



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

November 2021



End Violence
Against Children



End Corporal
Punishment





Briefing

This briefing highlights the human rights imperative to prohibit all violent punishment of children in all ASEAN member states. It summarises progress so far towards prohibition in each state and what remains to be done. Aiming to promote national action for prohibition, it emphasises the many immediate opportunities for working to fulfil children’s right to protection in law from all corporal punishment in all settings – in particular, where states are currently reforming legislation related to children, and in relation to the global 2030 Agenda for Sustainable Development and target 16.2 to end all violence against children.

Why prohibit corporal punishment?

Everyone has a right to protection in law from being hit and hurt, regardless of where they are, who they are with or what the circumstances are. Children are particularly vulnerable to violence – and yet in so many states they are the last to receive this basic legal protection. In many societies, the belief that physical and other humiliating punishment is a necessary part of “disciplining” children is widely held. However, where adults are legally protected from all assault, the legality of corporal punishment denies children their right to equal protection under the law and clearly discriminates against them. The legal and social acceptance of this form of violence against children is highly symbolic of children’s marginal and often secondary status in societies where they are not seen as individual rights-holders as confirmed by the Convention on the Rights of the Child 1989.

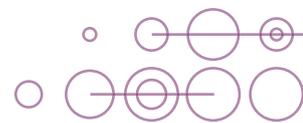
The UN Committee on the Rights of the Child and other international and regional human rights bodies have made it very clear that all corporal punishment of children must be prohibited and eliminated, including within the family. The issue of corporal punishment has been raised – in many cases repeatedly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

Legal protection from all corporal punishment is a right in itself. But prohibition is also critical for fulfilling children’s rights to health, development and education. Experience of corporal punishment as a child leads to death and injury for thousands of children each year and is associated with poor mental health in childhood and adulthood. Physical punishment is linked to increased aggression and antisocial behaviour in children and an increased likelihood of perpetrating, experiencing and accepting violence as an adult. It damages family relationships and, far from teaching children how to behave well, it teaches children that violence is an acceptable way to resolve conflict. Crucially, the COVID-19 pandemic has increased children’s risk of violence in every country and community, including in the ASEAN region. Emergency public health measures coupled with reduced household income have increased parent and caregiver stress as well as incidence of corporal punishment.

Progress towards prohibition

Progress towards universal prohibition of corporal punishment is rapidly gaining pace. Globally, 63 states have prohibited all corporal punishment including in the home and another 26 have committed to full prohibition. No ASEAN member state has yet achieved prohibition in all settings, but reform is under way in some, and four governments – Cambodia, Indonesia, Myanmar and the Philippines – have publicly committed to enacting prohibiting legislation.





Legislation prohibiting all corporal punishment has been enacted comprehensively in alternative care settings in only one of the 10 ASEAN member states (Philippines), in day care in one state (Philippines), in all schools in five states (Cambodia, Laos, Philippines, Thailand and Vietnam) and in all penal institutions in six states (Cambodia, Indonesia, Laos, Philippines, Thailand and Vietnam). In six states, the law does not allow for children convicted of a criminal offence to be sentenced to corporal punishment (Cambodia, Laos, Myanmar, Philippines, Thailand and Vietnam). (See the table on page 4 and 5 for more information about legislation in each state).

Prohibition of corporal punishment – a foundation for ending violence against children



As a key strategy in reducing and preventing violence in families and societies, prohibition of all violent punishment – the most common form of violence against children – is a critical step towards the achievement of target 16.2 of the 2030 Sustainable Development Agenda (end all violence against children) and is highly relevant to other targets, including those related to health and wellbeing, gender and to quality education.

“We envisage a world of universal respect for human rights and human dignity.... A world ... in which every child grows up free from violence and exploitation.”

Transforming our World: the 2030 Agenda for Sustainable Development

Indicator 16.2.1 – one of three indicators adopted by the UN Statistical Commission to monitor progress towards target 16.2 – recognises the centrality of prohibiting and eliminating corporal punishment for ending all violence against children: “Percentage of children aged 1-17 who experienced any physical punishment and/or psychological aggression by caregivers in the past month”.

ASEAN member states: Pathfinding countries



Since its launch in July of 2016, the End Violence Partnership has promoted the concept of Pathfinding, which aims to raise awareness, stimulate leadership commitment, galvanize action, and establish a standard of national violence prevention throughout the world.

