

Working towards the promotion of positive forms of discipline and the abolition of corporal punishment to ensure the realisation of children's rights to dignity and physical integrity.

article 19

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Linking Domestic Violence and Corporal Punishment

by Samantha Waterhouse and Fairouz Nagia-Luddy

In October 2009 the Parliamentary Portfolio Committee on Women, Youth, Children and People with Disabilities held public hearings to assess the impact of the Domestic Violence Act (DVA) 11 years after its implementation. A range of organisations made written and oral submissions. In addition to organisations focused on violence against women, submissions were also made by organisations which focus on child protection.

RAPCAN made a submission and argued that not only are children the secondary victims of domestic violence, as suggested by stakeholders in the gender sector, but they are in fact primary victims as well.¹ This article argues that corporal punishment by parents is a clear form of domestic violence and that children are victimised in a range of ways in homes typified by domestic violence. It will examine the rights and legislative framework relating to domestic violence and child protection; set out findings from research relating to children's experiences and the impact of domestic violence on children; and discuss recommendations for strengthening child protection in the context of domestic violence.

RIGHTS FRAMEWORK

Children's experiences of and exposure to domestic violence can be considered a violation of rights contained within the following

international instruments and domestic law. The United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) both require States to provide protection to children from all forms of physical or mental violence, injury or abuse, neglect or maltreatment while in the care of parents or guardians.² The Constitution of the Republic of South Africa³ (the Constitution) provides all citizens (including children) the right to be 'free from all forms of violence from either public or private sources'.⁴ Arguably this provision should then also protect children from *any form* of violence perpetrated by a parent. It further provides that all citizens have the right not to be treated or punished in a cruel, inhuman or degrading way.⁵ Finally children specifically are provided with the right to protection from maltreatment, neglect, abuse or degradation in section 28(1)(d) of the Constitution.

The principle of the best interests of the child is articulated in both the CRC and the ACRWC.⁶ The Constitution goes further by stating that the child's best interests are of paramount importance in every matter concerning the child.⁷ Importantly the Children's Act⁸ sets out a range of factors to be taken into

2 Article 19 of the CRC and Article 16 of the ACRWC.

3 Act 108 of 1996.

4 Section 12(1)(c) of the Constitution.

5 Section 12(1)(e) of the Constitution.

6 Article 3 of the CRC and Article 4 of the ACRWC.

7 Section 28(2) of the Constitution.

8 Act 38 of 2005.

1 Oral presentation made to the committee by the Gender Advocacy Project on 29 October 2009.

continued on page 2 »

Since the previous edition of *Article 19* in July 2009, there have been significant developments and activities in relation to the abolition of corporal punishment. In the international context, the Inter-American Commission on Human Rights recently released a thematic report on corporal punishment. This edition provides the key aspects of this report which calls for the prohibition of all forms of corporal punishment of children.

This edition also provides an overview of a recent regional initiative namely, the “Skilful Parenting Experts Meeting” hosted by the African Child Policy Forum and International Child Support in Nairobi, Kenya. Lorenzo Wakefield reports on the meeting which aims to ensure a holistic approach in supporting positive parenting in Africa.

In South Africa, the Parliamentary Portfolio Committee on Women, Youth, Children and People with Disabilities held public hearings in October 2009 to assess the impact of the Domestic Violence Act, 11 years after its implementation. In addition to organisations focused on violence against women, submissions were also made by organisations which focus on child protection. Samantha Waterhouse and Fairouz Nagia-Luddy provide a follow-up article based on the Resources Aimed at the Prevention of Child Abuse and Neglect’s submission in regards to the latter, and outline the links between domestic violence and corporal punishment.

In addition, an article by Catherine Franks titled “A Legal Ban alone will not be enough to stop Corporal Punishment”, argues that any reform in the law with regards to corporal punishment must be accompanied by awareness-raising and educational campaigns, to ensure it is effective.

Finally, we sadly announce that this is the final edition of *Article 19*. As stated by Deidre Kleynhans (Save the Children Sweden) in her concluding article even if this is the final edition of *Article 19*, Save the Children Sweden would like to reassure readers that they will continue the fight against corporal and other forms of humiliating punishment.

We wish to express our gratitude to Save the Children Sweden for their generous funding and support which ensured the success of *Article 19*.

continued from page 1 »

account in considering the best interests of the child in the family environment, and includes consideration of:

- The child’s physical and emotional security; and
- The need to protect the child from any physical or psychological harm that may be caused by subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to other harmful behaviour.⁹

These provisions set out the basis for recognising children as victims of domestic violence. It further ensures services and provides protection to children living in families experiencing domestic violence.

