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The Global Progress towards the human rights imperative to eliminate and prohibit all forms of Corporal Punishment

“The UN Study on Violence against Children should mark a turning point - an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children’s uniqueness - their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.”

Introduction, Report of the UN Secretary-General’s Study, 2006

Why is challenging all corporal punishment so important?

Why is this issue important? I often meet people who are puzzled or scornful that anyone could see ending corporal punishment as a priority, given the extreme breaches of children’s rights and the extreme forms of violence that children in so many states are still facing. But what we are challenging is not just one particular form of violence, but the whole idea that some arbitrary degree of violence against children should, uniquely, be legal and socially approved. Punitive violence against children is administered casually, is a routine part of a majority of children’s lives, is part of the scenery.

We need to think of challenging corporal punishment not just as a child protection issue, although it is sadly true that corporal punishment kills and maims countless thousands of children. For much too long, people, including many of those involved in child protection, have tried to keep child cruelty or child “abuse” and corporal punishment in two separate boxes. But more or less all physical “abuse” of children is administered in a context of punishment or control – is corporal punishment. Maybe a tiny minority of perpetrators are psychotic and don’t have any punitive motive for assaulting their children. But more or less all of the “abuse” that globally kills thousands of children – mostly very young – and maims and injures countless thousands more is done in the name of punishment – is corporal punishment.

Also, the idea that breaching a child’s human dignity and physical integrity is acceptable, normal, or even as some still suggest “in their best interests”, perpetuates their status as objects or property, and makes every other sort of extreme abuse and exploitation, including sexual exploitation and trafficking, more likely and easier.

Ending corporal punishment is an essential strategy for ending all forms of violence against children.

But beyond the child protection context, the acceptance and legality of this daily punitive violence is symbolic of children’s low status in our societies, as possessions. Just as with women: challenging routine domestic violence has been a fundamental part of women’s campaigns for equality. So it is with children. When we challenge all corporal punishment, however light, we are pursuing children’s equal right to respect for their human dignity and physical integrity. This is as fundamental as anything can be to improving children’s status and gaining recognition and respect for children as rights holders alongside the rest of us.

There is no other children’s rights issue so symbolic of children’s low status as less than people. The strength of the resistance to challenging hitting and humiliating children demonstrates how much it is a part of the traditional culture of almost every society. What we are about in this campaign is cultural change - a real shift in how children are regarded and respected.

So if we win this issue, if we persuade governments and societies and individual parents and other adults of children's equal right to respect, their right to equal protection under the law, it is a huge breakthrough towards the overall goal of achieving respect for children as rights holders, achieving recognition and ultimate realization of their rights.

“But children are different”

When one uses parallels with the campaign against violence against women, people respond: “But children are different”. Yes, of course they are different. The babies and small children who research suggests are the victims of most corporal punishment in the home are different in that they are very small and very fragile. Children's vulnerability, their developmental status, their dependence on adults and the huge difficulties they face in seeking protection for themselves: all these differences suggest that they should have more, not less protection from being hit and hurt.

While there is still far too much violence against women, no country now defends “reasonable” violence, or “disciplinary” violence against women. Societies do move on. But regrettably, in this case, children in most states are still waiting for the full protection of their human dignity and physical integrity which we as adults take for granted. It should be shaming to all of us that children are the ones singled out in our laws for *less* protection from assaults on their fragile bodies, minds and dignity.

Why is this issue so difficult?

This should be a very simple issue – hitting people is wrong and children are people too. But in fact it is hugely difficult and controversial still in many states in all regions. The difficulty comes from the personal dimension. When we are campaigning against the more extreme forms of violence against children, sexual exploitation, trafficking, female genital mutilation and so on – we perceive the perpetrators as quite different, other people, not like us. But when it comes to corporal punishment, most people in my country, the UK, and yours, were hit as children by their parents. Most parents have hit their own growing children. None of us likes to think badly of our parents, or of our own parenting. This makes it very difficult for many people, including politicians, and even those working in child protection, to think humanely or logically about the issue, to see it clearly now as an issue of equality and human rights.

If people found it easy, we would long ago have accepted that children have exactly the same right as the rest of us to be protected by the law from being hit; in fact we would probably think that children, starting off very small and totally dependent, have a right to more protection than us larger people.

Whatever audience one is addressing on this issue, one has to remember that the first response from individuals is likely to be at a personal, not a professional, level. It often takes time to get through the personal dimension, and for some people it is indeed too painful and difficult. I have often found it hard to convince people who have hit their own children that they can move on and join the campaign to prohibit and eliminate it. It is, surely, entirely understandable that parents have accepted and followed traditional pressures to use corporal punishment – but understanding it does not make it right.