Both Indonesia and the Philippines became Pathfinding countries in 2016 while Cambodia joined the Pathfinding list in 2019. This commits the Governments of these three states to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals.

The ASEAN Regional Plan of Action on the Elimination of Violence against Children

The ASEAN Regional Plan of Action on the Elimination of Violence against Children (2016-2025), also recognises the primacy of corporal punishment among forms of violence experienced by children. Its definition of physical violence – which includes “all forms of corporal punishment” – is based on the definition of corporal punishment adopted by the UN Committee on the Rights of the Child in its General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”.





ASEAN Regional Plan of Action on the Elimination of Violence against Children: Action 3(a) Law Reform

21. Prohibit in law and regulations all forms of violence against children in all settings...

22. Undertake a legislative review to ensure that legislation relevant to children's protection from violence, are in full conformity with applicable international human rights standards, including but not limited to the CRC and its optional Protocols.

23. Encourage to enact legislation to promote the implementation of positive discipline for children and to prohibit violence against children, including corporal punishment within the family, schools, and other settings including in the juvenile justice system.

The ASEAN Regional Plan of Action on the Elimination of Violence against Children (RPA – EVAC) recommends priority actions for ASEAN member states to focus on over the next five years. In the area of law reform, the recommended priority is to undertake a legislative review to ensure that relevant laws are in conformity with human rights standards (Action 3.22). **In order to fulfil their immediate obligations under human rights law, states must move quickly to enact the necessary reforms to prohibit all corporal punishment, including in the home.**

In 2016, the ASEAN Guidelines for a Non-Violent Approach to Nurture, Care and Development of Children in all Settings reiterated the need to prohibit corporal punishment in the home while proposing concrete concepts, principles and skills to promote positive parenting in the region.

In 2019, a mid-term review of the RPA-EVAC highlighted key areas where accelerated actions were required to meet the Regional Plan's targets, these include: **"Advancing law reform efforts to explicitly prohibit corporal punishment in all settings to ensure that children are legally protected from all forms of violent discipline and other cruel and degrading punishment..."**



Love Does Not Hurt Regional Project

A three-year cultural campaign launched in 2020 and rolled out in Cambodia, Laos, Philippines and Thailand which advocates to end the use of corporal punishment through community theatre and arts. The campaign promotes law reform to prohibit corporal punishment, positive discipline, adults capacity building and child participation. It aims to achieve individual and collective transformations to end the cycle of violence in all settings from one generation to the next. Target groups include children and their families; teachers, school officials; community leaders; child-care practitioners in private and public children care settings; civil society; legislators, etc. The Love Does Not Hurt Regional Project is supported by Terre des Hommes-Germany and the German Federal Ministry for Economic Cooperation and Development.





Opportunities for achieving prohibition

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

The deeply held view that some degree of violent punishment is necessary or even a duty in childrearing means it is not perceived as an abusive or violent act unless it reaches some level of severity. This is reflected in laws that authorise “moderate” correction or “reasonable” punishment of children – provisions that typically constitute a legal defence against charges of assault. These defences must be explicitly repealed or amended to unequivocally rule out the use of corporal punishment as a “disciplinary” method. It is also vital to repeal all laws authorising or regulating corporal punishment in schools and other institutions, and in penal systems.

The table below summarises the progress made towards prohibition in each of the 10 ASEAN member states and what remains to be done. Crucially, it identifies some immediate opportunities for drafting and introducing prohibiting legislation. End Corporal Punishment is pleased to offer technical advice and support on all aspects of drafting prohibiting legislation, and we welcome information on opportunities for action: email secretariat@end-violence.org