LEGISLATIVE FRAMEWORK PROVIDED BY THE DOMESTIC VIOLENCE ACT AND THE CHILDREN’S ACT

The Domestic Violence Act¹⁰ recognises children as the potential victims of domestic violence and expressly provides that children are among its intended beneficiaries. It defines ‘complainant’¹¹ to include children and it further includes parent-child relationships in its definition of ‘domestic relationship’.¹² In addition, the Children’s Act can be interpreted to include children living in families experiencing domestic violence in the definitions of abuse and description of children who may be considered in need of care and protection. The Children’s Act defines ‘*abuse*’ *inter alia* to include ‘*assaulting a child or inflicting any other form of deliberate injury to a child*’ or ‘*exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally*’.¹³ It also states that a child exposed to circumstances which may seriously harm their physical, mental or social well-being through actions by their parent, care-giver or family member may be in need of care and protection.

The Children’s Amendment Act¹⁴ provides the potential for programmes to assist families experiencing domestic violence through the chapter on prevention and early intervention. It includes that the State must provide services to families to develop parenting skills; promote relationships in the family; prevent failures in the family environment; and prevent the recurrence of problems that may harm children or adversely affect their development.¹⁵

CHILDREN’S EXPERIENCES OF DOMESTIC VIOLENCE

Evidence significantly links violence against women with violence against children in households that are considered to be violent.¹⁶ Research highlights *inter alia* that:

- Children may be abused intentionally as a form of punishment for the mother;¹⁷

9 Section 9 of the Children’s Act.

10 Act 116 of 1998.

11 Section 1(iii) of the DVA.

12 Section 1(vii) of the DVA.

13 Section 1(i) of the Children’s Act.

14 Act 41 of 2007.

15 Section 144 of the Children’s Amendment Act.

16 Holt, S., Buckley, H., and Whelan, S. (2008) ‘The impact of exposure to domestic violence on children and young people: A review of the literature’ in *Child Abuse and Neglect* 32 (2008) 797-810. Elsevier Publishers.

17 Holt et al. *op cit* 2008: 800.

... violent discipline against children, seldom result in any intervention to protect the child or support the family.

- The abusive partner uses harsh physical discipline or force with children;¹⁸
- The adult victim over-disciplines children to avoid conflict with an abusive partner;¹⁹ and
- The adult victim abuses the children due to diminished tolerance or inability to manage parenting stresses.²⁰

Children are regularly slapped, smacked, kicked, beaten with fists, whips, sticks, hosepipes and belts in South Africa. They experience this in their homes and at the hands of their parents.²¹ Similar acts committed against adult women are considered abuse. However, violent discipline against children seldom result in any intervention to protect the child or support the family. Thus, children who are physically, socially and emotionally more vulnerable than adults receive less protection from violence. It is noted that the extreme majority of parents who use corporal punishment love their children and truly believe that their actions are in the child's best interests. Therefore, measures to support parents and strengthen non-violent discipline are essential.

IMPACT OF DOMESTIC VIOLENCE AND CORPORAL PUNISHMENT ON CHILDREN

Studies indicate that the 'witnessing of abuse is usually combined with other childhood experiences that negatively affect children's emotional and social functioning, such as harsh discipline, lack of emotional support and affection and poor parental supervision'.²² These, it is argued, are positively associated with subsequent violent behaviour as the child grows older and the perpetuation of cycles of violence in families and society.²³

One of the major concerns for children in abusive households is the inevitable emotional and psychological trauma that these children suffer. Such trauma is caused by being directly involved, witnessing and hearing violent episodes between parents. Further the anticipation of abusive episodes in the home results in constant stress for the children and these children often live in a chronic state of anxiety due to the ever-present anticipation of a violent outburst, directed either at them, or at their mothers.²⁴

Research documents a wide range of physical, mental health and cognitive behavioural problems that children experience due to their exposure to domestic violence.²⁵

RECOMMENDATIONS FOR RESPONDING TO CHILDREN IN THE CONTEXT OF DOMESTIC VIOLENCE

In spite of the relatively comprehensive legislative framework to recognise children as direct and indirect victims of domestic violence, identification of children as victims and the provision of protection and other necessary services to children traumatised and victimised in this context is problematic. Further, the legal framework for protection of children from domestic violence in the form of parental corporal punishment is insufficient due to the common law defence of 'reasonable and moderate' chastisement that is still available to parents. This defence not only directly allows the use of less severe physical violence against children (which is considered abuse or assault when committed against an adult) but we argue, also enables the socially accepted use of more severe forms of violence against children by parents in the name of discipline.

