

**THE SOUTHERN AFRICAN NETWORK TO END
CORPORAL AND HUMILIATING
PUNISHMENT OF CHILDREN**

Promoting Positive Discipline

**SUBMISSION to the ALL AFRICA CONFERENCE OF
CHURCHES**

**Ending corporal and humiliating punishment of
children in Africa.**

This submission is made by the Southern African Regional Network on Corporal Punishment. The Regional Network comprises the following organisations:

- Childline South Africa
- Child Rights Alliance for Tomorrow - CRAFT, Botswana
- Child Rights Project, Community Law Centre, University of the Western Cape, South Africa.
- DITSWANELO - Botswana Centre for Human Rights, Botswana
- Human Rights Commission, South Africa
- Human Rights Commission- Zambia
- Office of the Ombudsperson for Children, Mauritius
- NGO Coalition on the Rights of a Child, Lesotho
- Resources Aimed at the Prevention of Child Abuse and Neglect, South Africa
- Rede Came, Moçambique
- South African Council of Churches, South Africa
- Save the Children - Swaziland
- Save the Children - Sweden
- Zambian Civic Education Association, Zambia
- Zambian Interfaith Working Group on HIV and AIDS (ZINGO), Zambia

This submission is made in support of our recommendations that the AACC adopts a statement urging all African States to prohibit all forms of corporal and humiliating punishment of children and to also promote such a ban.

1 INTRODUCTION

Violence against children is a global problem and affects children in every country of the world. Millions of children of all ages and from all social backgrounds, religions and cultures experience violence on a daily basis, and much of this is socially accepted and condoned.

The forms of violence to which children are subjected are varied, and include physical punishment at home or at school, and exposure to or experience of sexual violence (including extreme forms of violence such as female genital mutilation or cutting, child trafficking, sexual exploitation, and forced marriage).

For example, according to Global Report on Violence against Children, the first comprehensive, global study on all forms of violence against children¹:

- Almost 53,000 children aged 0-17 died as a result of homicide in 2002. In some industrialised countries, infants under one year face about three times the risk of homicide, invariably at the hands of parents, than children aged 1-4, and twice the risk of those 5-14.
- Of these child homicide victims, 22,000 (or nearly 42 per cent) were 15-17 years old, and nearly 75 per cent were boys.
- Each year, between 133 million and 275 million children witness frequent violence between their parents.
- As many as 80 to 98 per cent of children suffer physical punishment in their homes, with a third or more experiencing severe physical punishment resulting from the use of implements, according to studies from countries in all regions of the world.
- Between 20 and 65 per cent of school-aged children in developing countries reported having been regularly verbally or physically bullied.
- In surveys of 20 countries, at least 7 per cent of females ranging up to 36 per cent) and 3 per cent of males (ranging up to 29 per cent) reported sexual victimisation in their childhood.
- At least 82 million girls now between 10 and 17 years old will marry before they turn 18, including significant numbers of girls married at much younger ages.
- At least 88 states have not prohibited corporal punishment in schools.

¹ Pinheiro, P. 2006. *World Report on Violence Against Children*, United Nations, Geneva.

- Children in detention are frequently subjected to violence by staff, including as a form of control or punishment, often for minor infractions. In 77 countries, corporal and other violent punishments are accepted as legal disciplinary measures in penal institutions.

Children are likely to experience different forms of violence depending on their age, sex and gender with more girls than boys suffering sexual abuse and more boys than girls suffering physical abuse.

Violence against children is often hidden and unreported. This may be because some children believe the violence they suffer is 'normal' and inevitable or they may not know how or where to report violence. A child may have no one to confide in or he or she may be fearful of suffering further harm from the perpetrator. If a perpetrator is a family member or someone who holds a position of leadership and power in the community, children may be afraid of not being believed. Children who have suffered rape or sexual exploitation may fear isolation, stigma or shame if they speak out. Globally, it is the case that very few children ever report the violence perpetrated against them.

The short-, medium- and long-term consequences for children of such high levels of violence against them, often perpetrated with legal and social sanction, are incalculable. These consequences include growing up assuming that inter-personal and sexual violence are the norm, and the serious negative impact on the ability to live a fulfilled and productive life in adulthood.

