

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

article 19

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Positive Parenting

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Positive parenting helps children become confident, resilient, creative, competent people who are able to engage with life with enthusiasm and responsibility.

Both privilege and challenge

What a privilege! At the same time what an enormously challenging undertaking that requires dedication, self-sacrifice, compassion and courage. Positive parenting requires ongoing self-reflection, as our children trigger in us our personal struggles in growing up and present challenges in our already stressful lives. Whilst trying to avoid transferring our psychological baggage onto our children and trying to create a nurturing space for them in an often stressful, competitive environment, we can be guided by our knowledge of children's development.

The complex nature of development indicates that positive parenting involves far more than correcting children's undesirable behaviour, although this conflict-ridden aspect of family life is often the focus of attention. This focus was reflected in a recent group in which children were asked "How should parents treat their children?" and children answered: "Don't hit children"; "Don't 'skel' (shout at) children; "Don't swear at children" and so forth. Whilst it is critical to be mindful of how we deal with our children's unwanted behaviour, we need to be equally mindful of other aspects of parenting that are essential for healthy child development. It is in fact these aspects of parenting that create the necessary context for successful correction of behaviour.

Our impact on children

The extent to which we impact on our children's development, often unwittingly and through ordinary, day-to-day behaviour, is striking. When we consider that even from the first day of life an infant is able

to copy facial expressions, it becomes astonishingly clear that children have a profound capacity to observe, experience and copy us in ways we don't fully understand or always intend.

Children's innate capacities and parental sensitivity

Through observing, experiencing and copying, children build an image of themselves and the world over time, and they learn how to be and to cope. Even their capacity to deal with emotions is rooted in their experiences of us. When, for example, babies cry and their parents empathise with them, they see their own feelings reflected in their parents' faces. These observations help them identify and make sense of their feelings, and without them their feelings remain confusing and may become overwhelming. When their parents soothe them, babies' feelings are validated and, through copying their parents, they learn to value and sooth themselves. In contrast, when parents leave their distressed babies to cry (for example, to fall asleep on their own in the mistaken belief that this will make them independent), opportunities for learning about and managing feelings are missed. Instead, babies learn ways of shutting out their feelings that threaten to overwhelm them, their feelings remain unknown to them, and their capacity to manage them is compromised.

This example of a clear link between healthy psychological development and parental sensitivity is one of many. Parents' sensitivity and responsiveness to babies' feelings have another critical impact, which is that they enable

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Internationally, this has been an important year for the fight against the use of corporal punishment and other forms of humiliating and degrading punishment. The United Nations Study on Violence Against Children was finalized and the Independent Expert's Report submitted to the Secretary General in October. This study unequivocally condemned the use of all forms of corporal punishment in all settings including the family. Importantly, in addition to various recommendations, the Study wholly endorsed prevention initiatives in order to ensure that the use of violence against children is reduced and eventually eliminated. This edition of Article 19 therefore features an article on positive parenting in which various models are discussed that shed light on how to prevent the use of violence in raising children within the family context.

In addition, the United Nations Committee on the Rights of the Child released General Comment No. 8 on Corporal Punishment, featured in the October 2006 edition of Article 19. This document allows for no more excuses from countries that have ratified the Convention on the Rights of the Child but have not abolished corporal punishment in all settings. It provides unambiguous guidance on what constitutes corporal punishment and details various measures that need to be undertaken to effect a ban.

Over and above all these developments globally, Africa has its own regional children's rights charter that seeks to ensure the protection of the African child. We feature an article that argues how the relevant provisions of the African Charter on the Rights and Welfare of the Child can be interpreted to support a prohibition on all forms of corporal punishment of children.

In light of these overwhelmingly clear instruments and guidelines, it is hoped that the final legislative process in relation to the South African Children's Act, namely the Children's Amendment Bill, will result in a provision expressly prohibiting the use of corporal and other forms of degrading and humiliating punishment in all aspects of a child's life.

We would like to take this opportunity to wish all our readers a happy and safe holiday season.

babies to develop secure attachments. Through experiencing their parents as reliable and responsive to their needs most of the time (parents can never be fully responsive), babies learn to trust their parents, and their attachment to their parents becomes strong. This attachment is critical to their further development. It enables them to gradually move out into the world with confidence and enthusiasm and it lays the foundation for future relationships based on trust and reciprocal caring.