It is thus important that children receive equal legal protection from violence by adults and that the provisions of the Children's Act aimed at supporting parents and strengthening non-violent methods of discipline be implemented. The ability of State and civil society service providers to identify children as victims of domestic violence and respond to the needs of those children must be strengthened through guidelines for screening, training and the allocation of funds for appropriate services. Finally, further research into the nature and availability of services to children in this context will assist in developing appropriate policy responses. ●

18 Coohy in Renner & Shook Slack. 2006: 601

19 *Ibid.*

20 *Ibid.*

21 Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), *Corporal Punishment of Children, A South African National Survey Save the Children*. 57% of parents surveyed in a national survey on corporal punishment reported smacking or spanking their children with a hand while 33% reported beating their children with a belt or other object, the most common age for smacking children with a hand was three years and for beating with an object four years of age.

22 Abrahams, N., and Jewkes, R. (2005) 'Effects of South African men's having witnesses abuse if their mothers during childhood in their levels of violence in adulthood' in *American Journal of Public Health* 95(10) 1811. USA: American Public Health Association.

23 *Ibid.*

24 Emanuel, L. (2004) 'Some thoughts about the impact of DV on infants and children' *Clinical Perspectives in Journal of child and adolescent mental health* 16(1): 49-53.

SA: NISC Pty Ltd; Currie, C. (2006) 'Animal cruelty by children exposed to domestic violence' *Child Abuse & Neglect* 30(4): 425 - 435 426; Van der Merwe, A and Dawes, A (2007) 'Youth Violence: A review of Risk Factors, Causal Pathways and Effective Intervention' *Journal of Child and Adolescent Mental Health* 19(2), 95-113. South Africa: NISC Pty Ltd; Pinheiro, P. S. (2006), *World Report on Violence against Children* Published by the United Nations: Secretary-General's Study on Violence against Children.

25 Artz L. 2006. *An examination into the attrition of domestic violence cases: Preliminary Findings Mosaic*. Available at <http://www.mosaic.org.za/AttritionResearch.pdf>. Accessed on 13 October 2009.

LATEST INTERNATIONAL DEVELOPMENTS IN RELATION TO CHILDREN AND ADOLESCENT CORPORAL PUNISHMENT

The Inter-American Commission on Human Rights calls on States to Prohibit Corporal Punishment

by Bianca Robertson

The Inter-American Commission on Human Rights (hereinafter “the Commission”) recently released a new thematic document, “The Report on Corporal Punishment and Human Rights of Children and Adolescents”.¹ In this report, the Commission calls on Member States of the Organisation of American States (“OAS”) to prohibit and eliminate all forms of corporal punishment of children. It recommends that specific actions be taken to ensure the progressive realisation and protection of children and adolescents’ human rights.

This report, prepared by the office of the Rapporteur on the Rights of the Child, follows a decision issued earlier this year by the Inter-American Court on Human Rights (“the Court”) which confirmed the human rights obligations of Member States of the OAS to prohibit and eliminate all forms of corporal punishment of children.² It examines State responsibility in the use of corporal punishment by private citizens and in the context of parental authority. It makes detailed recommendations to Member States concerning the actions they should take to achieve full prohibition of corporal punishment within their corresponding jurisdictions.

The Commission’s report is a positive step for children’s rights in the Inter-American human rights system, as it makes provision for explicit and absolute legal bans on the use of corporal punishment in all contexts.

THE DOMESTIC LAWS OF THE OAS

As at September 2009, only 24 States worldwide have

passed laws prohibiting corporal punishment in the home.³ Only three of these are Member States of the OAS: Uruguay, Venezuela and Costa Rica. Recent progress has been made with the introduction of draft legislation to prohibit corporal punishment in all contexts in Brazil, Canada, Peru and Nicaragua. However, in most countries corporal punishment is not explicitly prohibited. At present, corporal punishment is not prohibited by law in schools in most OAS Member States.

In some countries such as Canada, Nicaragua, Dominican Republic, Ecuador, El Salvador, Haiti, and Honduras, corporal punishment is prohibited in schools but not in the home.

Although the majority of OAS Member States have ratified the Convention on the Rights of the Child (CRC), many still have to amend their domestic laws to conform to the standards and provisions of the CRC, and specifically to prohibit all forms of corporal punishment.

THE INTER-AMERICAN COMMISSION’S REPORT

The Commission recognises in the thematic report the gravity and seriousness of corporal punishment of children and adolescents. The Commission acknowledges that some Member States have already prohibited corporal punishment and that some States have initiated draft legislation.

The Commission also emphasises that although most of the Member States have banned corporal punishment as a sanction for criminal offences, it remains in the penal codes as a disciplinary method of many States. Furthermore, most of the Member States do not have specific legislation and explicit statutory language prohibiting corporal punishment in the home or at school. Thus, it recommends that Member States take specific actions for making comprehensive progress toward protecting the human rights of children and adolescents.

