across the political spectrum, including the far-right Freedom Party. There is an anecdote that the main subject of political debate was which party could take credit for the legislation!

### Equivocal process of reform leads to need for clarification

Ambiguity over the legality of physical punishment began with the drafting of a new Penal Code in 1971; an Explanatory Report added in 1975 argued against the justification of physical punishment. The defence of reasonable chastisement was removed in 1977. Ensuing confusion led to general debate about the need to clarify the law. Preparatory work to change the law had been undertaken by the Ministry of Justice and the Ministry of the Environment, Youth and the Family from the early 1980s, but it took until 1989 to reach the top of the parliamentary agenda.

## Public education

The government has established various channels by which parents and children can gain information and advice, including:

- parenting counselling through Youth Welfare departments
- child protection centres
- helplines for children, including the Child Emergency Telephone and the '*Kinderkummernummer*' Child Worries Telephone.

Children have been made aware of their rights through discussions and workshops in schools, as well as a leaflet produced by the Ministry of Youth and Families. There are nine regional Ombudsmen and a Federal Ombudsman, who are active in promoting children's rights, campaigning for protection of children and offering support in individual cases.

## Effects of reform

### Child Protection

Austria does not record the age of victims in its criminal statistics except for sexual offences, thus it is difficult to obtain an accurate picture of the impact of reform on reported crimes of physical violence against children. There have been attempts to press the Ministry of Justice for specific statistics on children but these have not been successful. A survey in 1991-92 found that around a quarter of parents occasionally resorted to violence in bringing up their children.

Around five per cent frequently used 'stronger' forms of violent discipline.<sup>70</sup> In general, there has been a significant emphasis on prevention of child abuse over the last decade, often in the context of family violence or violence towards women. Austria's ratification of the United Nations Convention on the Rights of the Child (UNCRC) led to a resurgence of interest in children's rights, and Austria was commended for adopting a comprehensive list of 'Measures against Violence in the Family and Society'.<sup>71</sup> In order to sensitise the public and unite the various institutions and services concerned with the problem of violence, Austria set up a Platform Against Violence in the Family in 1992.

## Public Opinion

'Nowadays the need of children for protection against violence... is not questioned in Austrian society',<sup>72</sup> says Martina Staffe, Head of Youth Welfare in the Federal Ministry for Social Security and Generations, and Federal Ombudsman for Children and Youth.

There has been little evaluation of the influence of the 1989 reform on public attitudes. The survey commissioned by the Federal Ministry for the Environment, Youth and the Family in 1991-92 indicated that 67.5 per cent of mothers and 68.8 per cent of fathers 'categorically reject serious corporal punishment (beatings) as a means of education'.<sup>73</sup>

A decade later, physical punishment is still practised but there have been no attempts to repeal the law. According to Petra Smutny, a civil law judge in Vienna, while there is still a lot of sympathy for parents who resort to physical punishment under pressure, or with very difficult children, a positive attitude to this sort of violence is generally seen as unacceptable.<sup>74</sup> Dr Gabrielle Hausmann, Director of the major Austrian non-governmental organisation (NGO) for children, the *Kinderschutz Zentrum*, has said that it will take a generation for attitudes to change completely. The cultural shift is more apparent in urban areas and amongst younger adults.<sup>75</sup>

## Prosecution and Enforcement

Non-serious violations of the ban are not immediately liable to punishment, but are taken into account when assessing the legal relationship between children and parents, for example in custody arrangements. Assault cases related to physical punishment incidents have been brought to court but Smutny comments that it is difficult to secure convictions, because of the difficulty of proving the injuries and the sympathy still expressed towards parents who 'lost control' and hit their child. She emphasised the need for the legal profession to be given specialised training in the long-term effects of physical punishment, and felt that many of its members still did not take it seriously enough. Assaults on children entail a higher degree of criminal liability under Austrian law because of children's vulnerability.

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<sup>70</sup>(Austrian) Federal Ministry of the Environment, Youth and the Family, 'Causes and consequences of violence against women and children', cited in *Initial Report of Austria (1996) in accordance with Article 44 of UNCRC, section 258*, available at [www.unhchr.ch](http://www.unhchr.ch).

<sup>71</sup>*Concluding Observations of the Committee on the Rights of the Child – Austria (1991)* available at [www.salzburg.com/kija/archiv/C099e.htm](http://www.salzburg.com/kija/archiv/C099e.htm).

<sup>72</sup>Correspondence with Martina Staffe.

<sup>73</sup>Federal Ministry of the Environment, Youth and the Family: 'Causes and consequences of violence against women and children', cited in *Initial Report of Austria in accordance with Article 44 of UNCRC, section 258*.

<sup>74</sup>Telephone interview, 18/04/02.

<sup>75</sup>Correspondence with Phil Taverner, NSPCC.

## 3.5 Cyprus

**‘Any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family [is prohibited]’** (Violence in the Family (Prevention and Protecting Victims) Law, 1994)

**Population:** 7.7 million (1998)

**Child population:** 2.2 million (1998)

**Mandatory reporting:** Government employees obliged to report suspicion of abuse

**Children’s Ombudsman or Commissioner:** No

**Framework for children’s legislation:** Violence in the Family (Prevention and Protection of Victims) Law

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

In 1994, the Republic of Cyprus banned the physical punishment of children, with legislation that addresses the whole spectrum of family violence. Women’s organisations had pressed for a bill on domestic violence, and then children’s voluntary organisations called for children to be included in the legislation.

### Stages of Reform

- **1956 – Legislation for the care and protection of children introduced**
- **1994 – Violence in the Family (Prevention and Protection of Victims) Law** [N.47 (I)/94]. Aside from the complete prohibition of violence in the family, this legislation:
  - recommends the establishment of an Advisory Committee on family violence
  - provides for the appointment of family counsellors to offer support and guidance
  - empowers the court to issue contact orders and removal of a child at risk of harm in a household
  - provides for the establishment of shelters for victims of abuse.
- **2000 – Amendments** [N. 119/(I)/2000], including the permitting of video evidence from a child, a fund for victims of violence and the power to remove a child from a household temporarily before the completion of a case.

The 1994 reform made any violence in the context of the family illegal, and it included sanctions relating to the psychological damage caused by witnessing violence in the family: it is an offence for violence to occur in the presence of a child. It also covered ‘violence used for purposes of sexual intercourse without the consent of the victim as well as for the purpose of restricting liberty.’ There were drastic increases in the penalties for criminal assaults upon family members.

### Public education

The Advisory Committee for the Prevention and Handling of Violence within the Family

has published leaflets, posters and stickers to increase awareness of the legislation. Non-governmental organisations and the Social Welfare Services are carrying out on-going campaigns against family violence. A need has been identified for more training of social workers to increase their awareness of family violence to complement the work of the specialised Family Counsellors and help ensure a more uniform approach to the problem of violence towards children.

## Effects of reform

### Child protection

There has been an increase in the number of referrals for all forms of family violence, from 26 in 1990 to 284 in 2000.<sup>76</sup> Statistics were not collected before this time so it is difficult to evaluate a long-term change in real levels of child and spouse abuse. The Department of Social Welfare Services believes that this increase is due to heightened public and professional sensitivity to family violence.

The role of family counsellors, established by the 1994 law, is crucial to child protection in Cyprus: they are seen as having more authority than ordinary social workers, and the clear message of the Family Violence law underpins their position.

### Enforcement and prosecutions

Support and welfare intervention is considered the appropriate response for parental physical punishment, and the highly specialised family counsellors can offer advice and help.

Referrals to the Department of Social Welfare Services have to be passed to a family counsellor within thirty minutes if the report concerns a child, and initial action taken within a day. There are few prosecutions for mild physical punishment because of the problem of obtaining evidence, and the preference for using police and court time for cases of serious abuse.

### Public Opinion

A survey conducted by the Advisory Committee on Cypriots' Attitudes to Domestic Violence and Child Abuse in October 2000, found that 15 per cent of 1000 interviewees believed that smacking children is a socially acceptable method of child discipline.<sup>77</sup> No other evaluation of the 1994 law has taken place. Evanthia Papsavva, Director of Social Welfare Services in Cyprus writes:

'It is believed that the new legislation has given a new impetus to children's and women's rights. It has raised awareness of cultural attitudes towards child discipline and has sensitised parents [to] the use of more constructive and effective methods of discipline.'<sup>78</sup>

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<sup>76</sup> 'Family Violence Referrals for the years 1990 to 2000' (*Department of Social Welfare Services, Cyprus*).

<sup>77</sup> *Correspondence with Maria Kapakioti, Executive Officer of the Advisory Committee for the Prevention and Handling of Violence in the Family, 15 April 2002.*

<sup>78</sup> *Correspondence, 27/4/02.*

## 3.6 Denmark

**‘The child has the right to care and security. It shall be treated with respect for its personality and may not be subjected to corporal punishment or any other offensive treatment’** (Parental Custody and Care Act, 1997)

**Population:** 5.3 million (1998)

**Child population:** 1.1 million (1998)

**Children’s Ombudsman or Commissioner:** National Council for Children established 1994

**Framework for children’s legislation:** Social Services Act; Act on Child Custody and Visiting Rights; ‘Crimes against life and body’ (Penal Code)

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Denmark’s legislation against physical punishment was broadly similar to the reforms enacted in Sweden and Finland, although it was introduced more slowly and with more equivocation. In 1985, following pressure from children’s organisations and the Children’s Commission, the Government amended the Care and Custody Act to include a statement on parental obligation to protect the child from violence, more ambiguously phrased than the Children’s Commission had demanded. This was interpreted as a prohibition of physical punishment: the Minister of Justice declared that the expression ‘right to punish’ should no longer be employed, and reference to the ending of the right to punish was made by other speakers during the first reading of the Bill. But legal textbooks in the later 1980s continued to refer to an existing ‘right to punish’, and the concept continued to be used in judicial practice. Thus, in 1997, a new amendment was made which stated unequivocally that violence was not to be used in the raising of children.

### Context of reform

King Christian the Fifth established the right to beat a child or servant in Danish law in 1683. Copenhagen’s death statistics from 1748 reveal that 987 people died from hitting and beating, most of them children. During the twentieth century, a series of measures gradually limited the use of physical punishment in orphanages, including a reduction of permitted strikes with a stick from 25 to 15 (1910), and the prohibition of punishment for bedwetting (1934). There were similar limitations on the use of force in schools.<sup>79</sup>

### Stages of reform

- **1911 - Abolition of the ‘flogging law’** for violent and sexual offences

<sup>79</sup>Merrick, Joav (1986) ‘Physical Punishment of Children in Denmark: An Historical Perspective’ *Child Abuse and Neglect*, 10,2 pp. 263-264.

- **1920 – Abolition of men’s rights to beat their wives and servants**
- **1922 – Ending of the corporal punishment of prisoners**
- **1967 – Corporal punishment ended in schools**
- **1985 – Parents’ ‘duty to protect children against physical and psychological violence’ written into the Custody and Care Act.’** This was interpreted at the time as a prohibition of physical punishment by the Nordic Council, among others. However, an explanatory note to the law emphasised that it was not intended to intrude on parents’ rights to inflict ‘light’ punishment.<sup>80</sup>
- **1997 – Parental Custody and Care Act** (1995) was amended and substituted for the 1985 parental duty passage, ‘The child has the right to care and security. It shall be treated with respect for its personality and may not be subjected to corporal punishment or any other offensive treatment.’ It was passed by 52 votes to 51. This is regarded by all as a complete prohibition of physical punishment.

## Factors influencing reform

### Organisations campaigning for change

A campaign on physical punishment legislation was well underway by the start of the 1980s. In 1981 the Children’s Commission observed that the concept of children as rights-bearing individuals with their own integrity was becoming more accepted in Denmark and elsewhere. It proposed that the following should be inserted into the Parental Custody and Care Act: ‘It is the duty of a person with custody of a child to discharge such care in accordance with the right of the child not to be subjected to physical punishment or other treatment that violates such rights.’ As explained above, a more limited, ambiguous amendment was made to the law in 1985.