When parents show children continued respect and sensitivity throughout their childhood, their self-respect and confidence grow and they learn to respect and care about other people.

The importance of spontaneous play

Also important to healthy psychological development is spontaneous play. A seven-year-old child recently reported that in his grade one class children were asked to draw their favourite place and a number of them drew their beds. What a sad reflection on our society! More and more, and from as young as babyhood, children are being encouraged and indeed pressured to engage in structured activities in which performance is the goal. Instead of encouraging exciting, personal exploration with brightly coloured paint, the two-year-old's hand is taken and s/he is shown how to draw a person or happy sun. The older child goes to numerous extramural activities leaving little room just to be. More and more children learn to perform and be outwardly competent, but the true joy and sense of personal agency they get from creating from the depths of their being may suffer.

Optimal learning and excitement comes from play in which no-one structures or corrects children, but they create and solve problems themselves. Spontaneous play, furthermore, helps children process their difficulties - the things that make them anxious, angry and confused. Positive parenting allows children substantial amounts of free play and discourages excessive television, videos and computer games which rob them of true engagement with the real world and may expose them to aggressive and sexually explicit material they are too young to understand. Material that cannot be psychologically digested may result in anxiety, confusion and behavioural problems.

The importance of moderate limit-setting

Whilst a good dose of spontaneous play is to be encouraged, it is necessary to set limits too. Freedom without limits can result in anxiety, aggression, a lack of self-control and a poor sense of responsibility. Children without limits fail to develop the capacity to deal with the frustration of not having their own way and as a result cope poorly in relationships, at school, and later at work. At the other extreme, excessive limits restrict personal development, undermine children's self-esteem, and prevent them from developing an inner sense of responsibility. Children who are excessively controlled and restricted do not learn to think for themselves and they learn to rely on authority figures to direct them. Aggression, lack of initiative and difficulty in dealing with authority may become lifelong problems. The ideal, then, is for parents to encourage freedom and individuality within moderate limits.

Structure and rules

Limits can be created by daily structure and by rules which are enforced consistently. Daily structure is often constructed around meals, wash times and bedtimes, with family rituals forming an important part of this structure. Meals together (without television) can be a valuable time for the family to enjoy being together. For the younger child, being told a story before bedtime can be an activity that nurtures for life. Watching television until falling asleep should be avoided as it does not help children learn a healthy wake-sleep routine.

Rules can help children adhere to healthy routines, learn non-aggressive and respectful behaviour, deal with the frustration of not always having what they want, and develop healthy habits (for example, not over-indulging in food, material possessions, and so on). Every family needs to decide what values they want to impart through their structures and rules.

Reducing children's need to break rules

Regardless of what the rules are, children will break them at times! However, their need to break them can be reduced. Treating children with respect and sensitivity, ensuring healthy routines, and allowing them freedom to engage with and master their environment without undue interference all go a long way to helping. Enjoying time together is also essential, as children may misbehave in order to gain attention (however negative).

A different though important motivation for misbehaving is anger and the need for power. Parents can reduce children's need to gain power by avoiding all forms of aggression, i.e. physical, verbal, and emotional. Children feel undermined and are justifiably angered when they are hit, sworn at, labelled (e.g. as stupid or clumsy), threatened (e.g. that they'll be left behind), or excessively punished. Furthermore, when parents tease them or are sarcastic they often feel confused, angry, or humiliated. They have these reactions because they misinterpret what they hear. Their thinking is still too concrete for such abstract uses of language.

Inconsistency in implementing rules should also be avoided. When parents say "no" one minute and "yes" the next, or give in when children throw tantrums, children become uncertain and develop a sense of being all-powerful, resulting in repeated attempts to test rules.

On a different note, positive behaviour is encouraged when parents and children discuss feelings, values and behaviour in the normal course of family life. Research has shown an association between high levels of moral reasoning, maturity and altruism in children and regular talking with children about how they feel, how other people feel, why certain behaviours are desirable, and so forth. Finally, at all times, it is important to make a note of noticing and acknowledging positive behaviour. This positive stance will help build children's self-esteem and counter any tendency towards a negative focus (a common focus, particularly when families are stressed).