CORPORAL PUNISHMENT AT PUBLIC INSTITUTIONS

With regards to corporal punishment at public institutions, the Commission’s report imparts that States have an absolute obligation to

1 OEA/Ser.L/V/II.135 Doc. 14, 5 August 2009.

2 See *Article 19*, Volume 5, Number 1, July 2009, pages 4-5, for a summary of this judgment.

3 These States are: Sweden (1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Bulgaria (2000), Israel (2000), Germany (2000), Iceland (2003), Ukraine (2004), Romania (2004), Hungary (2005), Greece (2006), the Netherlands (2007), Portugal (2007), Spain (2007), New Zealand (2007), Uruguay (2007), Venezuela (2007), Costa Rica (2008) and Moldova (2008).

prohibit the use of corporal punishment as a way to discipline children and adolescents under the custody and protection of a State's public institution. This protection extends to all detention centres, hostels, orphanages, hospitals, schools, and military schools.

In this respect, a State acquires a special status and role as guarantor in the prohibition of corporal punishment. This means that States are required to create effective mechanisms for preventing and punishing acts of violence against children and adolescents.

The report recognises that children and adolescents in State custody are often exposed to various forms of violence. It highlights the occurrence of corporal punishment against children in institutions, often at the hands of the staff and authorities responsible for these children's welfare. The report pays particular attention to the protection of the rights of children and adolescents in conflict with the law. In particular, the Commission states in paragraph 48: "Respecting children's dignity requires prohibiting and preventing all forms of violence within the context of juvenile criminal justice. That includes all phases in the proceedings, from first contact with the police authorities up to the serving of sentences".

Furthermore, the Commission recommends that a holistic approach is required when dealing with the protection of minors in mental health facilities. It endorses the application of a regulatory framework to govern children with mental disabilities. It is a State's priority to provide specialised protection and care of these minors, who are particularly vulnerable due to both their young age and mental disabilities.

STATES' OBLIGATIONS OF RESPECTING AND ENSURING RESPECT FOR HUMAN RIGHTS IN RELATIONS BETWEEN PRIVATE INDIVIDUALS

The Commission calls on Member States to act on the problem of corporal punishment by placing absolute legal bans on its use in all contexts. This obligation extends to the use of corporal punishment as a form of discipline by private citizens - including parents, teachers, or other adults with responsibilities in caring for children and adolescents.

The Commission asserts that there is a 'disproportionate and unreasonable differentiation' in respect of, on the one hand, the usage of corporal punishment against adults which is illegal, and on the other hand, the practice of corporal punishment against children, which is often seen as a reasonable and accepted practice. The Commission recognises the contradiction in this situation and that it could be held that the principles of non-discrimination and of equal protection of the law are being violated in this respect.

Thus, the Commission maintains that States, which permit or tolerate this form of corporal punishment could be in violation of its international obligations to uphold children's right to humane treatment and a life without violence.

THE CORPORAL PUNISHMENT OF CHILDREN AND ADOLESCENTS AND THE INSTITUTION OF PATRIA POTESTAD (PARENTAL CUSTODY)

This section reports on the gaps and shortcomings of the domestic laws of the OAS Member States with respect to the rights and authorities given to parents to discipline their children. To remedy this, the Commission asserts that the Inter-American Court needs to give the States its guidance as to how to regulate the institution of patria potestad or parental custody.

The Commission provides that laws which sanction parental corporal punishment are not in line with the international standards applicable to the institution of parental custody. Further, it does not give a child due protection from corporal punishment.

Thus, States are encouraged to adopt comprehensive public policies intended to educate families and institutions about the distinction that exists between corporal punishment, even the lighter forms thereof, and non-violent discipline methods.

MEASURES TO ERADICATE CORPORAL PUNISHMENT

The final section of the report contains the Commission's conclusions and recommendations and provides a set of guidelines to assist Member States to fulfil their obligations. States are under an obligation to provide legislative, educational and other measures to promote the eradication of corporal punishment against children and adolescents:

- **Legislative measures** - this applies to both the repeal of provisions that explicitly authorise the use of corporal punishment on children under the age of 18 years, the elimination of the "corrective measures" guidelines that are still a part of the regulations governing parental custody in many countries, and the adoption of provisions that explicitly prohibit corporal punishment.
- **Educational measures** - it is vital that adults responsible for caring for children under the age of 18 years themselves receive education about the rights of children, about the protection mechanisms available, and about discipline methods that are in no way based on violence.
- **Other measures** - in addition to the above measures, there should be comprehensive action from the State including health, justice, domestic security, etc. The Commission does not intend to offer an exhaustive list in this regard.

CONCLUSION

The thematic report is a further indication of the Commission's incessant commitment to eradicating all forms of violence against children and adolescents.

