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*Human Rights and Corporal
Punishment of Children*

CORPORAL PUNISHMENT AT HOME: AN ISSUE FOR CHILDREN'S RIGHTS

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If an angry man comes into his home and takes the back of his hand to his partner, most societies call it assault. If he takes the palm of that hand to their child, many call it discipline. A court of law may sentence that man for assaulting his wife but dismiss a case against him for doing the same thing to his child.

Children have the same basic human right as adults to be protected from any form of violence yet the laws of most countries extend far greater protection against being hit and humiliated to adults than to children.

Smacking, spanking, beating and other physical punishments breach rights to respect for human dignity and physical integrity. Furthermore the special defences in state laws that protect parents, teachers and carers who do violence to children in the name of discipline, breach the right to equal protection under the law. Corporal punishment in the home is therefore certainly an issue for children's rights but must not be understood as concerning special rights for children alone. What is at issue is children's human right to the same legal protection as all the rest of us.

A historical perspective on the continued legitimacy of violence to children

Legal concepts such as "reasonable chastisement" and "lawful correction" which protect the "punishment rights" of parents and teachers are rooted in the historical perception of children as the property of their fathers. Two centuries ago similarly traditional attitudes to slaves, servants and women were reflected in the "rights" of their masters and husbands to beat and humiliate them. A fundamental part of women's struggle for equal status involves challenging legal and social acceptance of violence towards them, especially their daily experience of routine violence at home. Although equal gender status has not yet been achieved everywhere, the rightness of its cause, is widely accepted. Now it is children's turn to overcome struggle their current special status as less than people, which is symbolised by the assumption that adults can have a "right", even a duty, to hit them.

Children's ongoing development and small size makes them particularly vulnerable to physical and psychological injury so it is surprising that they should be the last to acquire legal protection from assaults on bodies, minds and dignity. The painfully personal nature of the issue may explain, though not excuse, their long wait. Most adults were hit when they were children. Of those who become parents, only a few are determined not to treat their children as they themselves were treated; most take it for granted that they will do as their parents did because identification, the generally accepted basis of family bonds and therefore of all social learning, requires them to believe that their parents were good people and that what they did as parents was right. So powerful is the need to protect this belief that people who were physically punished as children, even physically abused, often blame themselves for misbehaviour or inherent wickedness that "deserved" the treatment meted out to them. As they grow up such young people often express gratitude to their parents for their "strictness" rather than blaming them for cruelty. By the time they become parents they are likely to have incorporated the rightness of such punishment into their self-images and belief systems and to pass corporal punishment down another generation, cushioned from the real impact and implications of hitting their children by corporal punishment's special vocabulary: "a good

(never a bad) spanking”; “a loving (never an angry) smack” ; “six of the best” (never the worst), and protecting themselves with the mantra “it didn’t do me any harm”.

The extent and severity of Corporal Punishment of children worldwide

Incidence: In most States worldwide, most children - even babies — are subjected to corporal punishment by parents and other carers in their homes. In many countries outside Europe, including the United States and Australia, teachers are still authorised to beat school pupils (not always excluding those with physical or mental disabilities) with canes, paddles or straps. In at least 50 countries, whipping or flogging of juveniles is still used as a sentence of the courts and as a punishment in penal institutions.

Mondial statistics for the incidence of corporal punishment as a whole are patchy and in many parts of the world figures for corporal punishment within families are non-existent because it is near-universal and unnoticed. In Saint Lucia in 2000, for example, plans for a survey foundered on pilot responses such as this, by a mother of eight: “ How can I answer your question? Can you tell me how many times you have swatted flies today?”

Barbados: 70 per cent of parents “generally approved” of corporal punishment and of these 76 per cent endorsed beating children with belts or straps.

Chile: a 1995 survey found 80 per cent of state school parents and 57 per cent of private school parents used implements on their children.

Egypt: A large-scale 1996 survey found that over one third of all children were disciplined by beating with straps or sticks; a quarter of these children reported that this “discipline” had led to injuries.

Korea: a survey by the Child Protection Association found that 97 per cent of children had been physically punished, many very severely.

Kuwait: a 1996 survey of parents’ attitudes found that 54% agreed with severe beating in cases of gross misbehaviour. 9 per cent of parents agreed with burning as a form of punishment.