The UN Convention on the Rights of the Child was ratified by Denmark in 1991, and the Danish Centre for Human Rights set up a working group in 1993 to investigate the need for a prohibition of physical punishment in accordance with the Convention. The National Council for Children was established in 1994, to serve as the children’s Ombudsman institution. One of the first actions it decided upon was to press for clarification of the law on physical punishment, and it joined with Danish Save the Children to launch a campaign on the issue entitled ‘An end to beating’ (*‘Nej til bank’*), culminating in the 1997 reform. The Bill that went before the Danish Parliament in 1995 was a verbatim version of the two organisations’ proposals.

### Pressure from the Nordic Council and the UN Committee on children’s rights

In 1982 the Nordic Council had recommended uniform legal provision for a ban on physical punishment, and in 1983 the first Scandinavian Seminar on Child Abuse and Neglect recommended that Denmark should follow Sweden’s lead. When physical punishment again became the subject of fierce debate in the 1990s, the proponents of a second reform pointed out that the legislation lagged behind ‘our Nordic neighbours’.<sup>81</sup> In 1995, the UN Committee on

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<sup>80</sup>Bitensky (1998), *op. cit.*

<sup>81</sup>Søvndal, Villy (1997) *Proposal for the 1997 law and comments, correspondence with EPOCH Worldwide, on file with NSPCC.*

the Rights of the Child recommended that Denmark take ‘additional preventative steps to protect children from violence, including in the home.’

### Confusion over the legal status of physical punishment

The 1985 law was intended to be symbolic rather than strongly to influence court practice, and the ensuing confusion made clarification of the law necessary for the benefit of parents, social services and law courts alike.<sup>82</sup> Research showed that courts were still referring to ‘the right to punish’ and ‘permissible punishment’ in criminal cases, with the grounds for sentencing potentially residing in the number, heaviness and location of blows inflicted.<sup>83</sup> The Public Prosecutor Ole Stigel noted in 1985: ‘It would have been preferable if the wording of the Bill had been clearer.’

## Public education

To accompany the 1997 reform, an information campaign was developed by the National Council for Children and partly funded by the Ministries of Justice and Social Affairs. The goals of the campaign were to inform parents and professionals about the change in the law, and ‘to give inspiration to a more open, accepting and humane practice in the upbringing of children.’<sup>84</sup> It was clear that the tone of the materials should be non-judgmental and supportive of parents.

- In autumn 1998, a pamphlet was produced for parents of children under 10-years-old, and 800,000 copies were distributed by teachers, health visitors and day-care centre staff. It advises parents on how to educate their child without physical punishment and provides details of organisations that can offer help. Another pamphlet has been produced for ethnic minorities, translated into Turkish, Arabic, Yugoslav and English; an Urdu leaflet is in preparation. The National Council is currently trying to raise funds to produce a new leaflet aimed specifically at parents with toddlers.<sup>85</sup>
- A magazine has been produced for parents, which can be given to them by professionals who have a specific concern about the routine use of physical punishment. It is designed like a weekly magazine, in a popular style and with various real-life stories, questions-and-answers, and children’s views.
- A TV programme was shown twice on the Danish national channel in autumn 1998, and viewed by around 400,000 people. It featured an interview with an ordinary mother, a family therapist, and children giving their opinions. It is also available for sale as a video, for professionals to use in parenting education.
- Posters were sent to all primary schools and postcards were distributed free in cafes; these featured a ‘no slapping’ logo.

Education of the general public about physical punishment continues on a small scale.

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<sup>82</sup> *Søvndal (1997), op. cit.*

<sup>83</sup> Article by Jørn Vestergaard, senior lecturer in law, cited in *Søvndal (1997), op. cit.*

<sup>84</sup> *Ingvarsen, Bente (1999) ‘Denmark: Backing a clear ban on physical punishment with promotion of positive discipline’ Journal of Child Centred Practice, Volume 7, Issue 2, pp. 79 – 85, p.82.*

## Effects of reform

### Child Protection

The Danish National Institute of Social Research (NSR) is undertaking a longitudinal study of 5,300 children born in 1995. In 2000 a survey in this series found that 12 per cent of three-year-olds were spanked 'sometimes' or 'seldom.' Milder physical violence (including slaps on the fingers and hard gripping of the arms) was more prevalent, but the results are still very positive when compared with a 1968 NSR survey indicating that 40.2 per cent of older children (9-12 years) were hit 'sometimes'.<sup>86</sup> The National Council for Children is encouraging the NSR to use a broader definition of physical punishment (to include its 'milder' variants) in future surveys of these children, in order to gain a full picture of the long-term effects of the reform.

Despite the ambiguity of the 1985 reform, it appeared to have a positive impact on Danish parents' use of physical discipline. A research study at the beginning of the 1970s suggested that as many as 85 per cent of parents used corporal punishment on children aged under one year.<sup>87</sup>

### Public attitudes

There has been a strong turn against the use of physical punishment in the home. In 1980, only 26 per cent of the population were opposed to physical punishment, a result that was confirmed in a 1984 Gallup poll. Two years after the ban, a 1988 survey showed that six per cent of parents felt that physical violence should obviously be used in cases of persistent disobedience, rising to 42 per cent who believed it might occasionally be used for this behaviour. Ole Varming, author of this survey, concluded that around half of Danish parents believed in a strict, obedience-based upbringing.<sup>88</sup>

By 1997, a clear majority – 57 per cent – were against the use of such disciplinary measures. Anecdotal evidence about current Danish attitudes suggests that parents are in favour of positive discipline and that they generally find it 'embarrassing' to admit to using corporal punishment.<sup>89</sup> However, it continues to be practised in a substantial minority of families, as shown above, and there has been some criticism of the public education campaign, both from parents who oppose the legislation and from parents who feel it should concentrate on those who actually use physical punishment.<sup>90</sup>

### Enforcement and Prosecutions

The strongest objection to the 1997 reform was that it would lead to increased supervision of family life and unreasonable sentencing of parents. But the proponents of the law emphasised that it "only" means that violence against children will be penalised in the same way as violence against other people'. That is to say, in all other groups in society the legislature entrusts authorities to make a sound and reasonable judgement in borderline cases, and there is no

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<sup>86</sup>*Correspondence with Soren G Hansen. Research undertaken by Danish National Institute of Social Research (NSR), longitudinal study of approximately 5300 Danish children born in 1995 out of a total of 70,000.*

<sup>87</sup>*Harder and Pringle (1989), op. cit., p.20.*

<sup>88</sup>*Newell (1989), op. cit., p.92.*

<sup>89</sup>*Ingvarsen (1999), op. cit., p.82.*

<sup>90</sup>*Ingvarsen (1999), op. cit., p.84.*

reason to suspect that ‘an overzealous enforcement of the law would occur in the area of child protection, or be allowed to thrive.’<sup>91</sup> Danish Save the Children also stated in response to the arguments against reforming the law in 1995:

‘What is more, for many years society has asked people who work with and look after children during the day – in many cases most of the child’s waking hours – to deal with problems without hitting them. Day carers, primary school teachers and educationalists not infrequently face situations where they must stop children running into the road, or have to explain to a child that it is wrong to slash the tyres of other pupils’ bicycles. The police also have to handle extremes of provocation from children and youths without reacting violently. Why should parents not be able to get on with their children without resorting to physical punishment?’

Parents and other carers can be prosecuted under the criminal code for assault and battery, yet as a note to the law makes clear, it was intended that there should be ‘no intensified or excessive action taken by law enforcement or social welfare authorities to monitor ordinary families’ private lives.’ There are no statistics available on rates of prosecution for physical punishment, although enquiries made to the police and prosecutors by the National Council for Children indicate that no prosecutions for ‘smacking’ have occurred.<sup>92</sup>

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<sup>91</sup>*Søvndal (1997), op. cit.*

<sup>92</sup>*Correspondence with Soren G Hansen.*

*It has not been possible to obtain much information about the legal reforms in Latvia and the Republic of Croatia – see comments in Discussion and recommendations section.*

## 3.7 Latvia\*

**‘A child shall not be treated cruelly, tortured or physically punished, and his or her dignity or honour shall not be violated’** (Law on Protection of the Rights of the Child, 1998)

**Population:** 2.4 million (1998)

**Child population:** 0.6 million (1998)

**Children’s Ombudsman or Commissioner:** No

**Framework for children’s legislation:** Law on Protection of the Rights of the Child

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Latvia’s restoration to independence in 1991 initiated the transition from a centrally-planned economy under Soviet occupation to a market-oriented and democratic society. The living standard of the population is very low and organisations such as Latvian Save the Children face great challenges in protecting children from maltreatment and giving them a better standard of life.

Existing legislation had already made ‘cruel and violent treatment’ of children a punishable offence, but it was unclear whether this included physical punishment and was not clearly defined.

### Stages of reform

- **1991 - Latvian Independence; ratification of the UNCRC**
- **1998 - Physical punishment prohibited** (Law on Protection of the Rights of the Child):
  1. A child has the right to privacy, living quarters, confidentiality of living quarters and inviolability and freedom of the person.
  2. A child shall not be treated cruelly, tortured or physically punished, and his or her dignity or honour shall not be violated.
- **2000 - An amendment further defined violence** as being physical, sexual and emotional.

### Factors influencing reform

The main drive behind the adoption of the law was meeting the obligations of the UNCRC, and Latvian Save the Children was instrumental in pushing for reform. However, the reform has been criticised for not backing up its declarations with adequate concrete provisions for protecting children’s rights.

## Public education

Some public education and explanatory work on the new law has been undertaken, and charities and other voluntary organisations are still putting much work into the elimination of smacking in family life. There is a continued media emphasis on the illegality of smacking, although a major criticism of the reform has been the lack of comprehensive education programmes for the general public.

## Effects of reform

### Child Protection

There has been a large increase in reported incidents of child abuse since the banning of physical punishment (30 in 1999 and 62 in 2000). The 1998 law included a mandate that anyone aware of children's rights violations should report it immediately. This mandatory reporting, together with the greater sensitivity to physical punishment and abuse necessarily created by legal reform, suggests that greater awareness and increased reporting rather than an actual increase in incidence is likely to be responsible for the higher abuse figures. However, these are still very low figures and suggest that awareness and/or reporting may well not reflect the reality of children's experience of maltreatment in Latvia.

Anecdotal evidence suggests that many parents still hit children. However, there is also some evidence that custody courts, which are the primary institutions protecting children's rights in Latvia, are working more effectively in identifying 'risk' families and intervening at an early stage where appropriate.

### Enforcement and prosecutions

There appear to have been no prosecutions for 'trivial' incidents of 'smacking'.<sup>93</sup>

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<sup>93</sup>Correspondence with Andra Reinfelds, National Centre for the Rights of the Child.

## 3.8 Republic of Croatia\*

**‘Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse’** (Family Act, 1998)

**Population:** 4.5 million (1998)

**Child population:** 1 million (1998)

**Children’s Ombudsman; Commissioner:** No

**Framework for children’s legislation:** Family Act; Juvenile Courts Act

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

The prohibition of physical punishment in the Republic of Croatia comes under several laws, most importantly the 1998 Family Act, which came into effect on January 1, 1999. Corporal punishment has also been outlawed in schools and other child care institutions.

Article 87 determines that ‘Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse’ while Article 91 states that a parent is obliged to protect the child from degrading treatment and physical punishment administered by others. The Act also specifies that every citizen is obliged to inform a Social Welfare Centre about any infringement of children’s rights, especially forms of violence. The use of physical or mental violence against a child is considered an abuse of parental duties, which may lead to court proceedings. The Family Act also prohibits the use of violence by an adult against a spouse or another family member. Provisions ensure that a child may approach the competent bodies if they believe their rights have been infringed, in order to have their case examined and appropriate measures taken.