It is a significant follow-up on the Commission's work in regard to the recent hearings, cases, reports, petitions and precautionary measures, and visits to different countries in the region. It remains to be seen whether all Member States will amend their domestic legislation and implement the Commission's recommendations to enforce legal bans on the use of corporal punishment as a method of disciplining children and adolescents both in the home and society as a whole. ●

The Report on Corporal Punishment and Human Rights of Children and Adolescents is available at
<http://www.cidh.org/ninez/castigocorporal2009/castigocorporal.toc.htm>

A POSITIVE PARENTING PROGRAMME FOR AN AFRICAN LIFESTYLE

Report on the 'Skilful Parenting Experts Meeting'

by Lorenzo Wakefield

On 1 and 2 October 2009 the African Child Policy Forum, in collaboration with International Child Support, hosted a skilful parenting experts meeting in Nairobi, Kenya. The aim of this meeting was to ensure a holistic approach in supporting positive parenting in Africa. This meeting thus brought together experts in the field of positive parenting throughout eastern and southern Africa.

THE THEMATIC AREAS OF DISCUSSION

In reaching its aim to ensure a holistic approach in supporting positive parenting, various African tenets of what should be included in a positive parenting programme were sought. Therefore the first day of the meeting was dedicated to the participants presenting and debating around the following thematic areas:

- African changing family structures and interactions and the implications on parenting education and support programmes;
- Different forms of interventions, practices and experiences in parenting; and
- The legal framework on parent/ family education and support.

Under the first thematic area a paper on quality care-giver/child interaction from an Ethiopian experience was presented. This paper investigated the connection between quality parent-child relationships and the social-intellectual development of a child. Based on various psychological tests it was found that quality parent-child relationships will in effect enhance a child's social-intellectual development. Another paper presented under this thematic area assessed



parenting in a changing social landscape. This paper assessed the current trend in parenting in traditional homes and added four interacting, contextual factors needed to enhance parenting in a traditional home. These are:

1. defining the role of the parents/ caretakers;
2. the cultural blueprint for parenting;
3. the current physical and economic conditions; and
4. the individual characteristics of a child.

The second thematic area brought together a plethora of practices on positive parenting programmes that were, or are currently taking place in various parts of the region. One presentation highlighted the importance of training child and youth care workers who oversee and supervise orphans and vulnerable children. This paper was based on experiences of low levels of qualifications that currently exist for child and youth care workers, especially those who act as care-givers to orphans and vulnerable children. This paper also set out various recommendations on what should be included in a curriculum for training child and youth

care workers who take care of orphans and vulnerable children. These include “enhancing knowledge and understanding of cognitive, emotional, physical, spiritual and moral development of children”.

An equally interesting presentation highlighted the importance of a parenting programme for teenagers who become parents. This paper set out the structure that an organisation uses to assist teenagers who become parents, by way of a positive parenting programme. This programme consists of 15 sessions that involve the teenage mother, their parents and the biological father of the child. With that it should be noted that they spend 2 sessions on positive discipline and the prevention of child abuse.

A Ugandan organisation highlighted the importance of the whole family as care-givers for children and the role they play in raising positive children. Their programme highlighted various elements, which include:

- The art of communication;
- Family fun;
- Discipline for freedom;
- Effective time management;
- Parenting teenagers;
- Sensible sexuality; and
- How to assist children in studying.

Day 1 of the meeting ended with the third thematic area being discussed, which was the legal framework within which to lobby for effective parenting. The first paper presented under this thematic area analysed the laws and policies that support family structures in Kenya and Tanzania. This paper analysed whether the Kenyan and Tanzanian laws relating to family are in conformity with the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. It was concluded that to a certain extent the Kenyan Children's Act does indeed conform to the provisions of international law. However, it also contains discriminatory provisions for children born out of wedlock.

The second paper presented during this thematic discussion focused on the ban on corporal punishment in the home in Africa. This paper highlighted the standards set by international law to ban corporal punishment in the home and analysed the extent of the ban in Africa. It concluded that only Southern Sudan has taken considerable steps to ban corporal punishment, both in their Interim Constitution and Child Act. The paper concluded with some helpful recommendations of positive alternatives to corporal punishment.

PARENTING IN AFRICA

Day 2 of the meeting started off with the participants discussing and evaluating the successes and gaps in the current parenting programmes and materials in Africa. The participants worked collectively at grouping various subjects into main themes of research, advocacy, lobbying

governments and regional bodies, training and monitoring. The idea was to establish what would be required in order to effectively carry out research on certain topics, create advocacy on others and how to carry out training and monitoring on further topics.

Once this was established, the delegation discussed the future direction of the programme. In making sure that a concrete body is established to run this programme, the following three questions needed to be answered:

1. Who should lead the process as of January 2010?
2. What should this body be mandated with?
3. Who will be approached for fundraising?