Where did corporal punishment come from?

I suspect that corporal punishment in one form or another, has always existed in human societies, as it exists in animal societies. There is some attractive anthropological research suggesting that in original small-scale hunter-gatherer societies (which barely exist now) and in societies where child-rearing was widely shared, there was little or no use of pain as a form of discipline.

What is certainly true is that England, in its colonial past, together with other colonial powers, had a lot to do with spreading and institutionalizing corporal punishment, in the context of slavery and military occupation, in the development of school and penal systems, and through some missionary teaching. The English common law concept of “reasonable chastisement” has been adopted and reflected in the legal frameworks of at least 70 countries worldwide. I get depressed when people say to me “But corporal punishment is part of our culture”, as if it wasn't a part of my culture and the culture of almost every state worldwide. I get even more depressed if they suggest it is a positive or necessary part of “their” culture.

Research into the impact of corporal punishment

There is a great deal of research, of varying quality, much of it from the US and the UK, into the harmful potential effects of corporal punishment – a significant factor in the development of violent attitudes and actions in childhood and adult life, its links with low self-esteem, depression, delinquency and all the things we do not want for our children. I am not sure how valuable this research is, because it misses the point and is in a sense disrespectful to children. Women would find it surely insulting if we looked for evidence of the ill-effects of male violence to justify prohibiting it: there is a human rights imperative to prohibit and eliminate all such violence.

Development of a human rights consensus against corporal punishment

Now at last there is rapidly accelerating progress to challenge and end adults' punitive violence against children. The major context for progress over the last 20 years has been the almost universal acceptance by states of the Convention on the Rights of the Child (CRC). The particular task of the Convention is to confirm that children are holders of human rights alongside adults, including the right to equal protection of their human dignity and physical integrity.

The Committee on the Rights of the Child, the monitoring body for the CRC, has paid particular attention to violence against children since it started to examine reports from States in 1993. It systematically recommends prohibition of corporal punishment of children in all settings, including the home and family, when it examines reports from States; it has recommended it twice to India – in 2000 and again in 2004. Its concluding observations in 2004 expressed concern that corporal punishment is not prohibited in all schools, in the family, nor in other institutions for children, and remains acceptable in society: “The Committee strongly recommends that the State party prohibit corporal punishment in the family, in schools and other institutions and undertake education campaigns to educate families, teachers and other professionals working with and/or for children on alternative ways of disciplining children”).¹

In 2006, the Committee issued its first General Comment on violence – on the right of the child to protection from corporal punishment.² The Convention is the first international human rights instrument expressly to require the protection of children from “all forms” of physical or mental violence, in article 19. As the Committee writes in its General Comment: “There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

In its General Comment, the Committee provides a broad definition of corporal, or physical, punishment - “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light...”. And the Committee emphasises that while corporal punishment is invariably degrading, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention - punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.³

The Committee highlights that rejecting violent and humiliating punishment does not mean rejecting discipline – which is about leading children to good behaviour. Hitting children is an obvious lesson in bad behaviour. And prohibiting violent punishment does not limit the protective use of reasonable force: with babies and young children, parents use protective physical actions the whole time – but these are quite distinct from deliberately hitting and hurting children to punish them.

In addition to the Committee on the Rights of the Child, the other relevant UN human rights Treaty Bodies – the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee against Torture and the Committee to Eliminate Discrimination against Women have all condemned corporal punishment and recommended prohibition. Also regional human rights mechanisms have done so, including the European Court of Human Rights, the Inter-American Commission and most recently the African Committee of Experts on the Rights and Welfare of the Child. There have also been judgments from high-level domestic courts – constitutional courts and supreme courts in many states in all regions, some condemning corporal punishment in penal systems and schools, others relating to corporal punishment in the home as well.⁴ In India, there was the

celebrated New Delhi High Court judgment against school corporal punishment in 2000, in a case brought on behalf of the Parents' Forum for Meaningful Education, which found school corporal punishment to be unconstitutional and in conflict with India's obligations under the CRC.⁵

UN Study on violence against children

The most recent context for global progress has been the UN Secretary-General's Study on Violence against Children, which reported to the General Assembly in 2006. The Study arose from the work of the Committee on the Rights of the Child: in 2001, the Committee proposed that the UN Secretary General should be asked, through the General Assembly, to carry out a comprehensive, global study (following on from the previous global study that had looked at the particular impact of armed conflict on children). In 2003, Professor Paulo Sérgio Pinheiro of Brazil was asked by Kofi Annan to lead the Study.⁶

The key message of the human rights-based Study report is that no violence against children is justifiable; all violence is preventable. The Study report, presented to the General Assembly in 2006, recommended that all violence against children, including all corporal punishment in all settings, should be abolished, and it set the ambitious target of the end of 2009.