Corporal punishment has been identified as one of the most serious forms of violence against children and is widely practiced across the length and breadth of our continent. In some countries in Africa, as in countries in every region of the world, corporal punishment is legally sanctioned as a sentence in the penal system, in places of care or as a disciplinary measure in schools. All African countries currently allow for the use of violence against children when committed by their parents and guardians.

As a result of the legal use of corporal punishment by parents, educators, within criminal justice systems and within care systems, many millions of African children are vulnerable to violence in every sphere of their lives. The physical and emotional damage this causes is incalculable and impacts on their development and the fulfilment of their potential.

2 CORPORAL PUNISHMENT IN AFRICAN STATES

The *All Africa Special Report on Ending Legalised Violence against Children*² indicates that corporal punishment of children by parents is still legal in all African States. This is despite the fact that all States in Africa, with the exception of Somalia, have ratified the CRC without any reservation to reduce its obligation to protect children from all forms of violence. Only 23 African countries have prohibited corporal punishment in schools, 36 countries as a sentence in the penal system, 22 countries have prohibited its use in the penal system as a disciplinary measure and only 3 countries have prohibited it in alternative care settings.³ This indicates that approximately 95% of the African child population are not protected from corporal punishment in alternative care settings, and 52% are not protected from corporal punishment in schools.⁴

This is a serious infringement on the human rights of children, particularly upon their right to dignity, physical integrity, equal protection of the law, and their right to be protected from all forms of violence. Law reform in this regard is thus long overdue for children living in Africa.

Many religious groups not only support the use of physical violence to control or teach children but actively advocate that this must be used against children. For example, it is noted that among some of the radical forms of Christianity it is believed that children come in to the world with the negative bias of *Original Sin* and that this must systematically be corrected out of the child.⁵

The All Africa Special Report provides an overview of a range of available research reports from various African countries which indicate that corporal and other forms of humiliating punishment are widely used in these countries.⁶ Included in the report are studies that have been conducted in 16 African Countries.⁷ These studies, many of which involved interviews and surveys with significant numbers of teachers, parents

² Ending Legalised Violence against Children, All Africa Special Report (2007), Global Initiative to End All Corporal Punishment of Children and Save the Children Sweden.

³ Progress towards prohibiting all corporal punishment in African states. (2008), Global Initiative to End All corporal Punishment of children.

⁴ All Africa Special Report, op cit, p 59.

⁵ Stork H. *Enfances Indiennes [Indian Childhoods]. Étude de psychologie transculturelle et comparée du jeune enfant [Study of transcultural and comparative psychology of the young child]*. Paris: Paidos-Bayard;1986. in Maldonado M. undated. Op cit.

⁶ All Africa Special Report, op cit, pp25-37.

⁷ Countries include: Botswana, Cameroon, Egypt, Ethiopia, Kenya, Liberia, Namibia, Somalia, South Africa, Sudan, Swaziland, Tunisia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

and/or children, create a concerning picture of what children experience in the name of punishment, correction and discipline on a daily basis in their homes and at school.

In addition to slapping and smacking children, the studies indicate that children are subjected to being kicked and to beatings with fists, sjambocks, whips, sticks, hosepipes and belts. The studies indicate that children experience a range of other forms of physical and degrading punishment including that they are burnt, tied up, locked up, required to kneel on hard and uneven surfaces, pinched, forced to undertake excessive labour and to stand in the hot sun for long periods of time.

These forms of punishment result in a range of injuries to children including fractures, loss of consciousness, burns and permanent disability. This is illustrated by a number of different studies, for example according to a study Egypt, 23% of 2 170 children who were interviewed indicated that medical attention was required as a result of corporal punishment they had experienced.⁸ A study in Swaziland showed that 28% of the 2 366 children interviewed experienced severe beatings with dangerous objects.⁹ 33% of South African parents reported beating their children with a belt or other object and the most common age for beating a child with an object was four years of age.¹⁰ It would appear from these studies that the more frequent use of corporal punishment is against the youngest and therefore the most physically vulnerable children.