Romania: a 1992 survey found that 84 per cent of parents regarded spanking as a “normal” method of childrearing; 96 per cent did not consider it humiliating.

Detailed studies have been carried out in the UK and USA where results produced in the last five years consistently suggest that over 90% of all small children are hit by parents.¹⁻⁵ These studies, all based on interviews with parents and therefore unlikely to exaggerate the incidence, found that as many as three quarters of babies are smacked or spanked before their first birthdays and that almost every child is hit between the ages of one year and four years. Peak frequency is thought to be between two and three years though there is better data for four-year olds, at around 97%. That percentage drops gradually with age so that by eleven years only about half of most samples of children are physically punished. Reliable recent data for UK adolescents are lacking but data from two American studies using large, nationally representative samples, showed that 40% of thirteen year olds² and more than 25% of fourteen year olds⁶ were regularly hit by parents.

Frequency: Many children are hit often. Frequency for children in two-parent families has often been underestimated because data have been collected from only one parent. Recent UK research⁷ collected data separately from children’s mothers and fathers and showed that the physical punishments two parents hand out are additive and closely correlated. The child whose mother hits her once a week is likely also to be hit weekly by her father.

“From the child’s perspective it is the *combination* of maternal and paternal punitive actions that is important.... Focus on only one parent’s actions will often lead to a poor estimation of the extent to which children in two-parent families experience physical violence. In particular it will lead to underestimation when an individual parent is identified as a frequent, severe or abusive punisher, for the child is in fact likely also to be experiencing high levels of punishment from the other parent.”⁷

Severity: The severity of corporal punishment has diminished all over the world since the end of the nineteenth century, but not as far as many people believe. Being hit by parents is not a trivial matter.

Corporal punishment is generally defined as “ the use of physical force with the intention of causing a child to experience pain, but not injury, for the purpose of correction or control of the child’s behaviour”¹. So corporal punishment is spanking or smacking but not only spanking or smacking. And despite protestations to the contrary (“it doesn’t really hurt...” “it’s just a sting...”) “loving taps” and “little smacks”, as well as “ a good spanking”, not only hurt but are intended to hurt. It is pain that makes these actions punishment,⁸ and the intention of causing pain that clearly differentiates punishment from the many parental actions that may cause pain as an unintended side-effect – such as grabbing the arm of a toddler who is about to fall over a cliff, or bathing grit from a young cyclist’s grazed knee.

Hitting is the most usual kind of physical punishment employed by parents, but it is not the only kind. Being beaten with an implement is usually a more severe punishment than being hit with an open hand, but it is not invariably so. In the UK Community study, Smith, Nobes and their colleagues^{4,7} defined three additional categories of physical punishment: “Physical Restraint”, used to control or end outbursts and including punishments such as being shaken, held, or forced under a cold shower; “Punishment by Example”, used to show an offending child “the error of his ways” and including pulling hair, biting and pinching; and “Punishment by Ingestion”, used for swearing, talking-back or shouting, and including punishments such as washing a child’s mouth out with soap or force-feeding something nasty or painful such as hot peppers. Informal enquiries in different States and communities reveal a wide and imaginative range of punishments designed to “fit the crime”.

Which parents hit their children, and why? A principal reason why particular parents hit their children is that their parents hit them⁹. Apart from family history, research findings suggest that physical punishment of children is significantly associated with family and relationship variables such as stability of the parents’ marriage and their mental health. Contrary to popular assumptions, the frequency and severity with which parents hit their children have little association with demographic indicators such as socio-economic status^{4,7}

Most of the thousands of individual parents who have been asked why they smack or spank or beat their children have told researchers that they do it because they are angry and “lose it”, or because they need to do something to assert their authority and cannot think what else to do. Despite the protestations of those who speak for parents’ right, or Christian duty, to chastise children physically, parents themselves seldom claim to hit children because they judge it the right thing to do, or to teach them anything useful by doing so. Some parents say that hitting children “works” in the sense of interrupting undesirable behaviour, but most know that stopping a child in his tracks does nothing to teach him a better way to go, so

although hitting their children may serve to relieve stress and re-assert mothers' sense of being in control, most say they would prefer an alternative^{7, 10, 11}.