The Study process, with its nine large-scale regional consultations, all with significant involvement of children and young people, helped to give the issue of corporal punishment more visibility. This is also part of the overall context for progress. Until the extent of corporal punishment does become visible, there is little hope of progress, but as it becomes more visible, particularly through interview research with children and parents, children may feel empowered to speak out more about their experiences in their homes and schools. Children tell us how much this "routine" violence, and adults' acceptance of it, hurts them, not just physically – it hurts them "inside".⁷ We need to support children in speaking out – the National Commission's public hearing in Tamil Nadu in 2008 was an important step, revealing some horrific cases.

Global progress towards prohibiting all corporal punishment

So – where have we got to globally? This is a summary of the progress:

- 23 states – 12 per cent of UN member states - have prohibited all corporal punishment in all settings, including the home; the most recent was Costa Rica, in June 2008. Supreme Courts in two additional states – Italy and Nepal – have ruled that corporal punishment in childrearing is unlawful.
- At least 26 more states are committed to full prohibition and/or are actively debating prohibitionist bills in parliament. If these reforms are achieved, children in more than a quarter of UN member-states will have full legal protection.
- New Zealand became the first English-speaking state to enact full prohibition in June 2007 (significant because, as noted above, English law, allowing "reasonable" punishment of children, exists in about 70 states worldwide).
- The first Latin American state to achieve prohibition was Uruguay, in November 2007, followed within weeks by Venezuela, and now by Costa Rica.
- The Council of Europe is the first inter-governmental body to launch a campaign for universal prohibition across its 47 member states; 18 have already achieved full prohibition (plus Italy by Supreme Court decision) and another nine are publicly committed to doing so soon.⁸

What are the steps to eliminate corporal punishment?

It is the child's right to be protected from all corporal punishment, wherever they are and whoever the perpetrator. Eliminating corporal punishment requires both clear and explicit law reform and sustained public and parent education – about children's rights and the law, awareness-raising of the dangers of corporal punishment and promotion of positive, non-violent relationships with children.

Law reform requires the removal of any existing authorisations of corporal punishment or defences of it which exist in any laws, or in common (case) law. Where, as in England and India, there is a long-standing common law right to use "reasonable" corporal punishment, this must be explicitly removed.

If all authorisations and defences are removed, then the criminal law on assault should protect children as it protects adults from assaults in all settings of their lives, whether or not the assault is disguised as discipline. Children need this “portable” protection from violence in all settings and by any perpetrators. Because the purpose is to deliver a clear message that it is as unlawful and unacceptable to hit a child as to hit anyone else, it is useful for the various sectoral laws – relating to schools, other institutions, child labour situations, penal systems – to also include explicit prohibition of corporal punishment.

Of course law reform on its own is not enough. But law reform is necessary. While the law says it is OK to hit children, public education to try and change prevailing attitudes will have little impact.

We have to emphasise that the first purpose of what we are doing is to require states to recognise and realise children’s rights, by quickly developing a clear and adequate framework or foundation of legislation in which corporal punishment and other forms of cruel or degrading punishment are clearly prohibited. The first purpose of any good law must be preventing crime, in this case preventing assaults on and humiliation of children; the criminal law also exists to punish those who commit crimes – but that is not its first purpose. From the child victim’s point of view, it is a bit late once they have suffered the assault.

The laws that prohibit all corporal punishment, reflecting children’s right to equal protection, must be taken seriously, but when parents are the perpetrators, prosecution and other formal interventions are very seldom going to be in the child’s best interests. Prosecuting parents, and sending them to prison or fining them, is very seldom in their children’s interests, whatever the crime. The Committee on the Rights of the Child provides detailed advice on this in its General Comment No. 8, suggesting that prosecution and formal interventions should only occur when judged necessary to protect a child from significant harm and to be in the best interests of the child; this could be reflected in the legislation, to re-emphasise its primary aim. Parents are not going to be charged or prosecuted and taken to court for minor assaults, any more than adults are for minor assaults on other adults; there is also the legal principle of *de minimis* – that the law does not concern itself with trivial things. There will need to be very clear guidance for all those working with and for families and in child protection, including the police and courts, to ensure the law is implemented in the best interests of the child victims.

Nevertheless, fulfilling children’s human rights requires that assaults on children should be criminal offences just as assaults on adults are.