While studies show that corporal punishment is the norm for the majority of children irrespective of their economic or cultural context, several studies indicate that children from poorer households and schools and from rural areas are subjected to more severe and frequent corporal punishment than wealthier urban children.¹¹ Other factors that have been identified as influencing the extent and harshness of punishment are highly stressed parents, depressed parents and families where there is conflict between adults.¹²

In light of the fact that many adults defend their 'right' to smack, beat or whip children, the extent to which it frequently extends beyond "reasonable" or "moderate" chastisement as demonstrated above must be considered. It is essential that domestic

⁸ Youssef, M. S. A. & Kamel, M. I. (1998), "Children experiencing violence II: Prevalence and determinants of corporal punishment in schools", *Child Abuse & Neglect*, vol. 22, no. 10, pp. 975-985 cited in All Africa Special Report, op cit.

⁹ Clacherty, G., Donald, D. & Clacherty, A. (2005), *Children's Experiences of Corporal Punishment in Swaziland*, Pretoria: Save the Children Sweden

¹⁰ Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), *Corporal Punishment of Children, A South African National Survey* Save the Children

¹¹ This is indicated in the research from Egypt, Ethiopia, South Africa and Swaziland cited in the All Africa Special Report, op cit, pp25-37

¹² Maldonado M. undated. *Cultural Issues in the Corporal Punishment of Children*.

<http://www.kaimh.org/corporal.htm>

laws must be extended to reflect the necessity of providing protection to the most vulnerable and marginalised citizens. While the use of any degree of violence is unacceptable to us, it is also unacceptable that protection is not extended to children on the assumption that adults exercise their self control to limit themselves to lower levels of violence. Often, in circumstances where parents resort to corporal punishment, tempers are high and this often results in more severe punishment than the parent initially intended.

The following quotes from children are taken from research reflected in the All Africa Special Report to illustrate their experiences and views and feelings on the issue:¹³

"You can't escape it. From when you are born to when you are grown-up, they beat you, shout at you, insult you, and do what they like to control you. I don't know why it has to be like that." Boy, 16 years Uganda

"We were all sitting with my sisters, brothers and cousins. He asked how am I talking to him and he hit me. He hit me with a pipe that has wires inside. He hit all over the body." Girl KwaZulu-Natal South Africa.

"She locked me into her room and hit me with a stick on my legs. She did not like it that I was playing with water" Girl, 9-12 year age group Swaziland

"I was caned on the buttocks with a thick wooden whip because I stole meat from the pot." Boy, Copperbelt Zambia

"I never wrote my homework. I got whipped on my bum with a hosepipe" Boy, Lusaka Province Zambia

"Teachers beat us badly when we are late, and yet we come from far." Girl, 10 years Uganda

"A teacher yells at me and she calls me an animal. She loudly shouts and say ya hayawan [animal] and then she immediately starts to beat me" Disabled child, 12 years Sudan

"It was a Tuesday evening in 2005. The teacher asked a question; I replied; he asked the class if my answer was correct. Some said "no" and some said "yes" ... He gave me

¹³ All Africa Special Report, op cit, pp38-52

the rubber whip, and asked me to hit those who'd said "no". I hit them, but because we're all classmates, I didn't hit them hard. The teacher took the whip from me and asked me if that's how one hits somebody. Then he hit me and beat me on my back until I was bleeding. My clothes were wet with blood and I was crying ... When I told my mother, she didn't say anything, not even that she would go and see the teacher. I didn't tell my father because I'm frightened of him" Child Togo

From the research and these quotes it is clear that children's rights are routinely violated in the exposure to violence, humiliation and indignity that they experience legally at the hands of adults.