Public debate was widespread when the Family Act was under parliamentary discussion. The population learnt about the new prohibition of physical punishment through the mass media, which made ‘a major contribution’ in informing adults and children alike about children’s rights and protection from violence. The Ministry of Labour and Social Welfare writes:

‘The public in [the] Republic of Croatia is favourably disposed towards the adoption of all regulations and taking all measures by which children are protected from any form of abuse or physical punishment. This is supported by an ever-increasing number of persons who report criminal offences against children and neglect of children by their parents, although they are not obliged to do so.’

This is illustrated by the fact that around ten per cent of cases of the abuse of parental duties were reported to Centres of Social Welfare by individuals, compared to only two and a half per cent from health care institutions.<sup>94</sup>

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<sup>94</sup>All information: correspondence with Nino Žganec, PhD, Assistant Minister of Labour and Social Welfare, Directorate of Social Welfare, Zagreb.



# Examples of public education materials from countries which have enacted reform on physical punishment



## DENMARK

*Parents do not have the right to hit their children (post-1997).*

This leaflet was also translated into Bosnian, English, Arabic and Serbo-Croat.



## SWEDEN

*Can you bring up children successfully without smacking and spanking? (1979)*

This booklet was also translated into Finnish, French, Greek, Serbo-Croat, Spanish and Turkish.

## FINLAND

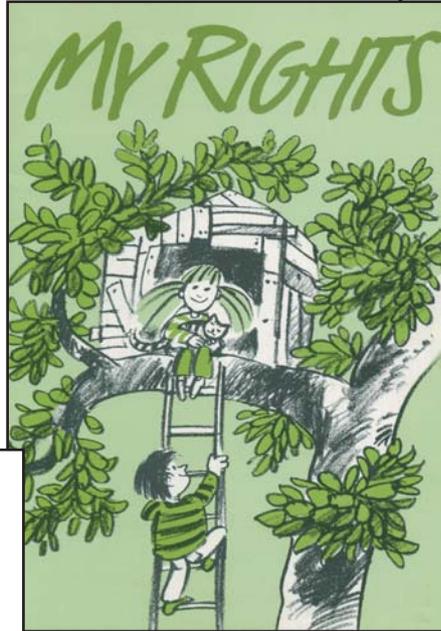
*Resourceful Parenting (1983)*



## SWEDEN

### *My Rights*

A booklet promoting the United Nations Convention on the Rights of Child to children themselves.



## GERMANY

*A slap lasts seconds but the pain lasts a lifetime...*

Stills from a TV advertisement; one element of Germany's public education campaign (2001)



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## 3.9 Italy

**‘The use of violence for educational purposes can no longer be considered lawful’** (Judge Ippolito, Court of Cassation, 1996)

**Population:** 57.4 million (1998)

**Child population:** 10.1 million (1998)

**Children’s Ombudsman; Commissioner:** No

**Framework for children’s legislation:** Certain provisions in the civil code; penal code and special regulations

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Italy has no specific youth-focused legislation comparable to, for example, the Children Act (1989) in England and Wales. However, a crime of ‘abuse of correction methods’ is delineated in the Penal Code (Article 571): ‘Whoever misuses means of correction or discipline to harm a person subject to his authority, or entrusted to him for purposes of education, instruction, treatment, supervision or custody... shall be punished.’ This is a less serious crime than assault and battery, with milder penalties. What might constitute a ‘misuse’ of the means of correction has not been defined, other than the causing of physical or mental injury (*una malattia nel corpo o nella mente*). The penalty is a maximum of six months’ imprisonment. If the discipline results in physical injury, or if it results in death, then longer sentences are applicable.

If the punishment is severe (*per eccesso*), or if the punishment is deemed inappropriate for another reason, the action then falls under the crime of maltreatment or common assault.

Physical punishment of children in schools was prohibited outright in 1928.

### Landmark judgement

In 1996 the Court of Cassation in Italy (equivalent to a Supreme Court) produced some varying judgements on correction methods. In January 1996, a case was brought leading to a decision that the appropriateness of the means of correction (article 571) resided in the *intention* of the perpetrator, not actual means employed nor the impact on the child. Naturally, a parent or carer accused of assault was likely to plead the lesser crime of ‘abuse of correction methods’, with the claim that their intention was to correct the child’s behaviour. This brought some public criticism, and it is said that the Court of Cassation took the first opportunity to reverse this judgement. A case in March oriented the interpretation of Article 571 back to a definition of means, not intention.

The comprehensive overturning of the January judgement came in May. The Court of Cassation declared in May 1996 that parental use of physical punishment to educate or ‘correct’ their children was illegal. A father was prosecuted for using frequent violence against his

10-year-old daughter, but claimed in his defence that he was not guilty of maltreatment, having intended only to correct his child's behaviour. Supreme Court Judge Francesco Ippolito rejected his defence, and took the opportunity to state the juridical principle that – on the basis of the Italian constitution, statutes on maltreatment and international law – parents are absolutely forbidden to use any violence in the upbringing of their children. This principle was established with reference to three particular values expressed in Italian law:

1. 'The Italian Constitution and family laws express an overriding concern with the dignity of the individual. These laws conceive that minors are entitled to be treated with a dignity equal to that accorded to adults.'
2. 'The Italian Constitution manifests a societal repudiation of violence as a way of resolving problems, either amongst nations or individuals.'
3. 'Italy as a party to the UN Convention on the Rights of the Child has embraced that treaty's tenets that children have a right to the harmonious development of their personality and that children should be raised in the spirit of peace and tolerance.'<sup>95</sup>

Judge Ippolito has commented that the judgement aims to challenge the "basis of the whole problem of violence against children,"<sup>96</sup> and predicted that it would become a new social norm, creating a culture in which physical chastisement of children is no longer socially acceptable:

"The very expression 'correction of children', which expresses a view of child-rearing that is both culturally anachronistic and historically outdated, should in fact be re-defined, abolishing any connotation of hierarchy or authoritarianism and introducing the ideas of social and responsible commitment which should characterise the position of the educator vis à vis the learner."<sup>97</sup>

## Effects of the ruling

Official Italian statistics do not record the age of victims, nor their relationship to perpetrators, although there is information available on 'crimes of ill-treatment within the family or against children.' According to Save the Children Italy, 'corporal punishment of children is not as serious a problem in Italy as it is in Great Britain, so... we focus on other issues.'<sup>98</sup>

Representatives of Telefono Azzurro, the Italian helpline for children, also commented that for them, physical punishment was associated with England. In general it does not appear to be a topic of current debate.

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<sup>95</sup>Bitensky, Susan H. (1996) 'Final straw: To spank or not to spank', *Chicago Tribune*, July 25, 1996 available at [www.nospank.net/bitensky.htm](http://www.nospank.net/bitensky.htm).

<sup>96</sup>Bitensky (1996), *op. cit.*

<sup>97</sup>Bitensky (1996), *op. cit.*

<sup>98</sup>Correspondence with Arianna Sauliani, Save the Children, Italy.

## 3.10 Israel

**‘[Physical punishment] injures [the child’s] body, feelings, dignity and proper development. Such punishment distances us from our goal of a society free of violence. Accordingly, let it be known that in our society, parents are now forbidden to make use of corporal punishments or methods that demean and humiliate the child as an educational system.’** (Justice D. Beinisch, Supreme Court, 2000)

**Population:** 6 million (1998)

**Child population:** 2 million (1998)

**Children’s Ombudsman; Commissioner:** No

**Framework for children’s legislation:** Law for Preventing Abuse of Minors

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Israel prohibited the physical punishment of children in 2000, following a Supreme Court Judgement at the start of the year and the increasing media attention being given to the plight of children suffering physical abuse in the family. The number of violent crimes committed against children in Israel is said to have risen by nearly 300 between 1998 and 1999, to a new annual total of 1,817.<sup>99</sup> Shelters for battered women have seen large increases in the numbers of abused children in their care. The Israel Association for Child Protection states that around 1.5 per cent of the child population (30,000 children) – regarded by some as a conservative estimate are victims of abuse, and cites stress, frequent military duty, fear of terrorism, unemployment and immigration difficulties as contributory factors. Over a third of the telephone calls to their helpline are related to physical abuse.<sup>100</sup>

### Stages of reform

- **1989 - Law for Preventing Abuse of Minors and Helpless Persons** introduced mandatory reporting for laymen and professionals
- **2000 – Landmark judgement: ‘Natalie Bako vs. The State’**
- **2000 – The Knesset rescinded the statutory defence of ‘reasonable chastisement’** (June 13, Bill presented by Anat Maor)

<sup>99</sup> ‘Israeli legislature backs up high court to shield children from parental violence’ by *Frimet Roth*, Jerusalem Post, July 3, 2000 (originally ‘Children’s Nightmare Season’).

<sup>100</sup> Website of the Israel Association for Child Protection, [www.eliusa.org](http://www.eliusa.org).

## Factors influencing reform

### Death of Moran Demnis

Israeli society was relatively slow to acknowledge the extent of child abuse in the country. The death of a three-year old girl from physical abuse in 1989 was a major shock to the nation. In response, the Law for Preventing Abuse of Minors and Helpless Persons (1989) was passed very quickly, introducing mandatory reporting of any suspected offence against a child to a welfare officer or the police. This is applicable to all persons, with a special duty imposed on professionals and persons responsible for the child to report, and harsher sanctions for non-compliance. It also set down the principle that injuring a minor and particularly one who is a family member, is an aggravated crime. Following the passing of the legislation, there was a striking increase in the number of police files on child abuse cases. A greater sensitivity to child abuse is also reflected in court decisions, in which a general tendency to push for more severe penalties is apparent.

### Landmark judgement

A mother was sentenced to a year's imprisonment (suspended) for abuse and assault of a minor, following accusations that she had hit her children regularly and violently in 1994-5. She appealed to the Israel Supreme Court, against both convictions, arguing that she had used acceptable disciplinary measures ('reasonable chastisement') against her children. Her appeal was rejected:

'The claim of the appellant that the acts were done for the good of her children in order that they better behave contradicts the fundamental values of our society regarding human dignity and the integrity of the body and mind of the minor.'

The appellant in this case called on a 1953 ruling (*Dalal Rasi v. Attorney-General*), which referred to English common law and stated that parents were free to impose corporal punishment on their children, as the English 'reasonable chastisement' defence makes clear. But since 1980, Israel is no longer obliged to consult English law. A recent ruling had declared that 'corporal punishment cannot constitute a legitimate tool in the hands of teachers or other educators.' This, combined with the UN Convention on the Rights of the Child (ratified by Israel in 1991), led the judge in this case to rule that parental physical punishment of children is illegal.

The reasons cited for this judgement included the detrimental medical, educational and psychological effects of physical punishment, the violation of rights that it entails, and a broader aim of ending the cycle of violence in society. The judge summed up:

'We live in a society in which violence is as pervasive as a plague; an exception for "light" violence is likely to degenerate into more serious violence. We cannot endanger the bodily and mental integrity of the minor with any type of corporal punishment; the type of permissible measures must be clear and unequivocal, the message being that corporal punishment is not permitted.'

## Public education

The National Council for the Child published a booklet in Hebrew shortly after the Bako decision, answering common questions on the issue. A planned \$250,000 campaign to be run by

the Ministry of Justice, the Ministry of Education and the Ministry of Health was suspended because of budget difficulties. There are some schools for parents that advise on non-violent child-rearing but 'they are very few and often don't reach those who need them most.'<sup>101</sup>

## Effects of reform

### Child protection

There has been no systematic research into the prevalence of physical punishment either before or since the judgement, though statistics are already indicating that the law may have had an effect on child protection: the number of police investigations following reports of assaults on children rose from 1,196 in 1999 to 1,593 in 2000. In comparison, the number of investigations in 1995 was 834. There has also been a rise in the total number of reports on children at risk from any form of harm.<sup>102</sup> However, further data needs to be collected before a meaningful change in attitudes can be ascertained. The annual Statistical Report on the State of the Child in Israel is due to be published by the National Council for the Child in January 2003, and may shed more light on the impact of the legal reform.

