

Text of the Oral Presentation to the African Committee of Experts on the Rights and Welfare of the
Child

ENDING CORPORAL AND OTHER FORMS OF HUMILIATING PUNISHMENT OF CHILDREN

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Text prepared by S Waterhouse, D Kassan and E Ruhukwa

Presented by E Ruhukwa

Introduction

We thank the committee for the opportunity to address you on this issue.

While this submission has been the initiative of the Southern African Network to end Corporal and Humiliating Punishment of Children and the African Child Policy Forum, our submission is supported by a wide range of organisations from across the continent. These are listed at the end of the submission.

Our organisations are concerned with the wide practice of corporal punishment of children in our countries and believe that the support of this committee on the issue is critical to our efforts to protect African children from all forms of discrimination and violence.

This presentation will address a number of themes in relation to this, these are:

- Relevant provisions in international and regional instruments
- Global developments on the issue
- Status of corporal punishment in Africa
- Violence against children in Africa
- Social and religious concerns

Provisions in international and regional instruments

Article 21(1) of the African Charter on the Rights and Welfare of the Child requires that State parties “*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*” Corporal punishment is, as will be demonstrated in this presentation, a social practice, which we believe, negatively affects the dignity, growth and development as well as the health and survival of many children on this continent.

Article 11(5) of the Charter provides that parties 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*” This is echoed in Article 20 of the Charter. It is our submission that the use of any form of corporal punishment is a violation of children’s inherent dignity and their humanity, this has been echoed in various documents of the UN Committee on the Rights of the Child as will be discussed.

Most would agree that corporal punishment or any form of violence against an adult, is considered a violation of the dignity and humanity of that adult, yet children who are physically, emotionally and socially more vulnerable than adults, are viewed as being less worthy of protection from these violations and are denied the right to equal protection of the law.

Furthermore article 16 of the Charter provides that State parties 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."

The protection of children from cruel, inhuman or degrading treatment is found in a number of other instruments, including: the Universal Declaration of Human Rights; Article 7 of the International Covenant on Civil and Political Rights which as been interpreted by the human rights committee in General Comment No. 20 to include a prohibition of corporal punishment and the Convention Against Torture and Other Cruel, inhuman or Degrading Treatment of Punishment, which has also been interpreted by the Committee to include a prohibition on corporal punishment.

Article 19 of the UN Convention on the Rights of the Child goes slightly further than the Charter to address the issue by including protection against all forms of physical and mental violence: State parties are required to 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." Article 19(2) goes further to require the "establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention ..."*

In their concluding observations to State reports, the UN Committee on the Rights of the Child has called on many countries in all continents to institute a clear prohibition of all forms of corporal punishment, in the family, in other care settings, in schools and within penal systems.

The CROC released General Comment 8 in 2006, this relates specifically to the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment in all settings. It highlights the obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment stating. “Eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of State parties.”

The CROC further recognise that corporal punishment is invariably degrading as are other forms of punishment which belittle, humiliate, denigrate, threaten, scare or ridicule children.

The CROC have emphasised that prohibition of corporal punishment must be coupled with educational measures to change attitudes and practice such as measures to raise awareness on the harmful effects of corporal punishment and to promote alternative forms of discipline in families which can be administered in a manner consistent with the dignity of the child. Furthermore they state that the purpose of prohibition is educational rather than punitive. Legal prohibition sends a clear message that no form of violence is tolerable and provides the opportunity to change this behaviour.

Global and Continental Developments

UN Global Study on Violence Against Children which was released in October 2006, the study found shocking levels of violence affecting children on all parts of the globe in their families, at schools, in alternative care institutions, detention facilities, at places where children work and in communities. As a result of this, the study emphasises that “No violence against children is justifiable and all violence against children is preventable.” The study thus urges State 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.” The study calls on State parties to prohibit all violence against children by 2009.

Similarly, in 2006 the Second International Policy Conference on the African Child: Violence Against Girls in Africa released the *African Declaration on Violence against Girls*. This declaration, *inter alia*, 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.

No African state has prohibited corporal punishment by parents, 23 States have prohibited in schools, it is prohibited as a penal sentence in 36 States and as a disciplinary measure in penal institutions in 22 States, only 3 African States have prohibited corporal punishment in alternative care settings.

Based on available population estimates, this means that 52% of Africa’s Children are not legally protected from corporal punishment in schools and of course no African Children are protected in their home environment.

There is growing Global progress towards the prohibition of corporal punishment, to date a total of 23 countries have legally prohibited all forms of corporal punishment in all settings, including that imposed by parents. This includes a number of European and Eastern European countries such as Germany, the Netherlands, Romania and Ukraine as well as Latin American countries such as, Venezuela, Costa Rica and Uruguay.