The 2006 *African Declaration on Violence Against Girls* urges member states of the African Union and the African Union itself to take all necessary measures for the effective prohibition of all forms of violence against children, including corporal and other humiliating forms of punishment; to place the issue of violence against children and especially girls on the African Union Summit's agenda as soon as possible; and to establish a Special Envoy on Violence Against Children to serve as a mechanism for preventing reporting and monitoring violence against children in collaboration with the African Committee of Experts on the Rights and Welfare of the Child.¹⁴

3 THE EFFECTS OF CORPORAL AND HUMILIATING PUNISHMENT

According to experts, corporal punishment can have serious psychological effects in that children feel humiliated and degraded and they become angry and resentful towards those who punish them this way. This leads to repressed anger which can be manifested in hatred towards themselves and others.¹⁵

A wealth of research has been conducted into the impact of corporal punishment, these show that corporal punishment may ensure immediate compliance by the child, but fails to teach a child self discipline or about logical consequences. In addition studies show that corporal punishment undermines the child's self confidence and self esteem leaving them feeling helpless and humiliated, and it also undermines trust between the child and the parent.¹⁶ Corporal punishment is ineffective because children are less likely to learn

¹⁴ The Second International Policy Conference on the African Child, Violence Against Girls in Africa, May 11 – 13 2006, Record of the Conference Proceedings. The African Child Policy Forum.

¹⁵ See Save the Children Publication, op cit, p 18

¹⁶ Gershoff E (2002) Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review. Columbia University p542

from this form of punishment and more likely to resist the parent and to develop strategies to avoid getting caught in the future. This is why children often repeatedly receive punishment for the same misbehaviour. It has also been shown that the use of more frequent and severe corporal punishment on children is linked to antisocial, delinquent and criminal behaviour later in life and people who are subjected to corporal punishment are more likely to engage in violence and humiliation against their spouses and children in adulthood.¹⁷

Corporal punishment is linked to severe physical abuse of children - studies with parents who had physically abused their children indicated that two thirds of the abusive incidents started in an attempt to "teach the child a lesson".¹⁸

Children report feelings of humiliation, shame, hurt, rejection, fear, resentment and revenge as a result of these forms of punishment. Research studies with children highlight the following feelings and responses of children to corporal and humiliating punishment.¹⁹

"So when my mom hits me, it feels like she doesn't love me" Girl Limpopo South Africa

"She took out a belt in front of my brother and she started beating me up. She made me go to my friend's house. I was scared and I went there crying. When I got to the gate I wiped my tears and my eyes were still red and I was embarrassed that my friend could see me, that I was beaten at home." Girl Limpopo, South Africa.

"The teacher came to me and he wanted to slap me and he took his rope and hit me with the rope. I felt like taking something and breaking him. I was thinking of killing him." Boy, 9-12 year age group Swaziland

"I felt bad. I wished he wasn't my dad. I felt like killing myself or running away." Girl, Lusaka Province Zambia

¹⁷ Gershoff E (2002) P542

¹⁸ Coontz, P.D., & Martin, J.A. (1998). Understanding Violent Mothers and Fathers: Assessing explanations offered by mothers and fathers of their use of control punishment. In G.T. Hotaling, D. Finkelhor, J.T. Kirkpatrick, & M. A. Straus (Eds), *Family abuse and its consequences: New directions in research* Newbury Park, CA: Sage and

Gil, D.G. (1973). *Violence against children: Physical abuse in the United States*. Cambridge, MA: Harvard University Press

¹⁹ All Africa Special Report, op cit, pp38-52

"I feel like my heart will explode if I start saying how I feel about her. She treats me worse than an animal and there is nothing I can do about it. I feel like running away and becoming a prostitute." Girl, 14 years Uganda

"I feel like revenging, but I do not because these parents are big. I can do nothing" Boy, 12 years Uganda

"If the teacher hits me, everything immediately goes from my head. Even if I had lots of ideas before, the moment he hits me, I lose everything – I can't think" Child Togo

"Teachers beat you when you've done nothing wrong. You get scared, and withdraw into yourself – you don't participate in class any more." Child Togo

Many adults defend the use of corporal punishment by saying that they themselves, as children, were hit and beaten by their parents and teachers and that it did not do them any harm. While it is certainly true that the majority of adults have histories of corporal punishment including severe forms, and that most do continue to live productive and socially engaged lives, it is also true that, we, the adults of the present day are the people inflicting this range of violence on our children and each other. In this way we are responsible for perpetuating violence in our society by sending the message to our children that in order to resolve conflict, one needs to resort to violence.