### Enforcement and prosecutions

There have been no high-profile prosecutions since the Bako decision, nor has there been a marked increase in relevant court cases, partly because they can take several years to come to court and partly because courts are concentrating on harsher forms of child abuse rather than physical punishment. This may change as the physical punishment message becomes more established.

### Public opinion

Following the Supreme Court judgement, two orthodox Knesset Members proposed Bills to make 'reasonable', educational uses of physical punishment legal. This attracted much press attention, but the National Council for the Child prepared an opposing legal opinion and the Bills were dropped. The National Council writes:

'The message that corporal punishment is "bad" and even illegal, is gradually being internalised by the public. What we sense is missing is some guidance to parents... [on] alternatives to corporal punishment.'

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<sup>101</sup>Correspondence with Tali Gal, Legal Adviser, National Council for the Child, Israel.

<sup>102</sup>Correspondence with Tali Gal, Legal Adviser, National Council for the Child, Israel.

## 3.11 Germany

**‘Children have a right to be brought up without the use of force. Physical punishment, the causing of psychological harm and other degrading measures are forbidden.’ (2000)**

**Population:** 82.1 million (1998)

**Child population:** 15.8 million (1998)

**Children’s Ombudsman; Commissioner:** No

**Framework for children’s legislation:** Child and Youth Services Act (Social Code); general penal code

**Source:** European Forum for Child Welfare (1998). *Are children protected against violence in Europe?* Brussels: EFCW

Germany’s experience of legislating against physical punishment is perhaps especially relevant to the UK. The countries’ populations are much larger (81 million and 58 million, respectively) than those of the Scandinavian countries (between 5 and 9 million inhabitants), and the welfare systems are more conservative in comparison with, for example, Sweden and Finland.

### Stages of reform

- **Late 19th century - legislation against the right of men to beat their wives and servants;** parents’ right to use physical punishment on children confirmed
- **1970s - Länder legislation prohibits the use of corporal punishment in schools and residential care**
- **1980 - Ban on ‘degrading’ methods of child-rearing.** Parental duty to consult children on aspects of their upbringing legislated for in civil law. However, the right to chastise physically was confirmed, in that physical punishment was deemed to fall somewhere between ‘degrading’ and non-degrading measures.
- **1998 - ‘Degrading methods of discipline including physical and psychological abuse’ banned** in an amendment to the Civil Law (*Bürgerliches Gesetzbuch*)
- **2000 - The explicit prohibition of physical punishment in the context of children’s rights** was introduced through an amendment to civil law: ‘Children have a right to be brought up without the use of force. Physical punishment, the causing of psychological harm and other degrading measures are forbidden.’ German child care law (*Sozialgesetzbuch*) was amended to impose an active duty on local authorities to ‘promote ways in which families can resolve conflict without resort to force.’

## Factors influencing reform

### Long-running debate and political opportunity

Since the 1970s there has been debate in Germany<sup>103</sup> concerning the distinction between permissible and non-permissible forms of punishment. In the early 1990s, measures to end physical punishment were under active consideration, but the government eventually drew back from reform. In their 1998 coalition agreement, the new government of Social Democrats and the Green Party published a commitment to clarifying the law on physical punishment. One of the very first bills drawn up by the government, in June 1999, was to outlaw physical punishment and promote positive discipline.

### Research linking youth violence and physical punishment

There has been a great deal of concern in Germany about the rate of youth crime and violent attitudes (the neo-Nazi youth movement is an extreme example). A study published in 1999 established a clear relationship between children's experience of physical punishment before the age of 12 and later criminality and violence.<sup>104</sup> Interviews undertaken with 16,190 children aged 14–15 showed physical punishment was experienced by around half the child population – 43 per cent stated that they had never been hit, 47 per cent said that they were smacked occasionally or regularly, and 10 per cent reported punishment regarded as mistreatment. The study confirmed the link between physical punishment and domestic violence, with abused children who had witnessed adult violence in the home outnumbering abused children who had not seen it by seven to one. The use of physical punishment was generally much lower in the German ethnic majority group, four times below that in Turkish families, which may suggest a drift away from physical punishment in mainstream German culture.

The most significant discovery of the research was that rates of active involvement in criminality and acts of violence increased systematically with the frequency and intensity of physical punishment experienced before the age of 12. Around 36 per cent of young people who were often mistreated as children were involved in violent acts. This compares to 27 per cent for those who were 'harshly punished' (defined as: had something thrown at them, were grabbed violently, were smacked on the bottom and occasionally hit with an implement) and 17 per cent of those who were never physically punished. The pattern of using violence was even more marked among young people physically punished within the last year, which increased from 17 per cent of those who had not been hit in the previous 12 months to 43 per cent of the 'often mistreated' category.

### The Children's Commission

There is no designated Children's Commissioner in Germany but an all-party group of MPs sits on a permanent Children's Commission (*KinderKommission*), which has a full-time staff of civil servants. It was this group which considered the research evidence and drew up the bill.

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<sup>103</sup>The literature does not specify whether debate was in East or West Germany or both.

<sup>104</sup>Pfeiffer Christian and Wetzels, Peter (1999) Use of physical punishment within families against children and the consequences (1999) (unofficial translation by Kerstin Goodall and Phil Taverner, NSPCC).

## Public education

The government has collaborated with various organisations to produce mass media advertising and educational materials, spending 2.5 million Euros on their public education campaign. The main strand of the campaign is called ‘More respect for children’<sup>105</sup>. Striking posters and leaflets have been produced, showing children with large red marks on faces and shoulders made up of finely graduated red text which reads ‘the pain fades but the hurt remains’. One glossy brochure opens with an interview with the then Minister for Families, the Elderly, Women and Children, in which she is asked frank questions about child-rearing, the implications of the law, and her own practice. Leaflets have not been distributed on the scale of the Swedish campaign but are widely available in health clinics and other public spaces.

One key initiative is a folder for new parents on child development that is either given out by or purchased from social workers. Newsletters are delivered each month from the child’s birth to age five, describing children’s development at each stage, the conflicts that may develop with parents, and ways of avoiding physical punishment. This seeks to encourage parents to think about their child’s needs and individuality from the very earliest days. One million packs have so far been produced.

Teachers discuss the law from primary school level onwards, and children have a high level of awareness of the law. The amendment of the child care law, imposing an active duty on local authorities to ‘promote ways in which families can resolve conflict without resort to force’, is an innovative additional provision in the legal framework. It will be interesting to examine its impact on child-rearing practices, child protection and domestic violence.

## Effects of reform

### Child protection

No information is currently available on the impact of the reform on violence towards children. Anecdotal evidence suggests that professionals aim for a constructive, child-centred and (initially) non-punitive approach: school teachers prefer not to go straight to social services or the police if they suspect child abuse.

### Public opinion

Overall, the indications are that the law has been positively received. It is notable that there was no real public opposition to the legislation, with the exception of a small number of more extreme religious groups. The German press covered the announcement of the new law in July 2000 with an overwhelmingly positive response: ‘Soon there will be no excuses: Parliament has outlawed the spanking of children – and it’s high time too’ ran one article on the day of the reform.<sup>106</sup>

Informal interviews with schoolteachers revealed absolute support for the new law but a sense that legal reform alone was not enough to change attitudes. They expressed a view that young

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<sup>105</sup> See [www.mehr-respekt-vor-kindern.de](http://www.mehr-respekt-vor-kindern.de)

<sup>106</sup> Schaeffer, Margaret (2000), ‘German Parliament bans use of Corporal Punishment in Child-rearing’, available at [www.nospank.net/deut2.htm](http://www.nospank.net/deut2.htm)

people who grow up with the ban will be the first strong supporters of non-violent child-rearing, as the breaking of patterns of violence through generations will take time.

The first evaluation of Germany's public education campaign has recently been completed.<sup>107</sup> While it is acknowledged to be too soon to see any measurable effect on parenting practices, the evaluation does report some encouraging findings, and the author posits that the law performs a useful symbolic function, by 'shift[ing] horizons, or the reference points of ... perceptions'. Parents who are aware of the new law have an increased consciousness of what the law says on physical punishment, a greater perception and definition of physical chastisement as violence, and are more likely to refer to the new legal regulation in family communication. However, so far, currently only a relatively low number of parents are aware of the legal change, and more needs to be done to extend this awareness. Professor Bussman, of Martin Luther University of Halle-Wittenberg, who has been conducting the evaluation, has described the potential of legal reform as follows:

‘The guiding idea is that the introduction of legal judgements cannot, in the end, prevent abusive attacks from parents, but [they] can help to make the justification of violence in child-rearing more difficult. Even the possibility of being in the wrong can endanger the normative consensus within families ... the refusal to speak about such limits or name such prohibitions demands justification.’<sup>108</sup>

### Enforcement and prosecutions

As the law is so new, there is as yet no evidence on how the law has been enforced, nor on rates of prosecution.

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<sup>107</sup>Bussman, K. ‘Evaluation of the German Prohibition of Family Violence Against Children’. Paper presented to the European Society of Criminology, September 5-7, 2002, Toledo, Spain.

<sup>108</sup>Bussman, K. *op. cit.*



## 4 Recent international developments

The debate over physical punishment continues to attract attention all over the world. Its use in penal institutions and schools is being challenged in many of the states that have not already prohibited it. This section presents some of the recent developments in major countries: it is by no means exhaustive, but rather intended to give a flavour of the debate.

### South Africa

The South African Law Commission has recommended that the common law defence of “reasonable chastisement” should no longer be available for parents and other care-givers who are charged with assault and similar offences. Consultation on a detailed discussion paper closed on 28 February 2002, and legislation will be now be drafted.

In a section on parents’ use of corporal punishment the report states: “The Commission recommends that an educative and awareness-raising approach be followed, in order to influence public opinion on the issue of corporal punishment. However, the Commission is further of the opinion that the common law defence that a parent may raise that physical punishment was justified on the grounds of the rights of parents to impose reasonable chastisement upon their children is overly broad, and that the common law in this regard should be revisited in order to protect children from serious breaches of physical integrity.”<sup>109</sup>

The new constitution adopted in 1994 is perceived as a break with South Africa’s apartheid past. It included a provision outlawing ‘cruel, inhuman or degrading treatment’ and a specific provision on the rights of the child: ‘in all matters concerning [a] child [a person under 18 years], his or her best interests shall be paramount.’ The final constitution, which entered into law in February 1997, provides that ‘Everyone has the right to freedom and security of the person, which includes the right... to be free from all forms of violence from either public or private sources... and not to be treated or punished in a cruel, inhuman or degrading way.’

South Africa has already abolished corporal punishment of children in all schools (National Schools Act, 1997), the penal system (1995), care institutions and foster care (Abolition of Corporal Punishment Act, 1997). South Africa’s Constitutional Court condemned corporal punishment in the penal system and upheld abolition of school corporal punishment against a challenge by a group of Christian Schools. The right to inflict corporal punishment in the home is still governed by the legal principles inherited from Britain. A bill passed in 1998 (the Domestic Violence Act) allows a victim of ‘domestic violence’ (including children), to apply to a lower court for a protection order. Breaches of a contact order are liable to imprisonment or heavy fines.

### Belgium

Belgium has been greatly shaken by the Dutroux paedophile cases of 1996, which preoccupy

<sup>109</sup>The full report and an executive summary are at: <http://wwwserver.law.wits.ac.za/sale/discussn/discuss.html>.

public opinion and are partly responsible for the relative lack of debate over physical punishment of children by parents. “The idea that ‘small violence’ within the family is also violence has not yet sunk in... Smacking by parents still seems to be rather an ‘accepted’ form of disciplining,”<sup>110</sup> says the Flemish Children’s Rights Commissioner.