Effects: Physical punishment is part of child-raising culture in most societies. It does not continue because its effects are desirable, nor will it come to an end because its effects are undesirable. The issue is one of children's rights rather than children's socialisation so research findings are not of central importance. Only the highlights of a large literature¹² are mentioned here.

There is no respected peer-reviewed research whose findings include desirable outcomes resulting from parental corporal punishment.

Extensive data, collected or analysed over many years, has shown that children who are hit a lot have more behaviour problems, especially with aggression, as they grow up,¹³⁻¹⁷ and more emotional and mental health problems throughout life, especially liability to depression and to various forms of family violence¹⁸⁻²⁰. Such findings have been widely accepted in the academic community but until recently their significance and interpretation has been open to a classic chicken-and-egg question: which comes first, a child's problem behaviour or his parents' punitiveness? Does being hit make children behave worse or do badly behaved children get hit more?

That ambiguity has been resolved, principally by three landmark American studies²¹⁻²³. Large, nationally representative samples of children under five were scored on an index of Anti-Social Behaviour, and on measures of the amount of physical punishment they received (Time 1). Two years later the ASB index was repeated (Time 2). Irrespective of the level of the first Anti-Social Behaviour score, the more physical punishment children were receiving at Time 1, the greater the increase in their ASB scores by the re-test at Time 2. Children who were experiencing very little, or no physical punishment at Time 1 showed no increase in their Anti Social Behaviour scores from Time 1 to Time 2, and some showed a drop. As the main author puts it:

“Of course other things (than corporal punishment) influence anti-social behaviour. But... we found that the tendency for physical punishment to make things worse over the long run applies regardless of race, socio-economic status, gender of child, relationship with parents or level of anti-social behaviour⁶”.

Worldwide moves towards ending corporal punishment of children

The United Nations' Convention on the Rights of the Child is the first international human rights instrument expressly to address the protection of children from violence. Article 19 requires states to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence...” while in the care of parents or others.

Attempts have been made to trivialise the violence involved in corporal punishment of children at home and thus exclude it from Article 19. However the Committee on the Rights of the Child, Treaty Body for the Convention, has consistently stated that legal and social acceptance of corporal punishment of children, whether in their homes or in institutions, is not compatible with the Convention. The Committee recommends prohibition of all corporal punishment, together with campaigns to raise awareness of its negative effects and to encourage the development of positive, non-violent child-rearing and educational practices.

In this context legal reform to give children the same protection as adults under the law on assault is creeping onto and up political agendas. Where corporal punishment is most visible - in penal systems and schools and so-called caring institutions—it is under serious threat now in all continents. The UK was the last country in the whole of Europe to abolish school corporal punishment but except that Northern Ireland still has to extend the ban to its private schools, the task was finally completed last year. Several North American States are moving towards abolition in their school systems and the matter is being actively debated elsewhere, especially in Canada and in parts of Australia. There have been recent moves against school corporal punishment in Ethiopia, Korea, South Africa, Thailand, Trinidad and Tobago and Zimbabwe, and some successes, notably in Kenya:

“For most Kenyan children violence is a regular part of the school experience. Teachers use caning, slapping And Whipping to maintain classroom discipline and to punish children for poor academic performance..... Bruises and cuts are regular by-products of school punishments, and more severe injuries (broken bones, knocked out teeth, internal bleeding) are not infrequent. At times, beatings by teachers leave children permanently disfigures, disabled or dead. Such routine and severe corporal punishment violates both Kenyan law and international human rights standards.”Kenya, Spare the Child: Human Rights Watch 1998,

In 2001 Kenya prohibited school corporal punishment.

However there is no room for complacency. Children are hit most often in their homes and by parents and parent-figures. This crucial last bastion of corporal punishment has been successfully challenged in only a tiny handful of countries. Ten European states and Israel have prohibited all corporal punishment of children: **Austria (1989); Croatia (1999); Cyprus (1994); Denmark (1997); Finland (1983); Germany (2000); Israel (2000); Latvia (1998); Norway (1987); Sweden (1979)**. More have reforms under discussion and there have been landmark human rights judgements condemning corporal punishment of children, from constitutional and supreme courts at national level, for example in Israel, Italy, and the European Court of Human Rights. Nevertheless progress towards principled legal reform is slow because the clear case for children’s rights is blurred by concerns for what are perceived as “parents’ rights” and for the anticipated political consequences of state intervention in the family. Parents have votes; children do not.