Thus, disciplining children by using corporal punishment teaches children that it is acceptable to resolve conflict and differences with violence, to express frustration, anger and helplessness through violence and that it is acceptable to harm someone who is smaller and less powerful than yourself. On a continent and indeed in a world where violence and brutality are the daily experience of millions, we must ask if these are the messages that we want to be sending to children as they learn to interact socially.

"Social violence can be viewed as the consequence of abuse experienced in childhood; (it is) the propensity to re-inflict childhood traumas upon others in socially approved violence" Psychologist Lloyd de Mause²⁰

Many people believe that discipline and corporal punishment are one and the same thing and fear that if corporal punishment is prohibited that children will be undisciplined. However, this is not the case disciplining children can be achieved without using physical and humiliating punishment. There are other, more effective positive methods for

²⁰ (1998) *The History of Child Abuse* Journal of Psychohistory 25

developing self discipline in children. Positive discipline is based on the idea that children learn more through co-operation and reward than through conflict and punishment.²¹

4 SUPPORT, INFORMATION AND EDUCATION FOR PARENTS

The primary goal of law reform is to change behaviour and current mindsets that children have to be physically punished in order to be disciplined. It is thus critical that a prohibition in law must be accompanied with a strategy to provide parents and other caregivers with the support and information required in order to equip them with alternative positive disciplinary measures. According to research the strongest factor leading to the use of corporal punishment is social and cultural support for corporal punishment.²² Many adults were hit as children and do not have knowledge of how to discipline children without hitting them. Yet, there are a variety of methods that can be used and parents, teachers and others who care for children must be exposed to these through education and information. This can be addressed to some extent by ensuring the availability of programmes promoting parenting skills and appropriate discipline at home and at schools.

The success of broad-based education is evident in the Swedish experience where, at the time that corporal punishment was prohibited in Sweden, 53% of Swedish citizens supported corporal punishment. By 1994 after intensive public education on the issue only 11% of Swedish people supported the use of corporal punishment.²³

5 SUPPORT FROM THE FAITH-BASED SECTOR

There is a growing movement in the faith-based community that promotes the necessity to prohibit legalised violence against children. This is captured in the following statement which was made by the Archbishop Emeritus Desmond Tutu of South Africa:

²¹ Alexandrecu G, Bhavania YG, Derib A, Habasch R, Horno P, Nilsson M, Noueri R, Pierre-Plateau D, Sequeira L, Soneson U & Stuckenbruck D; 2005: *Ending Physical and Humiliating Punishment of Children Making it Happen, Global submission with recommendations, prevalence and attitudes and good practice examples to the UN Study on Violence Against Children*. International Save the Children Alliance

²² Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), *Corporal Punishment of Children, A South African National Survey* and Thompson Gershoff, E. (2002). *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*

²³ Barn Ombudsmannen *The Swedish Corporal Punishment Ban*, www.bo.se/Adfinity.aspx

"Children can be disciplined without violence that instils fear and misery, and I look forward to church communities working with other organizations to ... make progress towards ending all forms of violence against children. ... If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where home and school are safe places to be and where discipline is taught by example. May God give us grace to love our children as He loves them and may their trust in us lead them to trust in Him."

Many modern theologians criticise the translation and common interpretation of ancient texts such as those contained in the *Old Testament* of the Christian Bible for example, and recognise the necessity of modern, rights-based interpretations of these texts, similar to the reinterpretation of the role and place of women in the family and society. In respect of Christianity, religious scholars indicate that the approach to discipline taught by Jesus in the New Testament is one of guidance and teaching through fairness and gentleness and not retribution and punishment.²⁴ In light of this it is noted that continued attempts to justify corporal punishment of children through biblical "proof texts" is unchristian and in a human rights context, a dangerous abuse of children's rights.