Responding to rule-breaking and unwanted behaviour

The question that needs to follow though, is this: when children **do** break rules (and they will) or simply behave in unwanted ways, how should we respond? This question is often the topic of debates, and trends occur. Factors like religious beliefs, cultural norms, mass media, personal experiences of being punished as a child and current life stresses influence the way parents enforce rules. The following guide can help parents develop positive strategies:

- The **goal** of rule enforcement is to help children develop **inner resources** (healthy values, an ability to cope with feelings, and an ability to control ones behaviour).
- Rules are enforced to **teach children and not to gain power**. Power tactics teach children to obey authority but they do not help children develop inner controls. Parenting is not about raising puppets; it is about raising human beings with vitality and personal agency.
- When rules are enforced children's **self-esteem remains intact**. Children should not be humiliated or be made to feel flawed.
- **Children are not made to feel frightened** when rules are enforced. Fear encourages obedience but does not help children develop inner resources.
- When enforcing rules it is important to **determine whether or not children are deliberately misbehaving**. Taking children's circumstances and frames of mind into account is necessary here. For example, when children (and adults!) are sick, overly anxious or tired they struggle to cope and they behave differently to when they are feeling strong and relaxed. Similarly, it is important to take children's developmental stages into account. Babies who are not easily consoled are not being naughty; they cannot conceptualise "naughty". Toddlers who explore their environment, say "no!" and have tantrums are doing what toddlers need to do in order to make sense of the world, develop a measure of independence and find their personal limits. Tantrums reflect their intense feelings that they are not yet able to address with rational thought and verbal negotiation. Three-year-olds who tell fantastical stories reflect the magical thinking of this age; they do not understand the abstract concept of lying. Six-year-olds are readily distracted; when they forget to take their shoes home they are not being naughty. Misbehaviour occurs when children deliberately do what they were told not to do.

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“For children to develop optimally, society needs to provide the necessary support to them and their parents.”

Positive parenting

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- **Children should not be chastised or punished when they have not deliberately done something wrong.** Instead, guide them with understanding and allow natural consequences to occur (such as not having the “right” shoes to get to school the next day). Talk with them, help them avoid unwanted behaviour, and help them achieve what is desired. For example, give the toddler toys to play with before making a telephone call; suggest a ball game outside when their racing around the kitchen is driving you crazy; ask in a non-critical way that they mop up the spilt milk (and help if necessary). Shouting for spilling milk brings fear and misses the opportunity for learning (for example that we all make mistakes but can try to make things better when we do).
- **Ensure consequences of unwanted behaviour are sufficient for learning but are not excessive.** Research has shown that overly harsh measures may result in heightened activity, aggression and delinquent behaviour. Parents will know what levels of consequences are necessary for learning to take place; some children require greater consequences than others, and some behaviours warrant greater consequences than others. Sometimes ignoring behaviour or stern expression of disapproval is sufficient; other times consequences like the removal of a privilege may be necessary.
- **Model the behaviour that you want to teach.** Remember that from babyhood children develop and learn by observing, experiencing, and copying our behaviour.
- **Ensure adequate supervision of children and adolescents.** There is a clear association between lack of supervision and problems like physical aggression, drug use, poor school achievement, lying, and so forth.

We always need to know where our children are, who they are with and within reason what they are doing.

- Finally, when you want to appraise your strategies, ask the following question: **Am I busy raising a human being or managing an inconvenience?**¹

These guidelines represent the ideal and are given to offer support and not to induce guilt. It is necessary for parents to remind themselves that parenting perfection is not possible; we all make mistakes and at times act in unfortunate ways. We are human beings, each with our unique vulnerabilities and struggles.

Environmental stresses

In addition, many of us parent under environmental conditions that make positive parenting enormously difficult and sometimes impossible. These conditions or “social toxins”² may include financial strain and insecurity, community violence, fragmented families, excessive working hours, inadequate crèches for young children and lack of after-school activities for older children (making supervision impossible when all family members need to work). These factors place heavy burdens on parents, many of whom feel increasingly disempowered, stressed and unable to provide the necessary protection, attention and guidance. At the same time, children may find the task of growing up excessively difficult and their distress may manifest in emotional and behavioural problems. The dynamic of disempowered parent and distressed child may become a vicious circle with tragic consequences.