When it comes to implementing prohibition in the schools or other institutional settings, it is very important that teachers should know that assaulting children is a criminal offence, and that they risk not only dismissal but also prosecution if they continue to use corporal punishment. The current provision in the Right to Free Education Bill, recently introduced to Parliament, is in my view too weak in that it suggests that contraventions of the ban on “physical punishment and mental harassment” will be dealt with by disciplinary action under “service rules”.⁹ Of course, it will be necessary to have a process for dealing with allegations of corporal punishment, and the threat of such disciplinary action, of possibly losing their job, may be enough to deter teachers. But equal protection demands that the criminal law should also be available.

Public education must accompany law reform; the process of law reform in itself should be educational if properly disseminated. We must not put governments off this long-overdue reform for children by suggesting that a new and separate and very expensive educational programme is required. Because traditional attitudes to children run so deep, educational efforts will need to be sustained over a very long period. We should encourage government to see that the key messages – and they are quite simple messages – should be built into all the state’s contacts with future parents, new parents and existing parents: at birth registration for example, through all points of contact with the health service for families, on entry to pre-school and school and in the school curriculum. There is no shortage of materials and programmes that can be used and adapted.

People often ask, why not start with public education, and once public attitudes have changed, then introduce law reform with public consent. But this is children’s right – now. The issue has become globally visible. The persisting legality and social acceptance of corporal punishment is clearly perceived as a human rights violation. Why should children wait any longer? As Paulo Pinheiro said when he gave his progress report to the UN General Assembly, a year after presenting the UN Study

report: “Children are sick of being called ‘the future’. They want to enjoy their childhoods, free of violence, now”.

Nobody would argue that we should wait to achieve full employment and universal anger-management courses for men before we move to prohibit domestic violence against women. So why should children wait?

Law reform to prohibit corporal punishment in many states has proceeded sequentially – first banning it in penal systems, then in schools and other institutions, then in foster-care, and finally in the home. But for children, of course there is no logic in this. It is in their homes and families that children are hit the most. It is children’s right to be protection from all forms of violence, including all corporal punishment, wherever they are.

If you campaign for less than complete prohibition in all settings including the home, you lose the arguments of principle and logic, your case is weakened, and children have to wait even longer. This is not an issue where compromise is useful, or acceptable.

Those developing strategies for achieving law reform need to consider whether to engage in large-scale public campaigns, provoking large-scale public and media debates, or whether it is better to focus the campaign on Government and Parliament to try to achieve the law reform relatively quietly – and then use the law as the foundation for public education. There is probably no choice... the issue quickly becomes a public one. But it has to be recognised that the issue is not a popular one with Governments; it does not win votes and of course children have no vote.

It is important to aim to build a broad alliance for reform, bringing in professional groups including paediatricians, doctors and psychologists, teachers, social workers, parent groups, human rights institutions and organisations, organisations working against violence against women, faith groups and so on. And of course it is important to engage with children and child-led organisations who want to work on this issue. It is an adult responsibility to eliminate adult violence against children, but children have a right to express their views and have them taken seriously. And children can be the most powerful advocates for change.

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¹ Committee on the Rights of the Child, concluding observations on India’s initial and first periodic reports under the CRC: CRC/C/15/Add.115, 23 February 2000, paras. 38 and 45; CRC/C/15/Add.228, 26 February 2004, paras. 44 and 45; all Committee documents available at <http://www2.ohchr.org/english/bodies/crc/index.htm>

² Committee on the Rights of the Child, General Comment No. 8, 2006, “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”; [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.GC.8.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.GC.8.En?OpenDocument)

³ See note ii, para. 11

⁴ See www.endcorporalpunishment.org for details of human rights recommendations and relevant judgments of high-level courts.

⁵ Parents’ Forum for Meaningful Education v Union of India and Department of Education, High Court of Delhi, December 2000; for text see www.endcorporalpunishment.org

⁶ *Report of the independent expert for the United Nations study on violence against children*, A/61/299, available at <http://www.violencestudy.org/IMG/pdf/English.pdf>

⁷ The title of an innovative research report, interviewing young children about being hit by their parents in the UK, was, *It hurts you inside – children talking about smacking*, Carolyne Willow and Tina Hyder, National Children’s Bureau and Save the Children UK, London, 1998

⁸ See www.endcorporalpunishment.org, “Countdown to prohibition” for updated details of global progress

⁹ Clause 17, The Right of Children to Free and Compulsory Education Bill 2008, introduced to Rajya Sabha, Bill No. LXV, 2008