Globally (including the African Continent), 103 States have prohibited the use of corporal punishment in schools, 147 as a penal sentence, 106 States have prohibited

in penal institutions, and 35 States have prohibited its use in alternative care settings.

Global progress in prohibition in all settings has accelerated over the past ten years with a number of countries around the world currently in law reform processes to address this issue.

Violence against children in Africa

Studies conducted in 16 African countries create a very concerning picture of what children experience in the name of punishment, correction and discipline on a daily basis in their homes, at school and in penal institutions.

These studies show that Children are slapped, smacked, kicked, beaten with fists, sjambocks, whips, sticks, hosepipes and belts. In addition children are subjected to many other forms of physical and degrading punishment such as being burnt, tied up, forced to kneel on uneven surfaces and forced to stand in the sun for extended periods of time. In a significant number of cases injury is caused to these children including injury that requires hospitalisation of the child.

Children provide the following examples of their experiences of corporal punishment:

"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

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

"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

While corporal punishment is common amongst people from all social and economic backgrounds, studies clearly indicate that children from poorer households and schools and children from rural areas are subjected to more severe and more frequent corporal punishment than wealthier, urban children. Thus the most vulnerable and marginalised children are those who are affected the worst.

We believe that any use of violence against children, no matter the extent of the violence is unacceptable and unnecessary. However we are also concerned that the right of parents to smack, beat or whip children is defended on the basis of an assumption that adults are able to control themselves and use only moderate and reasonable forms of physical punishment. This is clearly not the case, scores of children are exposed to extreme levels of violence, humiliation and indignity daily.

As a result of the fact that the majority of domestic laws attempt to categorise acceptable and unacceptable levels of violence against children, many adults beat children with impunity. It is thus essential that all levels of violence against children be prohibited.

Social and Cultural Issues

A wealth of research has been conducted into the impact of corporal punishment, these show that at best corporal punishment may ensure the immediate compliance of the child but that it fails to teach the child self discipline and about consequences.

Children report feelings of humiliation, shame, hurt, rejection, fear, resentment and revenge as a result of corporal and humiliating punishment. This is illustrated in the following quotes:

"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

"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

"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

These quotes provide a disturbing illustration of the impact of corporal punishment. It is clear that corporal and humiliating punishment teaches children that it is acceptable to resolve conflict and differences with violence; to express frustration, anger and helplessness through violence. On a Continent and in a world in which violence and brutality are the daily experience of millions, we must challenge ourselves to find new ways of teaching children.

Corporal punishment undermines children's self confidence, it undermines the relationship of trust between adult and child, the use of more frequent and severe corporal punishment has been shown to be linked to antisocial, delinquent and

criminal behaviour later in life. People who have experienced corporal punishment are more likely to use violence and humiliation against their spouses and children in their adulthood.

But, many people raise the concern that if corporal punishment is prohibited there will be no means of disciplining children. We argue that any poor discipline of children in our society is not the result of too few beatings, but rather a reflection on the state of our societies in general and in many cases it is a reflection of these children receiving too many beatings. Children can be disciplined using more effective and positive methods, that are based on the principle that children learn by example, structure and reward rather than through fear and punishment.

The majority of today's adults were hit or beaten as children and have not had the opportunity to learn other ways of disciplining children, for this reason it is necessary for us as the adults of today to learn new ways of engaging with and disciplining children. It is thus critical that law reform be accompanied by a strategy to provide adults with the support and information they require to provide alternative positive disciplinary measures to children.

Faith Based Support

We recognise that many concerns are raised against prohibiting corporal punishment on the basis of religious belief, many religious groups not only support the use of corporal punishment but actively advocate that this must be used. For example it is noted that among some 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.

However, there is a growing movement in the faith-based community that promotes the necessity to prohibit legalised violence against children. 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. 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 Prophet of Islam said *“Be generous, kind and noble to your children and make their manners good and beautiful.”*

In light of these developments, 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. 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.

Recommendations

In light of the information and arguments put forward in this submission, we would like to urge the African Committee of Experts on the Rights and Welfare of the Child to:

1. To provide leadership on this issue on the Continent by, adopting at this session a written statement, urging States in Africa to prohibit corporal and other forms of humiliating punishment of children in all settings and to urge States to promote measures to implement and promote this prohibition.
2. Ensure that member States provide information on their progress in eradicating the use of corporal and other forms of humiliating punishment of children in all settings in their periodic reports to the Committee.
3. In the Committee's recommendations to individual member States, draw attention to measures that member States need to undertake to fulfil their obligations under international and African human rights instruments.
4. We urge the committee to 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.
5. We urge members of this Committee to promote a ban on corporal punishment of children in their individual interactions with government officials and other relevant stakeholders.
6. Support the recommendation in the *Africa Declaration on Violence Against Girls* for the African Union to establish a Special Envoy on Violence against Children to support the efforts of the Committee towards preventing, reporting and monitoring violence against children on the Continent.