A collective responsibility

It seems appropriate, then, to view positive parenting as a collective responsibility. For children to develop optimally, society needs to provide the necessary support to them and their parents. In developing policies that impact on children’s development, which include labour, education and social development policies, government might usefully ask: Is its country concerned with raising human beings or with managing inconveniences? ●

¹ *The delightful comparison of raising human beings and managing inconveniences was introduced in an article by Kittie Frantz in Mothering (September - October 2005).*

² *The term “social toxins” was coined by Garbarino (1995) in his book Raising children in a socially toxic environment.*

It hurts beyond physical body!

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There is increasing awareness in the 21st Century regarding matters of corporal punishment (CP) and its contribution to children's discipline and welfare. Two of the most common-place reasons for support of CP in Zambia today are that (a) those who boast of having achieved some measure of success in life, would not have been able to do so if it had not been that their teachers and parents beat them up when they did wrong as little boys and girls many years ago; and that b) the traditional African parenting-menu relies on the use of corporal punishment.

From the child rights point of view however (the right to survive, the right to be protected and the right to develop), as well as from the perspective of education delivery, corporal punishment does not feature as a useful and necessary disciplining aid. Any claim to suggest that one would not have climbed the ladder to the highest rung of social mobility without it, simply reflects the fact that they are not aware of how much more they would have accomplished without it! Secondly, they are not aware of the cost to Africa of pursuing socialization models of parenting, to the detriment of the more sustainable educational imperatives of the 21st century.

Socialisation, unlike education, believes that a child is like an empty vessel that requires feeding for it to be full. Therefore, parents and teachers feel obliged to feed the child's mind (through imparting knowledge), to feed the heart (through inculcation of values and attitudes) and to feed the hands (through imitative transmission of skills). During the process of doing so, the child has an obligation to absorb the information given, observe the workings of the skilled hand of an adult man or woman, and reproduce the material faithfully as demanded by the traditional examiner. Failure to conform calls for the summoning of pain and hence fear, suffering and torture—through corporal punishment!

Education, on the other hand, recognizes that dishing out knowledge and skills to a child is a futile exercise i.e. if and when done in the absence of understanding. Under education therefore, parents and teachers have a duty to stimulate the mind of a child to think, stimulate the heart to feel (with zeal, passion and commitment) and stimulate the hand to do and innovate. Hence, the aim of education (unlike that of socialization) is to enable the child to grow and develop

beyond the known adult world of today (not just to be integrated into it) so that he/she can become an agent of societal change and transformation for tomorrow.

The foregoing strongly suggests that education, by its nature, encourages: critical thinking, creativity, innovativeness, talent identification/development, opportunity seeking and problem solving in a child. Therefore, it also enhances self esteem, self confidence and self determination, through understanding and appreciation of phenomena. On the other hand, socialization, as practised through corporal punishment, requires one to merely show respect for conformity to the adult world; respect that he/she neither feels, thinks nor purposes. In the end, the price is paid by all as follows:

*Immediately on receipt of a slap, slap that matured into
a smack that climbed higher to the level of a smug,
and bloomed into a beating soon thereafter, I
had no choice but to momentarily show false respect.*

*Then the heavens closed the doors on me not to experience
the vision of inspiration for lack of honesty and truth, my
intellect
dived to be stunted-short for lack of sustainable consistency
in thought and decision making, my moral-ethical being left
me stranded for lack of direction to human justice and
fair play, my emotions were thus bottled-up for lack of
freedom of self-expression; such that my so-called good
practices ended up being useless for lack of wisdom.*

Corporal punishment. Is it really worth the risk? ●

Imbwa ya mukali taichenjela

Translation: A violent man's dog cannot be tamed.

Meaning: Children born of harsh parents usually live in constant fear and are unable to excel and usually grow up to be rebellious children.

Language: BEMBA, spoken in the Northern Province of Zambia

Umwana kasembe, kakukoma watola wakobeka

Translation: A child is like an axe, you will still pick it up even after it has cut you.

Meaning: Parents should be gentle with their children. They should guide them rather than direct or dictate to them because children will forever remain precious to them despite their shortcomings.

Language: BEMBA, spoken in the Northern Province of Zambia

Mwana sianvela nomenyewa

Translation: A child does not obey by beating.

Meaning: Children can never be controlled by using violent methods but rather by advice.

Language: CHEWA, spoken in the Eastern Province of Zambia

Kumenya sikumanga nyumba

Translation: Violence does not build a home.

Meaning: Where there is violence, unity and progress does not prevail.