Where increasing pressure is felt to extend legal protection against personal violence to children in their homes, attempts are often made to draw lines between “ordinary” corporal punishment, which should remain a private matter for parents, and “abusive” corporal punishment which may be a legitimate public concern. This is the approach currently taken by the UK government.

Pressure to reform: a UK example

Test case in the European Court of Human Rights: In 1998 an appeal to the European Court of Human Rights by a boy who was beaten by his stepfather found against the UK Government. The child had been repeatedly beaten with a garden cane between the ages of 5 and 8. The intervention of his school eventually alerted the Child Protective services which took him to hospital and the stepfather to court on a charge of assault. The stepfather pleaded “reasonable chastisement” and the case was dismissed. However the child, with his natural

father, appealed to the European Commission of Human Rights on the grounds that the punishment breached his human rights under Article 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”). The Commission found that the UK Government had failed in its duty to protect him and sent the case to be heard in court. The UK Government was required to pay legal costs and £10,000 compensation.

The responsible government Minister condemned the punishments received by that particular child as “cruel, inexcusable and having no place in a civilised society” and promised government proposals and a process of consultation to assure better protection for children in the future.. However at that time and subsequently government ministers also declared that parents “right to smack (spank)” will be preserved.

Principled legal reform: While many parents, in the UK as in other countries, would like to see “ordinary smacking or spanking” set apart from more serious assaults, most professionals believe that attempts to draw lines between these two are both morally wrong and practically impossible. All corporal punishment is violent and all violence is unacceptable. Defences such as “reasonable chastisement” suggest that there is a level of violence that society accepts as a legitimate way to try to teach good behaviour, but parents’ behaviour is a model for their children, so any and all hitting is a lesson in bad behaviour.

More than 300 UK organisations which work with families and children have formed an Alliance - called **Children are unbeatable!** – to seek principled legal reform to give children equal protection with adults under the law of assault. What is sought is not a new law that will provide special protection for children, but the removal of an old clause in the law that provides special protection for parents. When a court accepts a defence such as “reasonable chastisement” on behalf of a parent who without that defence would be found guilty of assault, it confuses all parents over the treatment of children that is acceptable, and reduces the power of the child protection agencies to act according to their professional judgement of children’s best interests. A Judgement from the Supreme Court of Israel put it like this:

“In the judicial, social and educational circumstances in which we live, we must not make compromises that can endanger the welfare and physical well-being of minors... If we allow ‘light’ violence, it might deteriorate into very serious violence. We must not endanger the physical and mental wellbeing of a minor with any type of corporal punishment. A truth which is worthy must be clear and unequivocal and the message is that corporal punishment is not allowed”. The Israel Supreme Court judgement (January 2000).

Moving forward

Article 12 of the Convention on the Rights of the Child requires States to respect children’s right to express their views on all matters that affect them — and to give their views “due weight”. An important sign of progress is that children’s views are beginning to be canvassed (though not yet given much weight) on the issue of corporal punishment, which plainly affects them more than it affects anyone else.

In the UK, five to seven year old children were consulted about smacking. They all defined smacking as hitting; most of them described a smack as a hard or very hard hit. They wanted it understood that smacking hurts. They said that children responded negatively to being smacked, and that smacking was “wrong”. In Ethiopia, researchers from Swedish Save the

Children asked 13 and 14 year-old girls about the effects of corporal punishment. They listed: disturbed personality, physical injury, death, running away onto the streets, suicide due to fear of punishment. In South Africa in 1992 a representative group of children adopted a Charter of Rights at the Children's Summit in Cape Town. It asserts: "All children have the right to freedom from corporal punishment at school, from the police and in prisons and at home."

The way forward is a clear ban on all physical punishment. In advocating for this we have to be clear about its purpose, and about the distinction between the need for a clear law and for enforcement of that law. We need a clear prohibition of corporal punishment so as to give children the same rights as adults. This will technically criminalize all assaults on children, but will not, and should not, lead to more prosecution of parents for trivial assaults. A national poll in the UK in 2000, commissioned by the Children are Unbeatable! Alliance, showed that if they could be sure that parents would not be prosecuted for "trivial" smacks, three quarters of parents would support giving children the same protection as adults under the law on assault. People who would prefer the present status quo to be retained maintain that it is pointless to make a law that cannot, or is not intended to be enforced ; some even label such legislation as "bad law", conveniently forgetting that many widely-admired pieces of legislation, such as Britain's law against rape within marriage, influence private lives for the better from within rather than through external enforcement.