Belgian law neither contains a defence for physical punishment, nor expressly permits it in any way. In fact several recent amendments to the law would seem to protect children from assault, although they have not been interpreted in this way and are not regarded as prohibitions of physical punishment.

#### **Recent amendments to the law relevant to parent-child relationships:**

- **1995** - Amendments to the Civil Code changed Article 371 from ‘Children are to respect their elders’ to ‘Parents and children are entitled to mutual respect.’
- **2000** - The following article was incorporated into the Belgian constitution: ‘Every child is entitled to respect for its moral, physical, psychological and sexual integrity.’
- **2001** - Law concerning the Penal Protection of Minors introduced a range of changes to protect children, mainly through increased penalties, though some new offences were defined. The Belgian penal code states that ‘slapping and causing injury’ is an offence, but does not further define this form of assault. In practice, the use of violence towards children is only prosecuted when amounting to ‘maltreatment.’
- A Bill to forbid physical punishment has been proposed in the Belgian Senate, along the lines of the Swedish legislation. To date it has not been debated.

## **Iceland**

There is no defence of reasonable chastisement in Iceland’s law on physical assault, and the Child Protection Act contains certain provisions that could be taken to constitute a ban on physical punishment. A parent may lose custody if a child’s upbringing is ‘seriously deficient’ or if the child has suffered ‘serious mental or physical harassment or humiliation in the home’ (Article 25). Two more articles state that any carer is liable to punishment if they cause a child ‘serious physical or mental injury’ (Article 63) or if they subject a child or youth to punishment, threats or risks which may be expected to damage the child mentally or physically (Article 64).

The Ombudsman for Children in Iceland has repeatedly emphasised the need for an explicit prohibition of physical punishment, but this has not been drafted into new versions of the Child Protection Act or Children’s Act, currently under discussion. However, physical punishment may be moving up the public and political agendas following recent treatment of the issue in Iceland’s main newspaper.<sup>111</sup>

## **United States**

There is an active movement against physical punishment in the US but in general the culture is strongly in favour of corporal discipline. The US is also one of the only two countries in the

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<sup>110</sup>*Anckie Vandekerckhove, Flemish Children’s Rights Commissioner, correspondence 22/10/02.*

<sup>111</sup>*Correspondence with Asta Solveig, Andresdottir, lawyer, Ombudsman for Children in Iceland.*

world that have yet to ratify the UN Convention on the Rights of the Child (the other is Somalia).

Four of Minnesota's criminal statutes, when applied to instances of physical punishment, constitute an effective prohibition in that state, because an existing 'reasonable force' defence cannot be asserted in cases of assault. The implications of these several sections are not widely known and they have not been invoked in cases of mild physical punishment.

## Canada

Canada has a defence for the use of 'reasonable' force in correcting children in its Criminal Code (Section 43), applicable to teachers, parents and carers. The Committee on the Rights of the Child recommended prohibition of physical punishment to Canada in June 1995. The assault defence was challenged recently under the constitutional argument that it infringes a child's right to equality and other rights under the Canadian Charter of Rights and Freedoms, as well as contravening the UN Convention on the Rights of the Child.

The challenge was rejected in the Ontario (Canadian) Court of Appeal in January 2002. Summing up, however, the judge noted that 'The government has clearly and properly determined that it [physical punishment] is bad.'<sup>112</sup> He confirmed that there is no evidence that mild physical discipline had any positive corrective effect on children, but decided that Section 43 does not infringe the child's security in a way that violates the principles of fundamental justice. The case is likely to be referred to the Supreme Court.

## Australia

On December 5 2001, the New South Wales Parliament passed a bill to define the circumstances relevant to the 'Defence of lawful correction' available in the Crimes Act 1900. The Crimes Amendment (Child Protection – Physical Maltreatment) Act 2001 states that:

'(2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied:

- (a) to any part of the head or neck of the child, or
- (b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.'

The original Bill had sought also to prohibit the use of implements, limiting hitting to the use of the open hand. The Hon. A. G. Corbett had introduced several versions of the Bill, from 1996, and had also been instrumental in ending the use of physical punishment in schools. The bipartisan Law and Justice Committee, which unanimously supported the Bill, stated:

'The Committee does not accept the arguments that the child protection laws currently existing are sufficient to make this Bill unnecessary; child protection laws do not set clear standards for all parents on physical discipline... For many parents the Bill will make no difference at all, because it reflects their current standards. For a minority of parents, this legislative standard may force

<sup>112</sup>Judgement available at: [www.ontariocourts.on.ca/appeal.htm](http://www.ontariocourts.on.ca/appeal.htm)

them to consider modification of their methods of physical discipline. The purpose of this Bill is to set a standard, not to be the source of prosecutions.’

The law will come into effect in December 2002. The NSW Commission for Children and Young People has been asked by the State Government to conduct community education activities promoting the new legislation. These activities are being developed and will involve the production of materials in English and some community languages.

## New Zealand

The need for a change in **New Zealand** law was emphasised in March 2001 after a 41-year-old man was acquitted on a charge of assaulting his eight-year-old son with a piece of wood after a jury deemed it reasonable force. Section 59 of the Crimes Act states that parents are justified in using physical punishment ‘if the force used is reasonable in the circumstances.’ A survey commissioned by the Ministry of Justice revealed in December 2001 that 80 per cent of parents felt that smacks with an open hand should be permissible, but 85 per cent were against the use of a wooden spoon or belt, and 98.7 per cent felt that hits in the head and neck area should be outlawed. Force that involves bruising was unacceptable to almost all respondents. Justice Minister Phil Goff said: ‘It is likely that eventually public attitudes will move towards repealing legal sanctioning of smacking as has now happened in most European countries... Cabinet supports as a first step education programmes to inform parents about positive alternative forms of discipline.’<sup>113</sup>

## Switzerland

In 1978 the civil code was amended to delete an explicit confirmation of parents’ right to use physical punishment on their children. A 1992 report undertaken by the Federal Department for Interior Affairs (‘National Report on Child Abuse in Switzerland’) revealed that physical punishment was widespread and deeply embedded in the cultural consciousness. Public discussion was initiated but has never reached a high enough level for reform to be carried through. The organisation Kinderschutzbund planned a three-languages campaign but this was abandoned through a loss of private financial support.<sup>114</sup> Proposals for an explicit prohibition of violence in child-rearing in the penal code were debated in 1996 following the report of the Law Commission. Parliament acknowledged the need to change the law; however, the issue was not high on the political agenda and the proposals were shelved.

## Ireland

In 1998 the UN Committee on the Rights of the Child presented its concluding observations and comments on Ireland’s initial report. It drew attention to the need for legislative reform on the topic of physical punishment:

‘The Committee also expressed concern over: the fact that the views of the child are not generally taken into account, including within the family, at schools, and in society; the lack of prohibition in legislation of corporal

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<sup>113</sup>Hon Phil Goff, Minister of Justice Media Statement, 19 December 2001, available at: [www.scoop.co.nz/mason/stories](http://www.scoop.co.nz/mason/stories)

<sup>114</sup>Correspondence with Franz Ziegler of Kinderschutzbund, March 2002.

punishment within the family environment; the existence of child abuse and violence within the family...'

In 1997 the Select Committee on Social Affairs recommended that the existing defences available to parents, teachers and other carers for 'chastisement' be removed, and that a major programme for positive parenting be implemented, as had previously been recommended by the Law Reform Commission. Subsequently, the 1997 Non-fatal Offences Against the Person Act abolished teachers' immunity from criminal liability regarding physical punishment of pupils, but did not change the law for parents. The Government Strategy for children, *Our Children, Their Lives* makes reference to promoting positive discipline 'as part of a policy to end physical punishment'. The Irish Society for the Prevention of Cruelty to Children has been campaigning heavily on the issue for several years, running poster campaigns and television advertising to raise awareness.



## 5 Discussion and recommendations

This report has sought to bring together the available evidence from other countries that have legislated against all physical punishment of children, with a view to informing the debate around similar legal reform in the UK. The NSPCC believes that giving children equal protection with adults under the law on assault would make a significant contribution to the protection of children from physical danger, encouraging a culture of respect for children and helping to encourage the use of positive parenting techniques which would contribute to happier child-rearing experiences for both children and parents.

It is important to recognise that these aims of protection and welfare are shared by those on both sides of the physical punishment debate, despite the emotive disagreements over how best to serve the interests of children and families. Policies on physical punishment must be developed and reviewed in the light of open consultation and discussion, which should include children. The NSPCC offers this overview as an important contribution to this debate.

The evidence shows that physical punishment legislation has been widely accepted in the ten countries in which it has been introduced. No negative effects have been documented following legal reform, and such reform has helped to foster a culture in which children are accorded greater respect, have greater equality and greater protection from violence. There is, however, a need for evaluation of the success of public education initiatives, and research that will enable more meaningful international comparisons of activity in this area.

In this section, the main areas of commonality and contrast in the international experience of physical punishment legislation are identified and discussed, together with their implications for policy and research. These are:

- a staged process of legal reform
- the influence of high-profile maltreatment cases
- government leading public opinion
- links with domestic violence
- involvement of children in the debate
- public education programmes
- a lack of comparative research.

This is followed by comments on improving the evidence base and encouraging collaborative work across the European Union.

### Staged legal reform

Principled legal reform has been implemented in a broadly similar way in the countries that have prohibited physical punishment in the family. Changes to the law on physical punishment were introduced in at least two stages in almost all of the countries under discussion. First, an existing defence (equivalent to the ‘reasonable chastisement’ defence in UK law) for assaults

inflicted for ‘educative’ purposes has been removed from the penal codes. Secondly, a more general measure against the use of violence in the family has been introduced to the civil code which has often included an explicit prohibition of ‘physical punishment,’ combined with a statement about caring and supportive child-rearing (as in Sweden, Finland, Denmark, Croatia and Germany).

It is striking that ‘half-measures’ have not been successful, and have led to public and professional confusion requiring, ultimately, a complete and explicit legal prohibition of physical punishment. In Denmark, for example, the lack of clarity around the 1985 reform led ultimately to a complete and explicit prohibition of physical punishment in 1997. New South Wales has recently introduced ‘partial’ reform, in limiting the defence of ‘reasonable chastisement’ to exclude hits above the shoulders and in ways likely to cause pain for more than a ‘short period.’ Scotland is also proposing to limit the applicability of ‘reasonable chastisement’. These are the first and only two examples of attempts to find a middle way between maintaining the status quo and complete legal reform. It remains to be seen whether this approach will be of any value to children or to parents.

This risk of confusion in going halfway with physical punishment reform has been recognised in previous UK debates. In 1989, when David Hinchcliffe MP and others were attempting to repeal the 1933 Act confirming the defence of ‘reasonable chastisement’, the Lord Chancellor, Lord Mackay of Clashfern, argued that

‘[T]o remove section 1 (7), unless one is going to abolish the right (to moderate chastisement) altogether, would be to cause confusion. If the law was to be altered, it should be altered in a principled way.’

Areas of commonality with regard to the legislative context include the facts that:

- Statements on physical punishment have generally appeared in civil law. The implications of this are that no ‘extra’ sanctions are entailed other than those that are attached to transgressions of the penal code on assault. This has helped to emphasise the educative, rather than the punitive, aims of reform.
- The wording of the prohibition of physical punishment ranges from a strong statement of children’s rights (such as the statement that children’s development must be supported and encouraged in the Finnish legislation), to a more general prohibition of cruelty (exemplified by the Latvian or Cypriot statements).

## Landmark cases

High-profile criminal cases following the death of a child from physical abuse have been influential in generating debate around ‘appropriate’ uses of force in bringing up children, and links have been made between landmark cases and legal reform in both Sweden and Israel. However, it is evident that in the UK, widely-publicised tragedies of child abuse deaths, even those in which ‘physical punishment’ was said to have played a part, have not made much impact on this discussion, and recommendations following child abuse deaths have not so far focused on removing the ‘reasonable chastisement’ defence.