Language: CHEWA, spoken in the Eastern Province of Zambia

Nja ye huhula mang'inimang'ini ayilukelwi kunatwa kapafa

Translation: Don't hit the dog with a stick just because it is barking or being a nuisance.

Meaning: Desist from becoming violent with erring children, instead learn to talk and listen to them in order to understand their problems.

Language: LOZI, spoken in the Western Province of Zambia

Kuveta chikuma mwana nge analuwisa, kacapwa chamwazako yakumulongesa

Translation: Beating a child is not the best way of correcting it.

Meaning: Beating a child when he or she makes a mistake is not the right way of disciplining them. Parents should instead learn to guide their children through talking to them.

Language: LUVALE, spoken in the North-Western Province of Zambia

My elder brother beat me. He hit me against the wall and clapped me. I really don't know, he likes beating me and for this I am worried. I find no peace in my life. I feel miserable. I feel sad, and each time I think about it I feel sad. I want to commit suicide and never see him again. I felt like killing him with my bare hands.

(Girl 13-18-year age group)

I was walking around with my shirt untagged. The teacher called me to the staff room and made me pull up my shirt, open my pants and tuck in my shirt, then fasten it. Then open my pants, you know open my zip and this was done at lunch-time when teachers were coming in.

(Boy, 13-18-year age group)

I came home from playing soccer later than the expected time in the evening. I was beaten with a stick and denied food.

(Boy, 13-18-year age group)

I was not able to count and I was beaten.

I was beaten on my hand five times.

(Boy, 6-8 year-age group)

The teacher made me sit on the invisible chair for one hour.

I was making a noise in class.

(Girl, 6-8-year age group)

I came to school late for the third time. My teacher made me dig a hole outside. Anyone who did anything wrong that week was made to dig the hole.

(Boy, 9-12-year age group)

My uncle shouted at me that I was late and although I explained to him that I was from netball practice and gym. He threw a stone at me. I was able to dodge the stone. He also wanted me to come along with him to school to prove that I was from the practice. He spoke bad words, saying that it is possible that I was with boys at school and I am lying that I was at practice.

(Girl, 13-18-year age group)

These quotes were sourced from a report by Glynis Clacherty, David Donald and Alistair Clacherty, (2005): *Children's Experiences of Corporal Punishment in Swaziland*, Save the Children Sweden.

QUOTES FROM CHILDREN

The African Charter on the Rights and Welfare of the Child and corporal punishment:

Spare the rod, spare the child

Benyam D. Mezmur

1. Introduction

“Spare the rod, spoil the child” is a common saying which has found its way in various African languages and practices. Of the estimated 1800 languages in Africa, most belong to one of four language families: Afro-Asiatic, Nilo-Saharan, Niger-Congo and Khoisan. Perhaps without the need to exert much energy, one can find an equivalent of the “spare the rod, spoil the child” proverb in all these language families in Africa.

To date only 52 million of the world’s 2.2 billion children live in countries where the law gives them the same protection as adults from being assaulted.¹ And unfortunately, none of these 52 million children live in Africa as all 53 member states of the African Union allow corporal punishment at least in the home setting.² Therefore, in Africa, it might not be superfluous to conclude that only few children mature into adults without ever feeling the pain of physical punishment, bruises and stinging sensations from whips, canes, slaps and paddles. This is against the fact that all states in Africa, with the exception of Somalia, have ratified the Convention on the Rights of the Child (CRC) while 39 countries in the continent are State Parties to the African Charter on the Rights and Welfare of the Child (ACRWC).³

2. The African Charter on the Rights and Welfare of the Child

The ACRWC is the first comprehensive regional children’s rights treaty for the promotion and protection of children’s rights in Africa. It seeks to address some of the peculiar aspects facing the African child. Some of the peculiarities of the African situation omitted from the CRC were

identified as: the situation of children living under the then prevailing apartheid regime in South Africa, practices and attitudes having a negative effect on the life of the girl child and widespread harmful cultural practices in African society such as female genital mutilation. Other issues not considered by the CRC were problems of displaced persons arising from internal conflicts, the African conception of the community’s responsibilities and duties and most pertinently, the particularly difficult socio-economic conditions of the continent. Therefore the ACRWC imprints an African fingerprint on the conception and content of children’s rights. The Charter not only reflects an African normative consensus on children’s rights and thereby complementing the CRC, but also represents an attempt to Africanise and place within the African cultural context the children’s rights discourse.