In answering the first question it was concluded that a steering committee with representatives from all the regions in Africa should be established. Sub-committees would supplement the work of these steering committees, while a secretariat is set up with paid staff to run the administration of this programme.

It was also concluded that the steering committee would be tasked with deciding on what programmes need to be implemented after receiving advice from the sub-committees on this area. Once again, it was established that the secretariat would be responsible for rolling out the various programmes.

It was suggested that the United Nations, World Bank and various governments be approached to provide funding. At this present moment short term funding needed to be prioritised.

NEXT STEP?

The African Child Policy Forum, together with International Child Support will be hosting a stakeholders meeting in Addis Ababa during February 2010 where apart from inviting all the stakeholders in the region to discuss the future direction of parenting programmes in Africa, institutions such as the United Nations and World Bank will also be invited especially for funding purposes.

At the meeting a funding proposal will be considered in order to effectively roll out a positive parenting programme in Africa. ●

For further information please do not hesitate to keep updated with the programme on: www.parentinginafrica.com.



A LEGAL BAN ALONE will not be enough to stop Corporal Punishment

by Catherine Franks

“There is no law against it!” a parent could argue with regards to corporal punishment. Looking at the domestic law in South Africa, this would be true. Although corporal punishment has been prohibited in all schools, care institutions and the juvenile justice system, it still may be lawfully carried out within families. South Africa, like all other States on the continent, with the exception of Somalia, has ratified the United Nations Convention on the Rights of the Child (CRC). It has also ratified the African Charter on the Rights and Welfare of the Child (ACRWC). These, along with other international human rights instruments, oblige State Parties to take the appropriate measures to protect children from corporal punishment.

Whilst a national law prohibiting corporal punishment would send parents a clear message that physically punishing their children is unacceptable, such punishment would need to become a less socially acceptable form of discipline

for a legal ban to be more effective. There are various ways to move towards changing the general public’s attitude with regards to corporal punishment. This would be a positive undertaking, even while parental corporal punishment is still lawful in a State, because it would serve to discourage adults from physically punishing their children.

INTERNATIONAL INSTRUMENTS AND NATIONAL PROHIBITIONS OF CORPORAL PUNISHMENT

In ratifying the CRC, ACRWC and other international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), South Africa has obligations to prohibit by law all forms of corporal punishment of children.

Article 19 of the CRC requires State Parties to take all

appropriate measures to protect children from physical and mental “violence, injury or abuse... while in the care of parent(s) [and] legal guardians”. The United Nations Committee on the Rights of the Child has confirmed that this provision should be interpreted as covering the corporal punishment of children in the home. The Committee has called for the elimination of laws allowing for reasonable or moderate correction. In States around the world which have prohibited corporal punishment in the home, the first step has usually been to abolish laws allowing for reasonable chastisement, or other equivalent defences. Under common law in South Africa, parents have the power to “inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (*R v Janke and Janke* 1913 TPD 382). If such a defence were to be abolished, the next step a State could take would be to enact legislation expressly prohibiting parental corporal punishment.

Southern Sudan's new Child Act, which was officially launched in April 2009, prohibits corporal punishment in all settings, including the family home. Section 21 states that, “Every child has the right to be protected from torture, cruel, inhuman or degrading treatment or punishment, and in particular ... (b) no child shall be subjected to corporal punishment by chiefs, police, teachers, prison guards or any other person in any place or institution, including schools, prisons and reformatories”. The Interim Constitution of Southern Sudan explicitly prohibits parental corporal punishment. Section 21(1)(f) provides that every child has the right “to be free from corporal punishment and cruel and inhuman treatment by any person including parents...” Other than this, no other national laws have been passed which expressly prohibit parental corporal punishment on the rest of the continent, according to www.EndCorporalPunishment.org.

The United Nations Committee on the Rights of the Child has proposed that legal reforms concerning corporal punishment should be accompanied by awareness-raising and educational campaigns to promote positive forms of discipline. If the law should change with regards to corporal punishment, it would be of little use if parents were not made aware of this. The ban would also be much less effective if adults still believed that the use of corporal punishment was the best way to discipline a child. A public education campaign would be essential to change social and cultural acceptance of corporal punishment. The responsibility of this would fall on the government but civil society organisations and non-governmental organisations could assist in disseminating information and supporting parents in using methods of positive discipline. Even in States where parental corporal punishment is still lawful, such organisations could work to change the attitude of the general public and help educate adults about the negative impact of corporal punishment.