Britain's criminal law on assault does, technically, cover trivial assaults, so called "loving smacks" or taps, when they occur between adults. When the victim is a woman, nobody suggests that any level of assault should be legal. However, trivial assaults between adults never, or very seldom, get to court and certainly would not do so when children were involved. Every legal system has built-in obstacles that exist to prevent unproductive prosecutions. In the UK they are cited in the Code for Crown Prosecutors (Crown Prosecution Service, 1994). First, there is the evidential test — enough evidence to produce a "realistic prospect of conviction". All that we know about how courts tend to treat children's evidence, and particularly the evidence of small children who bear the brunt of physical punishment, adds to the confident prediction that prosecutions will be rare. Secondly, prosecutions must pass the public interest test, and the Code lists possible factors that may be taken into consideration. If these tests are not considered sufficient to prevent child protective services, the police and public prosecutors wilfully conspiring together to prosecute parents in cases where it is plainly not in the interests of the children involved — a very major "if" — then further guidance could be issued. For example, guidance could emphasise the best interests of the child as a primary consideration, as required by the Convention on the Rights of the Child.

Whatever the particular legal system, arguments about law enforcement must not be used to make a spurious case against human-rights-based principled law reform. Nor can reference to religious convictions or to cultural traditions excuse breaches of what are now internationally-established principles and standards of human rights. The international community has accepted that human rights are universal. States ratifying the Convention on the Rights of the Child, are required to respect and ensure the rights within it to all children in their jurisdiction, without discrimination on any ground. Rights to respect for physical integrity and human dignity cannot be "trumped" by appeals for respect for particular cultural practices or religious beliefs or interpretations of often contradictory texts. In the UK, a group of small Christian private schools made an application to the European Court of Human Rights challenging the school corporal punishment ban on the grounds that it interfered with

their parents' religious freedom and private and family life. The application was rejected unanimously by the Court without a hearing (European Court, 2000). In South Africa the Constitutional Court threw out a similar application by a group of similar schools (SA Constitutional Court, 2000).

We need clear, uncompromising laws to fulfil children's human rights, including the right to equal protection from assault. We need such laws to change the prevailing attitudes that justify hitting children, as they have done in Sweden²⁴. We need them to provide locally logical bases for the promotion of positive, non-violent forms of discipline and caring; to make it possible for politicians, community leaders and all opinion-makers to quote the law to help move society on from tolerating violence to children. We need those laws to enable everyone who works with families, in child protection and other services, to give clear messages to parents: it is no more acceptable or lawful to hit a child than to hit anyone else. And we need them to ensure that in those cases where prosecutions are necessary in the interests of children, the process is transparent and straightforward.

Living under a clear law, parents who assault their children will no longer be advised by lawyers that if the matter goes to court they have an effective defence. Removing the future prospect of arguing their case in court with the possibility of winning it, will render parents far more likely to cooperate with the extra-legal measures on which the future of non-violent child rearing depends: immediate interventions focused on reducing family stress and improving impulse control, and supportive educational programmes designed to promote developmentally appropriate, positive discipline.²⁵

A New Global Initiative

“The recourse to physical punishment by adults reflects a denial of the recognition, by the Convention on the Rights of the Child, of the child as a subject of human rights. If we want to remain faithful to the spirit of the Convention, strongly based on the dignity of the child as a full-fledged bearer of rights, then any act of violence against him or her must be banned, in accordance with articles 19 and 28.2 of the Convention”.

With these words the High Commissioner for Human Rights, Mrs Mary Robinson, recorded her support for a new Global Initiative to End All Corporal Punishment of Children which was launched during the recent Human Rights Commission in Geneva (Global Initiative, 2001).

The aim of the initiative is to speed progress by building on the Convention on the Rights of the Child and its Committee's recommendations, and disseminating detailed information on legal reforms and key judgements and on public education programmes. It has the support of UNICEF, members of the Committee on the Rights of the Child, and key international non-governmental organisations. It is to be hoped that it will also have the support of all members of the 2001 World Congress on Family Law and the Rights of Children and Youth.

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