## Governments have led public opinion

Majority public opinion in countries where legislation against physical punishment has been introduced has not, with the single exception of Finland, been favourable to reform. However,

it is clear that legislation, once introduced, hastens a declining support for and use of physical punishment. In areas such as capital punishment, drink-driving and seatbelt regulation, UK governments have chosen to lead, rather than to follow, public opinion, both for ethical reasons and on the basis of powerful evidence suggesting the need for reform.

## Links with family violence

Recent research by the NSPCC into the extent of child maltreatment in the UK has identified strong links between domestic violence and child maltreatment.<sup>115</sup> Neglect is most likely to be associated with domestic violence, followed by physical abuse, emotional abuse and sexual abuse. The more severe the physical maltreatment of children, the stronger the association with adult violence in the household (88 per cent of young people who experienced serious physical abuse as children reported domestic violence, versus 17 per cent of those who experienced occasional or light physical punishment). One of the groups of central importance to the debate on physical punishment is the ‘cause for concern’ group in the NSPCC study: those who were ‘smacked’ regularly and often suffered physical effects lasting until the next day. Of these, 44 per cent reported parental physical violence.

Cyprus is exceptional amongst the reforming countries for making an explicit link between physical punishment and other forms of family violence. Most other countries have tackled women’s rights, including legal provisions on domestic violence, before children’s rights. In the UK, for example, women’s rights became prominent in the 1960s and 70s, and discussion of domestic violence took place accordingly, whereas children’s rights have come to the fore more recently. There are obvious links to be made between adults’ and children’s rights with respect to violence in the home. Reframing violence in the home not only as an issue for partners in a relationship but as an issue for families as a whole may deepen understanding of the underlying dynamics involved. Recent work by the Institute for Public Policy Research supports this, arguing for a joined-up strategy to tackle family violence.<sup>116</sup>

## Involvement of children

This has been a major omission in the approach taken by governments to physical punishment legislation. Children and young people have rarely been surveyed or consulted on the issue, with the notable exception of Germany, which has tried to involve children in a meaningful way in reforming the law.

## Lack of comparative research evidence on child maltreatment

David Finkelhor, in a foreword to a recent collection on child abuse around the world, writes: ‘Up until now, disappointingly little organised and published information has been available that takes a consciously comparative perspective on the issue [of child maltreatment].’<sup>117</sup> The World

<sup>115</sup>Cawson, Pat (2002) *Child Maltreatment in the Family – The Experience of a National Sample of Young People*. London: NSPCC.

<sup>116</sup>Sparks, Clare and Zavery, Saira (forthcoming) ‘Violence within the family’, to be made available at [www.ippr.org.uk](http://www.ippr.org.uk)

<sup>117</sup>Freeman, Michael (2000) ed. *Overcoming child abuse: A Window on a World Problem*, Aldershot: Ashgate Publishing Ltd.

Health Organisation estimates that globally, 40 million children (aged 0 to 14 years) are subjected to abuse each year.<sup>118</sup> Injuries (intentional and unintentional) accounted for 15 per cent of the global burden of disease in 1990, a figure that is expected to rise to approximately 20 per cent by 2020. Among these injuries, those caused by violence are expected to rise from 19th place in the rank order of the disease burden to 12th place in 2020.<sup>119</sup> And yet the hitting of children is not natural or inevitable, however time-honoured a practice. The evidence from around the world is that there are significant variations in the cultural practice of physical punishment as well as different social responses to it.

There have been no attempts to ascertain the statistical prevalence of physical punishment on a comparative international scale. It must be noted that this is connected with the lack of adequate statistics in most of the world on the prevalence of child maltreatment in general. The reasons for this paucity include:

- variations in reporting systems: two main approaches to reporting have been developed, operated through the social and medical services. Regional or national **case registers** of suspected child abuse may be kept by government and voluntary social services. Figures may be available through children's telephone helplines or women's refuges, for example, as well as through local authorities. The NSPCC developed one of the earliest community-based registers in 1973. Some form of **screening instrument** or protocol for suspected cases of child abuse and neglect (SCAN) may be used in health facilities.
- the value of statistics collected through these varying means is obviously dependent on the consistency of definitions of child physical abuse, awareness, the ability to identify abuse and reporting requirements for both the public and professionals. Unless physical punishment is recognised as an unacceptable way to treat children, or is especially severe and regular, it is unlikely to be picked up by either of these reporting mechanisms without local protocols making this a requirement.
- the failure to distinguish the age of a victim, and his or her relationship to the perpetrator, in **criminal statistics**. These factors are more often highlighted with respect to sexual abuse (and rape), but rarely in terms of physical assault and battery. For example, Germany collects statistics on physical assaults of children under 14 years, and separates them by gender and relationship to the perpetrator, as does Sweden. This is invaluable for evaluating the protection of children from physical abuse and the impact of legislation on physical punishment. Most countries do not even record the fact that a child, rather than an adult, has been the victim of a serious beating.
- research on the practice of physical punishment and its possible effects has been comparatively rare. In the UK there have been relatively few significant studies in the last 15 years, although research by Smith and Nobes has made an important contribution to knowledge in this area. Research from other countries is often not available in translation: for example, recent studies have been undertaken in Germany that would be of great value to others working in the field were they more widely available. However, the Swedish Government should be commended for its commitment to the debate

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<sup>118</sup>Submission from World Health Organization to the Committee on the Rights of the Child for its Day of General Discussion, September 28, 2001, available at [www.who.int/child-adolescent-health](http://www.who.int/child-adolescent-health).

<sup>119</sup>Murray, Christopher and Lopez, Alan (1996) The Global Burden of Disease, A Comprehensive Assessment of Mortality and Disability from Diseases, Injuries and Risk Factors in 1990 and projected to 2020. World Health Organisation and Harvard University.

on physical punishment and its wide dissemination of information in English and other languages.

It should be noted that the only way of achieving near-accurate statistics on the prevalence of physical punishment is through detailed interview research with children, and with parents of babies and young children. Results can be assumed to be under-estimates, however careful and confidential the studies, because of the nature of the research topic.

## Public education

Unless public education is underpinned by legal reform it can only ever be partially convincing, and limited in its success. A retained defence of 'reasonable chastisement' serves to undermine professional arguments in favour of 'positive parenting' methods, and allows those wholly or partly committed to physical punishment a powerful reason not to adopt less harmful child-rearing practices. Conversely, to introduce legal reform in the absence of sustained programmes of public education and family support for those in need of greater help would be unacceptable. Removing a parental right 'enjoyed' for centuries without helping parents to find effective and reliable alternatives helps neither parents nor their children; the evidence shows that attitudes and practices have shifted most in countries which have invested in sustained public education, such as Sweden.

The cost of a wide-spread public education campaign in the UK has to be set against the financial, as well as social, benefits of a cultural change for children. If, as is hoped, successful public education initiatives, combined with clear normative legislation, enabled earlier intervention in borderline situations of child physical abuse, the cost to the state would be vastly reduced. In the UK, the current cost of child abuse to statutory and voluntary agencies is estimated at £1 billion a year, of which the large majority is spent on intervention services, not prevention.<sup>120</sup> The cost of all forms of child abuse and neglect in the US has been estimated at \$258 million per day.<sup>121</sup> This estimate brings together the direct costs associated with health care, hospitalisation, chronic ill-health, mental health, child welfare, law enforcement and the judicial system (\$66.8 million) and indirect costs: special education, mental health and health care, juvenile delinquency, lost productivity and adult criminality (\$190.9 million).

## Improving the evidence base

There are serious gaps in the literature on physical punishment, in particular on its prevalence in different countries and on the evaluation of physical punishment reform in countries other than Sweden. It is notable that children's views have, in general, been absent from the debate on this issue. Funding for original research, translation and different means of collating statistics would develop our understanding of physical punishment and enhance public education initiatives. Now that ten countries have prohibited the use of physical punishment and other countries are moving towards this position, there is a clear need for governments and voluntary bodies in these countries to evaluate the impact of such reform. This evaluation should examine:

- the impact on child protection work: reductions in incidence of physical abuse and child deaths as a result of prevention and earlier intervention

<sup>120</sup>Childhood Matters: Report of the National Commission of Inquiry into the Prevention of Child Abuse, Volume 1, (1996), London, The Stationery Office.

<sup>121</sup>Prevent Child Abuse America, Press Release, 2 April 2001, [www.preventchildabuse.org](http://www.preventchildabuse.org)

- parental use of physical punishment
- public attitudes to physical punishment
- enforcement of the law and prosecutions under the law
- the effectiveness of non-violent methods of disciplining children
- the effectiveness of public education programmes.

The development of an internationally accepted definition of child physical punishment, based on standardised notions of 'frequency' and 'severity' and perhaps taking the form of a World Health Organisation protocol, would be of immense value in ascertaining prevalence across different countries and population groups.

There needs to be wider dissemination of existing research on physical punishment, including a translation project, and funding for further meta-analytic studies, in order to create a better understanding of the rationales influencing legal reform.

Longitudinal studies of children in different countries should be undertaken to assess parental use of physical punishment and its relationship to child abuse and other possible outcomes, using standardised definitions of physical punishment where possible.

Published criminal assault statistics, at a minimum, should include the age of the victim, their relationship to the perpetrator, and any conviction.

Further research should be undertaken to deepen adults' understanding of how physical punishment affects children; and to ascertain their views on legal reform and their perspectives on alternative, more effective and more respectful forms of discipline. Most importantly, as a recent article on the topic has emphasised:

'investigating corporal punishment through the eyes of children rather than the adult is the single most pressing research need.'<sup>122</sup>

## Sharing information in the European Union

As with most Justice and Home Affairs issues, physical punishment is not specifically within the legislative competency of the European Union. However, there is great scope for the exchange of information and experience between European Member States and more broadly across the Council of Europe (comprising 44 states) on best practice in physical punishment education, legislative developments and their effects on children, families and services. Examples of comparative and collaborative work are sparse: for example, there are few to be found on this topic on the Daphne Programme database. Notable comparative projects on children and violence include the European Forum for Child Welfare's 1998 'initial comparative study of laws, policies and practice in the European Union',<sup>123</sup> which looked at various aspects of children's protection from violence in Member States. Another current example is a trans-national project on primary prevention of violence against children in the home: experts from

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<sup>122</sup>Holden, George W. (2002) 'Perspectives on the Effects of Corporal Punishment: Comment on Gershoff' *Psychological Bulletin*, Vol. 128, No. 4, pp. 590-595.

<sup>123</sup>European Forum for Child Welfare (1998) Are children protected against violence in Europe? An initial comparative study of laws, policies and practices in the European Union *Brussels: European Forum for Child Welfare*.

Austria, Finland, Italy and Sweden are developing workshops for parents.<sup>124</sup>

In order to understand best practice in ways to protect children from physical violence, European Union and Council of Europe Member States should gather and share information on physical punishment topics including:

- costing and targeting public education campaigns
- methods of public education and evaluation of their impact
- ways of researching children's views and involving them in the debate
- experience of introducing legal reform: political, public, financial and legal.

Appropriate forums for this exchange of information include:

- EU Ministers for Children, who meet annually to discuss children's issues at an expert and ministerial level. An Intergovernmental Experts Group meets bi-annually, to share good practice and prepare the ministerial meetings
- The Children's Alliance, an all-party group of MEPs looking at children's issues
- The planned Network of Observatories on Infancy<sup>125</sup> could examine the theme of physical punishment. These observatories are independent research centres in Member States, who will develop common statistical indicators on topics relating to children
- The Council of Europe (not to be confused with the Council of the European Union), with responsibility for the European Court of Human Rights and, with 43 members, the European organisation with the widest representation.