CHANGING ATTITUDES TOWARDS CORPORAL PUNISHMENT

Awareness must be raised of the harmful effects of corporal punishment. Such effects include that; corporal punishment could result in serious and permanent physical damage, or even death. Many cases of physical abuse of children have arisen from situations where corporal punishment was used. Parents may be angry when administering corporal punishment, as they are responding to their child's perceived misbehaviour. Therefore it could be easy to underestimate the force they are using against the child.

Southern Sudan's new Child Act, which was officially launched in April 2009, prohibits corporal punishment in all settings, including the family home.

Also, if a child does not stop the offensive behaviour when hit, a parent may feel there is nothing more for them to do but hit harder. The fact that corporal punishment is often carried out repeatedly shows that it is not effective at preventing a child from misbehaving again, even if the child does stop that behaviour temporarily. Corporal punishment does not just harm children physically, it can also cause mental and emotional damage, and can ultimately affect the child's relationship with his or her parents.

As well as leading to physical, mental and emotional damage, corporal punishment can actually have the opposite effect on children than that which the parent desires. For instance, if a parent physically punishes a child for stealing, the child will not understand what is actually wrong with stealing. The child may then still attempt to steal items, but will make sure that this is done in a way that is hidden from the parents, so as to avoid physical punishment. Using corporal punishment to discipline children does not help shape their values or allow them to understand why some forms of behaviour are unacceptable, and therefore cannot be effective in the long-term. Hitting children also teaches them that it is acceptable to use violence when interacting with others. By hitting or caning children, adults send the message that it is acceptable to resort to violence as a solution and that it is also fine to hit those who are smaller and weaker. If parents are made more aware of such issues, it may discourage them from using corporal punishment.

continued on page 10 »

Arguments against justifications for using corporal punishment should be made widely known. One relatively common justification is that it is a parent's religious right to hit a child. Certain religious texts, from different religions, have been interpreted as allowing, if not even encouraging, parents to physically punish their children. Many also believe that disciplining children in this way is part of their culture. A director of an orphanage in Ghana commented that, "Caning has always been used in Africa. It is even in the Scriptures - spare the rod and spoil the child. It has always been the African style". Historical studies have shown that using physical punishment as a form of control was introduced into to African societies through colonialism and has since then, seemed to have become a part of the African culture.

Some adults may feel it is their right to hit their child. The child may be regarded as the parents' "property", so they may feel that the child can be treated however the parents wish. There is also a view of seeing a child as a human "becoming" rather than a human "being". If a child is seen as someone who is just on their way to becoming an adult, rather than as a human being in their own right, it can make them more vulnerable to physical punishment and abuse. The idea of the child as the property of their parents or as a human "becoming" is in conflict with the image of the child supported by the CRC and ACRWC. The image of a child as someone who is entitled to respect needs to be promoted.

Parents may be concerned that if the law was changed with regards to corporal punishment, it will result in their actions of corporal punishment becoming criminalised for disciplining their children. In States around the world where corporal punishment in the home has been prohibited by law, the reform was used as an educative tool for parents. The aim was not to send parents to prison, but rather to raise awareness of the harm of corporal punishment and promote methods of positive discipline. It has been argued that prosecuting parents would not be in the best interests of the child, unless the level of violence is severe.

Parents who have become accustomed to hitting or beating their children may believe that this is the only possible way to discipline children. Such parents may also have been physically punished themselves, which could serve to legitimate this form of discipline in their minds. Methods of positive discipline must be promoted, as this too will enable corporal punishment to become socially unacceptable. Childline South Africa, for example, has produced a booklet for parents, explaining other ways to discipline a child.¹ It is important to remember the purpose of disciplining children. The aim behind parental discipline would most likely be to



teach and guide children, helping them to learn appropriate behaviour and enabling them to become independent and responsible adults. While punishment, and in particular physical punishment, is often the method parents decide to use when disciplining their child, there are many other more effective ways they could do this.

If parents decide to use non-violent forms of punishment, it can help the child to understand the consequences of their actions, if a punishment is linked to what they have done wrong. For instance, if a child has to fix something he or she has broken; the child may be less likely to repeat that behaviour again. Positive discipline encompasses many ways to effectively discipline children, and not all of them involve punishment. For example, talking with a child about their misbehaviour, can give the child the chance to explain their actions, and allow the parents to say why they found his or her behaviour unacceptable. The child can then understand the reasons why he or she should not repeat that behaviour. There are many different methods of positive discipline that are appropriate for children of different ages. To encourage a move away from corporal punishment, information about positive discipline should be widely publicised and support offered to parents who are unsure about how to discipline their children without the use of corporal punishment.