State	Corporal punishment not fully prohibited	Opportunities for law reform and progress towards prohibition	Immediate action required to achieve full prohibition
Brunei Darussalam	Home, alternative care, day care, schools, penal system	No known current opportunities or moves towards drafting prohibiting legislation; Government rejected UPR recommendations to prohibit in 2014 and 2019.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all defences/authorisations for its use.
Cambodia	Home, alternative care, day care	Law on Child Protection under discussion; Action Plan to Prevent and Respond to Violence Against Children 2017-2021 committed to amending all relevant provisions to prohibit corporal punishment of children in all settings, in particular within the Civil Code and the Law on the Prevention of Domestic Violence and the Protection of Victims 2005. Review of the Law on the Prevention of Domestic Violence and the Protection of Victims 2005 .	Ensure the Civil Code and the Law on the Prevention of Domestic Violence and the Protection of Victims include clear prohibition of corporal punishment and repeal of parental authority to discipline.
Indonesia	Home, alternative care, day care, schools, penal system	Government indicated commitment to prohibition by accepting 2017 UPR recommendation. A National Strategy on the Elimination of Violence Against Children 2016-2020 highlighted prohibition of physical punishment as an international obligation. But draft Criminal Code authorises corporal punishment and Aceh Criminal Code provides for judicial corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting all corporal punishment of children and repealing all laws and bylaws authorising it, including under Shari’a law in Aceh province.





Lao PDR	Home, alternative care, day care, penal institutions	New Penal Code 2017 does not seem to include prohibition of corporal punishment in all settings. In 2020, the Government supported UPR recommendations to prohibit in all settings.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment.
Malaysia	Home, alternative care, day care, schools, penal system	No known moves towards drafting prohibiting legislation; at 2009 UPR Government stated intention to abolish judicial corporal punishment for children, but rejected 2013 and 2018 UPR recommendations to prohibit.	Drafting and introduction of legislation prohibiting corporal punishment, repeal of legal defences for its use in childrearing and of all provisions authorising caning/whipping.
Myanmar	Home, alternative care, day care, schools, penal system	Government indicated commitment to prohibition by enacting a new Child Rights Law 2019, which includes provisions aiming at prohibiting all corporal punishment of children. However, Law reform process was stalled in 2020 due to political instability.	Ensure that the Rules and Procedures of the Child Rights Law 2019 include clear prohibition of all corporal punishment of children.
Philippines	Home	Government indicated commitment to prohibition by accepting 2012 UPR recommendation; A consolidated Anti-Corporal Punishment and Positive Discipline Bill was adopted by a bicameral committee conference in 2018. However it was vetoed by the President in 2019. The Plan of Action to End Violence Against Children 2017-2022 suggests the enactment of the Positive Discipline Bill.	Reintroduce a legislation prohibiting corporal punishment in all settings.
Singapore	Home, alternative care, day care, schools, penal system	No known current opportunities; The Children and Young Persons Act 1993, revised in 2011 specifically authorises caning in children's homes, penal institutions and as a sentence for crime; Government rejected 2016 UPR recommendations to prohibit and defended the use of corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repealing all legal defences and authorisations for corporal punishment.
Thailand	Home, alternative care, day care	Government accepted 2016 UPR recommendations to prohibit but did not introduce legislation to prohibit. The Constitution of 2017 does not prohibit corporal punishment.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment and repeals right to administer "reasonable" punishment and provisions authorising flogging.
Vietnam	Home, alternative care, day care	Criminal Code 2015 and Criminal Procedure Code 2015 came into force in 2018; corporal punishment is only prohibited in the penal system.	Drafting and introduction at earliest opportunity of legislation prohibiting corporal punishment.





Taking action for children

Research in many ASEAN states attests to the widespread infliction of physical and other humiliating punishment on children in the guise of “discipline”. We know that reforming legislation to prohibit corporal punishment provides a firm foundation for eliminating its use and transforming the lives of children. Many opportunities for prohibition exist in ASEAN states right now – and they should not be missed! It is vital to propose that prohibition of corporal punishment – including the repeal of all legal defences/authorisations for its use – is included in the laws and retained as the legislation passes through parliament.

Moving swiftly from discussion to action is key. National attention to corporal punishment (for example through government consultations, community interventions, new research, media reports, etc) can be used to promote prohibition: but ultimately, law reform remains crucial to ensuring children’s immediate human right to protection of their physical integrity. Prohibition becomes effective when it is accompanied by appropriate measures to raise awareness and promote positive, non-violent forms of discipline. Concrete implementation of the law is the most efficient way to change attitudes and the only way to fulfil children’s right to protection in law and practice.

The key steps for moving from prohibition to elimination of corporal punishment include:



“... eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties....” - Committee on the Rights of the Child, General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”

End Corporal Punishment is a critical initiative of the End Violence Partnership

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