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<sup>124</sup>For further information, see 'Trans-national local support programme to prevent violence against and abuse of children in families', available at [www.wien.gv.at/english/magelf/daphne](http://www.wien.gv.at/english/magelf/daphne)

<sup>125</sup>The lead organisation for the Network is the UNICEF Innocenti Research Centre in Florence.



## 6 Conclusion

The developments documented in this report are testament to global progress towards accepting that children have a right to equal protection against all forms of violence, and thus towards ending all social and legal approval of corporal punishment. There is still a long way to go, but such reform is gathering important momentum.

In the UK, the continued existence of the defence allowing parents to use ‘reasonable chastisement’ when disciplining their children remains a barrier to fully respecting children as human beings in their own right – developing citizens, the responsibility, and not the property, of their parents. Many concerns still inhibit progress towards the aim of equal protection for children. These include criticisms that the state has no right to involve itself with such matters; fears of parents being imprisoned by the hundred for minor transgressions of the law, and worries that children will be spoilt, and/or become unmanageably anti-social beings.

Yet this overview of the available evidence points in another direction. In Sweden, where legal reform has been in place the longest, accompanied by widespread public education, only a minority of the population remain in favour of physical punishment, a group which tends to comprise members of the older generation and recent immigrants. There is no evidence that youth violence has increased, and drug and alcohol use among the young has in fact decreased. While it is not possible to attribute this solely to the prohibition of physical punishment, it has clearly not contributed to an increase in such harmful behaviours. In Germany, where reform was introduced most recently, one of the key motivations for change was the publication of a major piece of research showing links between the physical punishment of children and a propensity to youth criminality and violence (see page 53).

It must be understood that physical punishment in the family is part of a continuum of once-legitimate interpersonal violence. Its prohibition has usually been incremental in the countries that have given children equal protection from assault. Banning physical punishment has often begun with reforms protecting women, servants and prisoners from violent disciplinary techniques, followed by legislation against the use of corporal punishment in schools and child-care settings, before removing a parental defence of chastisement from criminal law. The UK has undertaken the first two of these reforms; only Scotland attempted to amend the criminal law to introduce complete protection from physical punishment for 0–2 year olds, but is now proposing only to introduce partial protection for all children, by banning shaking, hitting with implements and blows to the head.

In its Concluding Observations, following consideration of the UK Government’s second periodic report on progress towards implementing the UNCRC, the Committee on the Rights of the Child once again criticised the Government for ‘persist[ing] in retaining the defence of “reasonable chastisement” and ... tak[ing] no significant action towards prohibiting all corporal punishment of children in the family’ (see Appendix 2 for details).

It is to be hoped that in a few years' time, when the UK Government is examined on its third periodic report, such criticism will be replaced by a commendation of the UK jurisdictions for finally affording children equal protection with adults under the laws on assault, and putting in place comprehensive and sustained parent education and family support programmes to enable parents to raise their children using positive, non-violent and respectful methods of discipline.

# Appendix 1:

## Physical punishment in UK law

### Stages of reform:

- **1860** – Chief Justice Cockburn’s ruling on ‘reasonable chastisement’ in *R. v. Hopley*
- **1889** – Prevention of Cruelty to and Protection of Children Act, first statutory confirmation of parents’ and guardians’ rights to administer punishment
- **1933** – Children and Young Persons’ Act, confirms the common law right of parents to use physical punishment on children: ‘Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to him.’
- **1937** – Children and Young Persons’ (Scotland) Act, confirms the common law defence for Scotland
- **1968** – Children and Young Persons’ Act (NI), confirms the common law defence for Northern Ireland
- **1987** – End of corporal punishment in state-supported education [Section 47 of the Education (No. 2) Act 1986, ‘Abolition of Corporal Punishment’ – this covered England and Wales. Similar legislation was enacted for Scotland in section 48, and for Northern Ireland in 1987]
- **1989** – Physical punishment prohibited in local authority, voluntary and private children’s homes in regulations issued under the Children Act
- **1991** – Regulations on foster care oblige local authorities and voluntary organisations to get written agreement from foster carers that they will not use any physical punishment on any child placed with them
- **1998** – School Standards and Framework Act, extended abolition of physical punishment to cover all schools and nursery education, and effectively criminalised ‘reasonable’ corporal punishment by teachers by removing the defence in criminal and civil proceedings
  - Implementation of the Human Rights Act
  - European Court of Human Rights *A v UK* judgement
- **2000** – Young Offender Institution Rules do not list physical punishment under the section dealing with permissible punishments
- **2001** – National Standards for the ‘regulation’ of all day care make one of the inspection criteria that ‘physical punishments, including shaking, [should not be] used.’ The Standards specifically permit childminders to smack children in their care with the written permission of parents, although the National Childminding Association is against this exception and does not allow its members to use physical punishment.
- **2002** – Wales became the first country in the UK to use regulations to prohibit physical punishment in all forms of day care, including childminding.

## Background to physical punishment in the UK

A defence of 'reasonable chastisement' exists in common law in all UK jurisdictions, allowing parents and others in 'lawful control or charge' to use moderate force for the purposes of disciplining a child.

The defence of 'reasonable chastisement' in criminal law arises from an 1860 court judgement involving a teacher's punishment of a child. In the case of *R v Hopley*, the court declared that:

'a parent or schoolmaster... may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment... If it be administered for the gratification of passion or of rage, or if it be immoderate and excessive... or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose... the violence is unlawful.'

The *R. v Hopley* case demonstrates the extent to which attitudes to children and discipline have changed: few people would now argue for the need to correct a child's 'evil' nature through violence. Instead people talk about the 'loving' hit to protect children from danger and to 'set limits' on their behaviour as they are learning about the world. The reasonable chastisement defence is anachronistic: the terms of reference for child-rearing, even within the pro-smacking lobby, have changed greatly since the mid-Victorian era.

More than 110 years later, challenges to teachers' use of corporal punishment at the European Commission and Court of Human Rights led to the removal of the defence of reasonable chastisement with respect to assaults on children in state schools and on state-funded children in the private sector. Education law was further amended in 1993 to state that physical punishment in private schools could not be justified if 'inhuman and degrading'. Finally, a House of Commons free vote on the issue was allowed in 1998 following continued pressure: the overwhelming response was for full abolition of physical punishment in all schools.<sup>126</sup>

The ban on physical punishment in schools was an explicit acknowledgement of the fact that smacking does not serve a useful educational or disciplinary purpose. In spite of this, the defence of lawful or reasonable chastisement has been retained with respect to parents and primary carers. However, the UK is currently being compelled to review its laws on physical punishment in the family following a 1998 judgement known as *A v the United Kingdom*.

A British man was prosecuted in February 1994 for severely beating his stepson-to-be with a garden cane, but was found not guilty of assault causing actual bodily harm, citing the defence of reasonable chastisement. The case was then taken to the European Commission and Court of Human Rights, which ruled unanimously that the treatment was not 'reasonable' but 'inhuman or degrading' and an infringement of the boy's human rights. Because UK domestic law failed to protect children from inhuman or degrading treatment (as required under Article 3 of the European Convention on Human Rights), the UK Government was held responsible.

The UK is required to respect judgements of the European Court, and the Committee of

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<sup>126</sup>Lyon, Christina M (2000) *Loving Smack or Lawful Assault? A Contradiction in Human Rights and Law*, London, Institute for Public Policy Research, pp. 16-22.

Ministers of the Council of Europe is responsible for ensuring that this happens. In 2002, almost four years after the 'A v UK' judgement, the Committee is still awaiting an explanation of how the Government proposes to implement the judgement. When the judgement was released in September 1998, the Government responded by stating that it would consult on how to clarify the law to give children better protection. More than a year later, in January 2000, the Department of Health issued a consultation paper (*Protecting Children, Supporting Parents*), on the issue for England and the Welsh Assembly issued an identical consultation paper for Wales, as law reform on physical punishment is not a devolved issue for Wales. However it is a devolved issue in Scotland and Northern Ireland, so the Scottish Executive and the Northern Ireland Executive have each responded with distinct consultation papers opening up public debate and proposing legislative changes.

## England and Wales

The Department of Health consultation closed in April 2000 and in November 2001 the Government announced that it did not intend to make any change to the existing law, on the basis that the Human Rights Act, which incorporates the European Convention on Human Rights into UK law, came into force in October 2000. The Government made a commitment to keep its impact on judgements involving physical punishment of children under review. In *Protecting Children, Supporting Parents* the option of redefining the reasonable chastisement defence was discussed and the document wrangled with the problem of defining what is reasonable and what excessive, what pain children can endure and what might be deemed a 'fitting' instrument with which to discipline a child. However the possibility of removing the defence entirely or explicitly prohibiting the use of physical punishment of children was not considered at all: 'The Government's view is that it would be quite unacceptable to outlaw all physical punishment of a child by a parent. Nor, we believe, would the majority of parents support such a measure.' The Government's decision ignored the views of professional and voluntary bodies that work with children, health, education and social services groups, which were 'strongly and virtually unanimously of the view that physical punishment of children should be banned.' These groups constituted around a third of the 830 responses to the Consultation. Of the responses from individuals, over half expressed strong religious arguments. No children or young people were asked to give their views.

It is thought that the Government was also influenced in its decision by a particular case, *R v H* [2001], where the court worked out a formula which all juries now have to consider whenever a parent is charged with criminal assault for having physically chastised their child. The jury is directed to decide whether the punishment was 'reasonable' in the light of the child's behaviour, the duration of the punishment, the physical and mental consequences for the child, depending on their age, and the reasons for the punishment. However, the latter test (the reason for the punishment) is not, in fact, a valid one, as neither the European Court nor UK law states that this should be taken into account.

## Scotland

In September 2001, the Scottish Executive announced proposals to ban all physical punishment of children up to their third birthday. Statutory factors such as the context of the hitting and the age of the child were set out to help the courts decide if physical punishment of older children is 'reasonable', and it was proposed that blows to the head, shaking and the use of implements should be outlawed for all ages. Under the proposals, childminders would be banned from using physical discipline.

The proposals followed consultation on the document *The Physical Punishment of Children in Scotland (2000)*, to which 34 per cent of responses favoured a total ban on physical punishment, 43 per cent favoured some clarification of the law, and 17 per cent thought the law required no change. The White Paper, published in December 2001, had concluded that ‘The aim of our policy is to reduce the level of violence in society, and it is well known that children learn their habits in later life by example... By setting clear statutory limits on physical punishment, we aim to safeguard children while protecting responsible parents.’

These changes were incorporated in the Criminal Justice (Scotland) Bill, presented to the Scottish Parliament in April 2002. In September, the Scottish Parliament announced that it was dropping the proposal to prohibit physical punishment of children under three, as it was not supported by the Justice (2) Committee. Its scrutiny of the proposals led them to believe that it was unjustified and unenforceable, and they were not sufficiently reassured that ‘trivial’ incidents of physical punishment would not result in parents being brought before the courts.

While rejecting the prohibition of all physical punishment of children under the age of three, the Committee stated that it strongly supported any measures to reduce harm to or the abuse of children, although it felt that the option of more public education and improved support for parents should be regarded as an alternative to legislation. It did, however, conclude by a narrow majority that it ‘is reasonable for there to be a blanket ban on blows to the head and accepted the intention behind the ban on shaking or the use of an instrument, while wishing to see further clarification of these provisions.’<sup>127</sup> The Bill is due to finish its passage through the Scottish Parliament early in 2003.

## Northern Ireland

The five-month consultation undertaken by the Northern Ireland Executive closed on January 31 2002. Over 500 responses were received. The most detailed of the three consultation papers, *Physical Punishment in the Home: thinking about the issues, looking at the evidence (2001)*, focused on the wider context of parenting, asking whether physical punishment works as a discipline strategy, and whether it is bad for children. The options it has proposed include: leaving the law unchanged; limiting the reasonable chastisement defence; removing the defence; introducing a statement of rights and responsibilities; and encouraging the development of parenting programmes. An equal opportunity assessment included in the paper (as required by the Equality Commission and the Northern Ireland Act 1998) concludes that:

‘The most obvious ways to mitigate the adverse [equality] impact identified and better promote equality of opportunity would be to remove the defence of reasonable chastisement and to encourage the development of support for parents.’