Similarly, in Islam, to take good care of and show compassion towards children is one of the most commendable deeds. The advice of the Prophet is to treat those who are under the age of seven as children (employing tenderness and compassion), treating those from seven to 14 as siblings (with care and concern) and from 14 onwards as close friends (with trust and cooperation). The use of corporal punishment contradicts these notions. The Prophet of Islam said *"Be generous, kind and noble to your children and make their manners good and beautiful."*

During the eighth gathering of *Religions for Peace* in Kyoto, Japan (August 2006), representatives from various religions recognised the inherent dignity of every person, including children.²⁵ The gathering brought together, Buddhist, Christian, Hindu, Jain, Jew, Muslim, Sikh, Shinto, Zoroastrian and Indigenous leaders. They recognized their responsibility and obligation to protect children from violence. The shared principles among these religions, of compassion, justice, love and solidarity, speaks to their commitment to a worldview based on non-violence and for the protection of children against all forms of harm, hurt and punishment.

²⁴ Rev. Vermeulen K. 2007. *Faith Based Response to Children's Bill promotion of Positive Discipline and Ban on Corporal Punishment.*

²⁵ World Conference for Religions and Peace. *Eighth World Assembly of Religions for Peace. Religious Leaders Confront Violence and Advance Shared Security. Kyoto, Japan 2006.*

Civil society organisations in many African countries are already working on this issue and have been doing so for some time. Some of these are represented by the Regional Network on Corporal Punishment, the source of this submission, and include the South African Council of Churches and the Zambia Interfaith Working Group on HIV and AIDS (ZINGO).

Faith-based organisations and religious leaders can find much support for prohibition within both the Convention on the Rights of the Child (ratified by all African countries except Somalia) and the African Charter on the Rights and Welfare of the Child, ratified by 37 African countries). Detailed information about the relevant content of these documents, and the global status of prohibition, can be found in appendix 1.

6 RECOMMENDATIONS

In light of the information and arguments put forward in this submission, we would like to urge the All Africa Conference of Churches to:

1. At its session in December 2008, include in its Conference Resolutions a commitment to addressing the issues of positive parenting and non-violent discipline in congregations across the continent.
2. Commit to preaching sermons on the issue, including highlighting the gentle, kind and respectful tone of the recorded encounters between Jesus and children.
3. Support the establishment of parenting support groups within congregations, and the promotion of appropriate parenting skills, training and capacity-building within Church membership.
4. Provide faith-based sector support for civil society organisations working with parenting and discipline issues in communities.
5. Advocate within countries for a review of laws which legitimise 'reasonable corporal punishment' in any setting.
6. Support our position to fully address general societal violence and ensure that children are raised in homes and communities that instil a strong sense of self-discipline and an abiding respect for the rights and dignity of all.

Appendix 1 - INTERNATIONAL AND REGIONAL RIGHTS STANDARDS

1 International rights framework

The United Nations Convention on the Rights of the Child (the UNCRC) constitutes the most authoritative and comprehensive statement of the fundamental rights of children covering civil and political, social, economic and cultural rights. It is also the most widely ratified human rights document in the world with 191 States having signed and ratified it.²⁶

In particular, article 19(1) which addresses the issue of violence against children, is the most important article which lends itself to an interpretation as prohibiting all forms of corporal punishment of children. It provides that State parties should 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.”

In addressing the issue of violence against children, the Committee on the Rights of the Child (CROC) has indicated that the UNCRC requires a review of legislation to ensure that no level of violence to children is condoned and has emphasized that corporal punishment, however light, in the family, or in schools and other institutions, or in the penal system is incompatible with the UNCRC and should be prohibited.²⁷

The CROC has criticized legislation that, while it protects children against serious physical assaults defined as child abuse or child cruelty, still allows for parents and teachers to use physical forms of punishment, while often only stipulating that such punishment must be reasonable and moderate. The CROC has thus recommended that all forms of corporal punishment, even that which occurs within families and by parents be prohibited.²⁸ The CROC has further stressed that both legislative and educational measures are needed to change attitudes and practice. It has indicated that any prohibition of corporal punishment within the family and in institutions must be followed up with measures to raise awareness on the harmful effects of corporal punishment and

²⁶ The only countries that have not ratified this instrument are the United States of America and Somalia.

²⁷ Hodgkin, R and Newell, P *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2002, p 265. Also see Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.8 and Report on the twenty-eighth session, September/October 2001, CRC/C/111, para. 715.