The ACRWC guarantees a number of civil, political, economic, social and cultural rights comparable to those protected by the CRC. The four cardinal principles are incorporated including the best interest of the child which is to be given *the* primary consideration. Among other things, the participation and recruitment of children in armed conflicts is proscribed, harmful social and cultural practices are to be eliminated and child marriages are expressly prohibited. The right to freedom of expression, the right to freedom of thought, conscience and religion, the right to privacy, the right of access to information, the right to benefit from social security, the right to education, the right to health, the right of handicapped children and the right against child abuse and torture are guaranteed.

3. Corporal punishment

Because the ACRWC was adopted in order to give the CRC specific application within the African context, those who consider corporal punishment as part and parcel of the African cultural method of child-upbringing could have an argument formulated favouring corporal punishment within the framework of the ACRWC. This “cultural

¹ *All Africa Special Report: Ending legalised violence against children*, available at <http://www.nospank.net/all_af_ethiopia.pdf> (accessed 2 November 2006) p. 9.

² *All Africa Special Report*, p. 56-57.

³ *African Charter on the Rights and Welfare of the Child (1990) OAU Doc. CAB/LEG/24.9/49 (1990)*.

“all forms of torture, inhuman or degrading treatment...” does not leave room for any level of legalized violence against children.”

relativist” argument could seem to fly under paragraph 6 of the preamble of the ACRWC which requires the “taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child.”

In addition, article 11(5) of the ACRWC could be the second port of call for an argument favouring corporal punishment under the ACRWC. This sub-article provides that States Parties to the Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

Yet, the relatively strong argument favouring corporal punishment particularly in the family setting could be construed by a direct reading of article 20(1)(c). Here it is provided that “parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall have the duty to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child”. This article could be read to justify corporal punishment in the home as long as it is reasonable and hence the concept of “reasonable chastisement”.

However, truth be told, all these arguments can hardly stand scrutiny and rather tend to collapse under their own weight. To begin with, the four cardinal principles of the ACRWC cannot support corporal punishment. For instance, the principle of “the best interest of the child” which is mandated to be given *the* primary consideration can’t have anything in common with any form of violence against children, abuse and torture-however light! This is fundamentally because the interpretation of the “best interest of the child” should be consistent with the whole Charter.

Even under article 11(5) of the ACRWC, questions abound: how is it possible to corporally punish a child while still treating the child with *humanity* and with respect for the *inherent dignity* of the child and in conformity with the ACRWC? The answer to this should be a clear “NO, it is not possible!” Corporal punishment and human dignity are two

mutually exclusive concepts. Moreover, corporal punishment in schools under the ACRWC won’t be in tandem with the very provisions on the right to education such as the one requiring that the education of the child shall be directed to, according to 11(2)(a), “the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential” and under 11(3) (d) to “ take measures to encourage regular attendance at schools and the reduction of drop-out rates.” To use the words of the UN Committee on the Rights of the Child “children do not lose their human rights by virtue of passing through the school gates.”

The clear language of article 16- captioned “protection against child abuse and torture”- is also in favour of absolute prohibition. State Parties to the ACRWC are obliged “...to 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 the parent, legal guardian or school authority or any other person who has the care of the child.” In the same vein with article 19 of the CRC, “all forms of torture, inhuman or degrading treatment...” does not leave room for any level of legalized violence against children.

In the context of the criminal justice system, article 17(2) (a) echoes a similar right as expounded under article 16. Accordingly, State Parties have the duty to ensure that no child detained, or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment. In a laudable decision, the African Commission on Human and People’s Rights, established under the regional protection of the human rights system - the African Charter on Human and Peoples’ Rights - has found that the sentencing of eight students in

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Sudan to 25-40 lashes for “public order” offences under the 1991 Sudanese Criminal Law would tantamount to a State sponsored torture.⁴ Here, clearly, corporal punishment would conflict with the inalienable rights of children to respect for their human dignity and physical integrity.