A survey commissioned by the Northern Ireland Office of Law Reform (March 2001) found that around a third of the sample said that physical punishment was an acceptable form of punishment. There was a very marked difference in views according to the age of the respondent: only 19 per cent of young adults (18-24) thought it was acceptable, compared to 55 per cent of people over 65, a finding described as ‘an indication that attitudes and practice may be changing.’

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<sup>127</sup>The full report is available on: [http://www.scottish.parliament.uk/official\\_report/cttee/just2-02](http://www.scottish.parliament.uk/official_report/cttee/just2-02)

As the Northern Ireland Assembly was suspended in October 2002, it is unclear when any proposals on reform will be put forward.

## Professional and voluntary organisations and the campaign to end physical punishment

In the UK, the campaign against physical punishment is co-ordinated by the Children are Unbeatable! Alliance. Formed in 1998, the Alliance has more than 300 member organisations, including professional and religious bodies, as well as many prominent individuals. They have all signed the following statement of aims:

‘We believe that the traditional defence of ‘reasonable chastisement’ works against the aims which we and the Government of a modern Britain share: the encouragement of positive parental discipline in all families, and assurance of effective child protection in the few cases where it is needed.

‘We believe it is both wrong and impracticable to seek to define acceptable forms of corporal punishment of children. Such an exercise is unjust. Hitting children is a lesson in bad behaviour. Removing the defence of “reasonable chastisement” and thus giving children in their homes and in all other settings equal protection under the law on assault is the only just, moral and safe way to clarify the law. While technically this would criminalise any assault of a child, trivial assaults, like trivial assaults between adults, would not be prosecuted. There already exist adequate means to prevent unwarranted or unhelpful prosecutions. It would on the other hand ease prosecution in serious cases. It would eliminate the current dangerous confusion over what is acceptable and provide a clear basis for child protection.

‘There is ample evidence from other countries to show that full legal reform, coupled with the promotion of effective means of positive discipline, works rapidly to reduce reliance on corporal punishment and reduces the need for prosecutions and other formal interventions in families. Using positive forms of discipline reduces stress and improves relationships between children, their parents and other carers.’

The NSPCC’s Children’s Day in 2002 focused on the theme of ‘Protecting Children from Physical Harm and Providing Parents with Alternatives to Physical Punishment’, using the strapline “Hitting children must stop. FULL STOP.” Activities included poster and radio advertising, media activity, a survey of campaigners and the launch of a new booklet for parents, *Encouraging Better Behaviour*.<sup>128</sup> The National Family and Parenting Institute has also undertaken a great deal of work on positive parenting, including extensive research and publications as has the Save the Children Fund.<sup>129</sup>

<sup>128</sup>To obtain a copy, please send a stamped addressed envelope to NSPCC Publications and Information Unit, Weston House, 42 Curtain Road, London EC2A 3NH, or order online at [www.nspcc.org.uk](http://www.nspcc.org.uk).

<sup>129</sup>See [www.nfpi.org.uk](http://www.nfpi.org.uk) and [www.savethechildren.org.uk](http://www.savethechildren.org.uk) for details of current activities.



## Appendix 2: International law and human rights

### United Nations Convention on the Rights of the Child (UNCRC) 1989

In November 1989, the General Assembly of the United Nations adopted the Convention on the Rights of the Child. To date, every country in the world has ratified the UNCRC, with the exception of the United States (which has been a signatory since 1995) and Somalia.<sup>130</sup> The UK ratified the CRC in 1991, although it has been incorporated into domestic law, unlike the European Convention on Human Rights (see below). This overwhelming level of support makes it ‘an authoritative expression of world opinion’.<sup>131</sup> The Article of principal relevance to the physical punishment debate is Article 19.

#### Article 19

States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from **all forms of physical or mental violence, injury or abuse**, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Other Articles in the Convention are also relevant to the protection of children from all corporal punishment:

- Article 3 requires that in all actions concerning children, “the best interests of the child shall be a primary consideration”
- Article 6 requires States to “ensure to the maximum extent possible the survival and development of the child”
- Article 28, the child’s right to education, requires States to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”

<sup>130</sup>The current status of the ratifications to the CRC is available at <http://www.unhcr.ch/pdf/report.pdf>.

<sup>131</sup>Bitensley (1998), *op. cit.*, p391.

- Article 37 requires States to ensure that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...”
- Article 40 states that all children involved with juvenile justice systems “have the right to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth...”

The Committee on the Rights of the Child, which monitors implementation of the UNCRC, has consistently stated that legal and social acceptance of physical punishment of children, in the home and in institutions, is not compatible with the Convention. Since 1993, in its recommendations following examination of reports from many States Parties to the Convention, the Committee has recommended prohibition of physical punishment in the family and institutions, and education campaigns to encourage positive, non-violent child-rearing and education.

In examining States Parties’ reports, the Committee has singled out for particular criticism any legislation, existing in many countries, that allows some level of violent punishment – “reasonable chastisement”, “moderate correction”, and so on.

The Committee on the Rights of the Child is the highest international authority for interpretation of the Convention. Elected by States Parties to the Convention, the 10-member body meets three times a year in Geneva. States Parties must submit an initial report on progress towards implementation of the Convention within two years of ratification; subsequent reports must then be submitted every five years.

In 1995, the Committee on the Rights of the Child, in its comments on the UK’s first report under the Convention on the Rights of the Child, stated: “The Committee is disturbed about the reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its Articles 3, 19 and 37. The Committee is equally concerned that privately funded and managed schools are still permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its Article 28, paragraph 2.”

It went on to recommend: “The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommends that physical punishment of children in families be prohibited in the light of the provisions set out in Articles 3 and 19 of the Convention. In connection with the child’s right to physical integrity, as recognized by the Convention, namely in its Articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State party consider the possibility of undertaking additional education campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children.”

‘In its most recent (thirty-first) session, in 2002, the Committee considered the second periodic report from the UK on its progress towards implementing the Convention. In its Concluding

Observations, it welcomed the abolition of corporal punishment in all schools in England, Wales and Scotland, following its 1995 recommendations, but expressed concern that such abolition has not yet been extended to private schools in Northern Ireland. The adoption by the National Assembly for Wales of regulations prohibiting corporal punishment in all forms of daycare, including childminding, was also welcomed, but the Committee once again expressed concern and regret that the defence of 'reasonable chastisement' continued to be retained<sup>132</sup>:

**36. The Committee recommends that the State party:**

- a) with urgency adopt legislation throughout the State party to remove the 'reasonable chastisement' defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;**
- b) promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, engaging with children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.**

## UN Committee on Economic, Social and Cultural Rights

In May 2002 another human rights Treaty Body, the Committee on Economic, Social and Cultural Rights, made a similar recommendation to the UK, examining its implementation of the International Covenant on Civil and Political Rights<sup>133</sup>: "Given the principle of the dignity of the individual that provides the foundation for international human rights law (see paragraph 41 of the Committee's General Comment No. 13) and in light of Article 10(1) and (3) of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child (CRC) (paragraph 31 of the CRC's 1995 concluding observations...)"

## European Convention on Human Rights (1950) and Human Rights Act (1998)

The UK has been bound by the European Convention on Human Rights (ECHR) since 1953. In October 2000, the 1998 Human Rights Act came into force in the UK, giving the ECHR

### Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a domestic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>132</sup>Published on October 4 2002, available at: <http://www.unhchr.ch>

<sup>133</sup>Available at: <http://www.unhchr.ch>

direct and binding force in domestic law in England, Wales, Scotland and Northern Ireland. It is applicable in all courts. Two articles from the ECHR have particular relevance for physical punishment:

The European Commission and the European Court of Human Rights have considered many cases involving physical punishment in the education system, as well as the 1998 'A v UK' case on parental physical punishment. Another important decision made by the European Commission of Human Rights was to reject an application by a group of parents alleging that the Swedish prohibition of physical punishment breached their right to respect for family life (see Article 8). In this case, the right of the individual child to equal protection was seen to outweigh the right of parents to hit children as they deemed appropriate.

## Committee of Ministers of the Council of Europe

The Committee has repeatedly recommended measures to prohibit physical punishment and to educate parents about alternative methods of discipline. In 1985, it recommended that Member States should 'review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a provision does not necessarily entail a criminal penalty.'<sup>134</sup> Another recommendation stressed 'the general condemnation of corporal punishment and other forms of degrading treatment as a means of education, and the need for violence-free education.'

In 1993 the Committee produced a detailed set of proposals for member states to adopt 'a policy which aims to secure the child's welfare within his/her family.'

## Council of Europe recommendations

In 1985, proposing measures to reduce family violence, the Committee of Ministers of the Council of Europe (including the UK) recommended that States should "review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment even if violation of such a prohibition does not necessarily entail a criminal penalty" (Recommendation R85/4).

In 1990, a further recommendation on social measures concerning violence in the family, emphasised "the general condemnation of corporal punishment and other forms of degrading treatment" (R90/2).

A 1993 recommendation on the medico-social aspects of child abuse urged states to "minimise levels of violence within society and the resort to violence in child-rearing practices" (R93/2).

In the concluding statement at a Council of Europe conference on "Evolution of the role of children in family life" in 1994, the General Rapporteur stated: "The time has come to break bad habits that tend to be passed from one generation to the next. Legal and other affirmative action should be taken against all physical punishment and deliberate humiliation of children. Their rights apply as much within the family as outside".

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<sup>134</sup>Ruxton (1996), *op. cit.*, p408. Council of Ministers of the Council of Europe, Recommendation R (854) on violence in the family, adopted 26 March 1985, Strasbourg.

## European Social Charter

The European Social Charter entered into force in 1961<sup>135</sup>. It protects fundamental social and economic rights in Council of Europe member-states. (A revised Social Charter entered into force in 1999 but has not yet been ratified by the UK). The European Committee on Social Rights (ECSR) supervises the conformity with the Charter of the law and practice of member-states. Article 17 of the Charter (the right of mothers and children to social and economic protection) states: “With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

In a “general observation” adopted in 2000 and issued in 2001, the European Committee on Social Rights stated that it considers “that Article 17 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 detailed statement from the Committee refers to the consistent recommendations of the UN Committee on the Rights of the Child to European states to abolish all corporal punishment. It also refers to the judgment of the European Court of Human Rights in the case of “A v UK”. The statement concludes: “The Committee 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. The Committee does not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved.

“Moreover, in a field where the available statistics show a constant increase in the number of cases of ill-treatment of children reported to the police and prosecutors, it is evident that additional measures to come to terms with this problem are necessary. To prohibit any form of corporal punishment of children is an important measure for the education of the population in this respect in that it gives a clear message about what society considers to be acceptable. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable corporal punishment and what is not.”

Following examination of the most recent report from the UK on implementation of the Charter<sup>136</sup>, the Committee comments: “...As regards corporal punishment, the Committee notes that it was prohibited in private schools by the School Standards and Framework Act 1998, with the result that corporal punishment is now prohibited in all schools. The Committee wishes to be informed whether legislation prohibits corporal punishment in other institutions caring for children. It notes that not all forms of corporal punishment are prohibited within the family. The Committee refers to its general observations on Article 17 in the general introduction and decides to defer its conclusion on this point pending more information from the British Government on the situation and on its intentions in this regard. It also wishes to receive information on the situation in Northern Ireland and Scotland”.

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<sup>135</sup>All public documents relating to the supervision of reports under the European Social Charter can be found on the Council of Europe website at <http://www.humanrights.coe.int>

<sup>136</sup>European Committee on Social Rights Conclusions XV-2 The United Kingdom, Article 17, page 23.



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