²⁸ CROC's concluding observations in response to Spain (Spain IRCO, Add.28, paras 10 and 18) and the United Kingdom (United Kingdom IRCO, Add.34, paras 16 and 31).

to promote alternative forms of discipline in families, which is to be administered in a manner consistent with the child's dignity.²⁹

The CROC explains that the purpose of a total prohibition of corporal punishment, including that which is imposed by parents, is educational rather than punitive and has indicated that such law reform tends to lead to less rather than more prosecutions of parents because of the change in attitudes that they promote.³⁰ The CROC has called on many countries in all continents for a clear prohibition of all forms corporal punishment – in the family, in other forms of care, in schools and the penal system – and has proposed that such legal reform be coupled with education campaigns in positive discipline to support parents, teachers and others.³¹

In addition, article 37(a) of the CRC which prohibits torture or other cruel, inhuman or degrading treatment or punishment of a child has also been interpreted to protect children against all forms of corporal punishment.³² This absolute prohibition complements article 19(1) by emphasizing the need for protection of children in all circumstances from these extreme forms of violence.³³

In 2006, the CROC released a General Comment particularly relating to the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.³⁴ This Comment specifically deals with the nature of the State Party's obligations regarding inter alia articles 19 and 37 and guides State Parties in understanding the provisions concerning the protection of children against all forms of violence. It also highlights the obligation of all State Parties to move quickly to prohibit and eliminate all corporal punishment³⁵ and all cruel or degrading forms of punishment of children and outlines the legislative and other awareness-raising and educational measures that States must take. In this regard the Comment particularly emphasizes

²⁹ See CROC's concluding observations in response to Finland (Finland 2RCO, Add.132, paras 39 and 40) and to Latvia (Latvia IRCO, Add.142, paras 27 and 28) as referred to in Hodgkin and Newell, op cit, p 266.

³⁰ Hodgkin and Newell, op cit, p 266.

³¹ Hodgkin and Newell, op cit, p 268.

³² Similar provisions granting protection against torture and other cruel, inhuman or degrading treatment or punishment are found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and also the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³³ UN Human Rights Standards and Mechanisms to Combat Violence Against Children: A Contribution to the UN Secretary General's Study on Violence Against Children, Unicef, Innocenti Research Centre, 2005, p 6 (hereinafter Unicef 2005 report).

³⁴ General Comment No: 8 (2006), Committee on the Rights of the Child, Forty Second Session, Geneva, 15 May -2 June 2006, CRC/C/GC/8 dated 2 March 2007.

³⁵ The Comment defines "corporal" or "physical" punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light." This involves hitting (smacking, slapping, spanking) children with the hand or with an implement such as a whip, belt, shoe, wooden spoon, etc. However, it can also involve kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning or forced ingestion such as washing children's mouths out with soap or forcing them to swallow hot spices.

that "eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties."³⁶ The Committee views corporal punishment as invariably degrading and also recognizes that there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include punishment which belittles, humiliates, denigrates, threatens, scares or ridicules the child.

In addition, the UN Secretary General's Global Study on Violence Against Children report, released in October 2006, provides detailed information on the incidence of the various types of violence against children within the family, schools, alternative care institutions and detention facilities, places where children work and within communities. The study found that shocking levels of violence affect children on all parts of the globe and, in light of this, has noted that a core message of the study is that "no violence against children is justifiable; all violence against children is preventable."³⁷ The study urges States Parties "to prohibit all forms of violence against children, in all settings, including all corporal punishment ...torture and other cruel, inhuman or degrading treatment or punishment ..."³⁸ and calls for law reform to prohibit all violence against children to be achieved by 2009.³⁹

In addition to the UNCRC, the International Covenant on Civil and Political Rights, states within Article 7 that "No one shall be subjected to cruel, inhuman or degrading treatment or punishment." The Human Rights Committee have interpreted Article 7 in General Comment No.20 this includes that the article must be interpreted to include acts that cause mental suffering and "(t)he prohibition must extend to corporal punishment. It is appropriate to emphasise in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions."⁴⁰

2 Regional rights framework

The African Charter on the Rights and Welfare of the Child (The Charter) recognizes the need for African States to take appropriate measures to promote and protect the rights and welfare of the African child. Article 16 of the Charter provides that "States Parties to

³⁶ At para 22, p 6.