CONCLUSION

A reform in the law with regards to corporal punishment must be accompanied by awareness-raising and educational campaigns, to ensure it is effective. However, work can and should begin, even while parental corporal punishment is still lawful in a State, to move towards making this form of punishment socially and culturally unacceptable. For this to happen, the negative effects of corporal punishment should be publicised, along with arguments against common justifications for the use of such punishment, and forms of positive discipline should be promoted. The ideal would be for parental corporal punishment to become legally, socially and culturally unacceptable in Africa and globally. Although that day may be a long way off, it is essential to keep working towards that goal, so that children can be raised without violence, just as they are entitled to be. ●

¹ <http://www.childlinesa.org.za/content/view/21/33/> (Accessed on 24 November 2009)

ENSURING the protection of children from all forms of corporal punishment:

Save the Children Sweden reassures its commitment

by Deidre Kleynhans

In 1979, the International Year of the Child, Sweden became the first country in the world to prohibit all forms of corporal punishment of children; and as of 1 July 2009 (thanks to legislation, publicity and awareness campaigns) Sweden will have had a ban on all forms of corporal punishment for 30 years. Many countries have since followed suit, and as of March 2009 a total of 24 nations have legislation banning all forms of corporal punishment. While many African countries have made strides to ban corporal punishment in schools and institutions, it remains legalised at home in almost all African countries. The home should be the place where children feel the safest, but often parents betray their sense of safety by abusing children in the name of discipline. In Zambia, for example, a 15 year old girl was severely beaten all over her legs after she slept over at a friend's house without informing her mother. As a result of the severe beating, both her legs had to be amputated, in an attempt to save her life. Tragically she still lost her life. A clear and urgent need thus exists to protect children from all forms of violence, including the most hidden and least acknowledged form of violence – corporal punishment.

Even if this is the final edition of Article 19, Save the Children Sweden would like to reassure readers that we have not given up our fight against corporal and other forms of humiliating punishment. On the contrary, this battle to protect children has all but begun and is fast gaining momentum. Save the Children Sweden, together with partner organisations aim to ensure the protection of children from all forms of violence, especially corporal and other forms of humiliating punishment.

In order to ensure adequate protection of children, Save the Children Sweden believes that governments need to establish holistic national child protection systems, as recommended by the United Nations Study on Violence against Children. Save the Children Sweden will aim to contribute to this by:

- Promoting the development of national child protection systems where:
 - All forms of violence against children are prohibited, including corporal punishment in all settings;
 - Sufficient resources are allocated to ensure effective enforcement of legislation;
 - Prevention strategies and services are available;
 - National statistics reflect the situation for all children; and
 - Children can participate in decisions that affect them.
- Piloting community-based child protection models with local authorities, organisations and children.
- Supporting religious and traditional leaders to embrace and

promote children's rights in line with the United Nations Convention on the Rights of the Child, and assist these leaders to promote parenting skills rooted in positive African cultural practices.

Save the Children Sweden is currently advocating for national child protection systems in South Africa, Swaziland, Botswana, Zambia and Mozambique. These systems include the banning of all forms of corporal punishment in all settings together with parenting programmes to equip parents with positive discipline skills. Experience has shown that promoting a ban of corporal punishment without providing a suitable alternative with which to discipline children leaves parents feeling helpless, inadequate and increases an opposition against the ban of corporal punishment. Save the Children Sweden has therefore embarked, together with Childline South Africa, on a Parenting Project with the intention of developing culturally appropriate parenting materials to be used by parents, caregivers, teachers and Childline counsellors in the Southern Africa region (See *Article 19*, Volume 5, Number 1, July 2009, pages 1 - 3).

Save the Children Sweden would like to urge readers to continue strong in the battle against corporal punishment and ensure that parents, teachers, caregivers and governments are equipped with skills to relate to children in a positive, non-violent manner. It might be the close of this chapter, but it is not the end of the fight to protect children. ●



Source: <http://www.ispcan.org/congress2010/index.html>

XVIII ISPCAN INTERNATIONAL CONGRESS

The International Society for the Prevention of Child Abuse and Neglect (ISPCAN) will be hosting its 18th international congress from 26 to 29 September 2010, in Honolulu, Hawaii, USA. The theme for this year's conference is: "One world, one family, many cultures: strengthening children and families affected by personal, intra-familial and global conflict".

The congress will be sub-divided into the following thematic areas:

- Cultural perspectives in strengthening families and protecting children
- Identifying, treating and preventing family and sexual violence
- Impact of armed conflict on families and children
- Family strengthening: a key to the prevention of child abuse and neglect
- Youth empowerment in the prevention of generational child abuse and neglect

KEY DATES:

| | |
|-----------------|-------------------------------|
| 31 March 2009 | Abstract submissions begin |
| 1 November 2009 | Online registration begin |
| 15 January 2010 | Abstract submission deadline |
| 15 July 2010 | Early registration deadline |
| 15 July 2010 | Speaker registration deadline |

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