³⁷ Secretary General's report of the independent expert for the United Nations Study on Violence Against Children, 61st session, United Nations General Assembly, dated 29 August 2006 (hereinafter Secretary General's report) at para 91, p 24.

³⁸ Secretary General's report, op cit, at para 98, p 25.

³⁹ Secretary General's report, op cit, at para 116, p 32.

⁴⁰ HRI/GEN/1/Rev.4, page 108

the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.”

Similarly Article 11(5) of the Charter provides that Parties to the Charter should “take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child”.

Article 20 requires that parents or caregivers should ensure that “domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child”.

In terms of Article 21(1) State Parties should “take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and those customs and practices prejudicial to the health or life of the child”.

It should be highlighted that Article 1 of the Charter provides that “any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations of the Charter shall to the extent of that inconsistency be discouraged”.

Article 17, which is in relation to children in conflict with the law, states that, “no child who is detained or imprisoned or deprived of his or her liberty should be subjected to torture, inhuman or degrading treatment or punishment”.

Clearly all these provisions are intended to ensure the right to respect for the dignity and physical integrity of the African child. Whilst it is noted that the African Committee of Experts is yet to make a pronouncement on the interpretation of these provisions of Charter, it is however our submission that the Charter could be interpreted along the same lines as the Convention on the Rights of the Child. Further, article 1(2) of the Charter stipulates that nothing in the Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in any other international convention. By implication, provisions in international conventions that offer greater protection to children or are more favourable in realizing the rights of the

child will thus take precedence over any less protective interpretation of the provisions in the Charter.

Furthermore, various articles contained in the African Charter on Human and People's Rights could be interpreted to protect children against all forms of corporal and other humiliating forms of punishment.⁴¹

Article 5, for instance, states that "every individual shall have the right to the respect of the dignity inherent in human beings and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".

Article 18(3) provides that "the State shall ensure the protection of the rights of the women and the child in accordance with international declarations and conventions".

According to Article 19 of the African Charter on Human and Peoples Rights, "All people shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another".

The provisions of these two regional instruments all lend credence to the argument that no person or no child should be subjected to corporal punishment as it is a practice which is inconsistent with principles of human rights.

3 Global position with respect to prohibition

It should be noted that various strategies and steps were used to bring about this change in these countries.⁴² Some initiated change by firstly abolishing corporal punishment in the public sphere of a child's life, such as in the penal system, residential care facilities and in schools. With regard to corporal punishment in the home, a first step has often included removing the defence of reasonable chastisement, which was available to the parents and this was then followed by a more explicit prohibition being

⁴¹ These *inter alia* include article 5 (every individual shall have the right to respect of the dignity inherent in a human being andAll forms of exploitation and degradation of man particularly ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited); article 18(3) – The State shall ensure ...the protection of the rights of women and the child as stipulated in international declarations and conventions; article 19 – All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

⁴² Rowan Boyson (ed Lucy Thorpe) *Equal protection for children- an overview of the experience of countries that accord children full legal protection from physical punishment* NSPCC. Report accessed from www.endcorporalpunishment.org Also see *States with full abolition* accessed from www.endcorporalpunishment.org .

included in the civil legislation.⁴³ However, it is reported that merely removing the defence of reasonable chastisement without also simultaneously including an explicit prohibition on corporal punishment in the law, lead to much confusion amongst professionals and the public and parents still believed that physical punishment was legal.⁴⁴ Therefore, in order to bring about real and constructive change, it would be necessary to have an explicit provision stating that corporal punishment in the home is not allowed.

In other countries such as Italy and Israel, court decisions have pronounced that corporal punishment or parental violence against children can no longer be tolerated in society as it infringes upon the human rights of children.

⁴³ For example, these countries include Sweden, Austria, Finland, Norway.

⁴⁴ Rowan Boyson report, op cit, p 23.