On top of this, if corporal punishment is considered to be part and parcel of the African culture and tradition, then there is more reason to classify it as a “harmful social and cultural practice”. This is because, in line with article 21(1) (a-b), it is “prejudicial to the health or life of the child” and is discriminatory on the child on the basis of age. There is no shortage of convincing evidence that corporal punishment is a hidden cruelty in child rearing that has serious adverse consequences for its victims and society at large. Accordingly, article 21 (1) of the ACRWC clearly articulates the State Party’s obligation which includes the need to take “all appropriate measures to eliminate harmful social and cultural practices” including corporal punishment in all settings.

The implementation and monitoring of the ACRWC is supervised by the African Committee of Experts on the Rights and Welfare of the Child (the “Committee”).⁵ The Committee has the mandate to give an authoritative interpretation of the provisions of the ACRWC. Members of the Committee have, at different occasions, expressed their positions on the issue of corporal punishment. A case in point could be during the “Violence against the Girl Child” conference of the African Child Policy Forum held in Addis Ababa in May 2006. In the “messages” section of the All Africa Special report, the chairperson of the Committee writes that “... thousands of homes have become real laboratories of violence against children and... [t]hat is unacceptable.”⁶ The close link that is being forged between the African Committee and the UN Committee and

the recent General Comment No 8 on corporal punishment by the latter and the recommendations of the Global Study on Violence against Children would also influence the position of the Committee on the matter. As much as the Committee is mandated, under article 46 of the ACRWC, to “draw inspiration from international law on human rights, particularly from the African Charter on Human and Peoples’ Rights and ...the Convention on the Rights of the Child...” the possibility that the Committee would go for an interpretation supporting the prohibition of corporal punishment in all settings is highly likely.

4. Concluding remarks

The rejection of any justifications of corporal punishment under the ACRWC is not in any sense rejecting the positive concept of discipline. Rather it is an indication that, indeed, “the distinct nature of children, their initial dependent and development state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.”

Although the ACRWC does not squarely confront corporal punishment and prohibit it expressly, nor does the CRC. Hence, the move towards finding the right against corporal punishment is through interpretation. Although the authoritative interpretation of the provisions of the ACRWC in connection with corporal punishment can only be confirmed once a clear position has been taken by the African Committee, what is provided for above seems a progressive interpretation of the provisions parallel with international standards and developments.

In conclusion, an attempt to find provisions in the ACRWC that entitle the African child a right against corporal punishment in all its settings is far from being an exercise that could be dubbed as “looking for the right in the wrong place”. Rather, as shown above, there is no logical and legal reason that warrants why, the 30 year old famous bumper sticker “People are not for hitting- and children are people too”- would find an exception when it comes to the African context! ●

⁴ *Curtis Francis Doebbler v. Sudan, African Commission on Human and Peoples’ Rights, Comm. No. 236/2000 (2003).*

⁵ *Article 32 (1) of the ACRWC.*

⁶ *All Africa Special Report, p. 4.*

Report on UN Study on Violence Against Children released

The UN Study on Violence Against Children has been completed and the Secretary General's report was presented to the United Nations General Assembly (Third Committee) by his independent expert, Professor Pinheiro on 11 October 2006.

In an important development the Study defines violence against children as:

"Physical, psychological (psychosocial) and sexual violence to children in the form of abuse, neglect, exploitation, as act of commission or omission of direct or indirect forms, that endanger or harm the child's dignity, physical, psychological, or social status, or development."

The report concludes with certain overarching recommendations for States on how to prevent and respond to violence against children. These include:

- States must ensure that no child is subjected to the death penalty or a sentence of life imprisonment and that States take steps to prohibit all forms of violence against children, in all settings, including corporal punishment, harmful traditional practices, sexual violence, and torture and other cruel, inhuman or degrading treatment or punishment.
- States must ensure that anti-violence policies are designed and implemented from a gender perspective taking into account the different risks facing girls and boys in respect of violence.
- States must improve data collection in order to identify vulnerable subgroups to inform the development of policies and programmes at all levels.

In addition the report contains specific recommendations which apply in the different settings within which violence occurs. These, among many other recommendations, include:

- States should support parents and caregivers to care for their children by developing education programmes that address child rearing and non-violent forms of discipline;
- Schools be encouraged to adopt and implement codes of conduct for staff and students;

- States prioritise reducing the rates of institutionalization of children by regularly reassessing placements and to establish effective complaints and investigation mechanisms to deal with cases of violence in the care and justice systems;
- States should implement prevention strategies to reduce immediate risk factors.

Of significance is the fact that the Report concludes by stating that while the primary responsibility for implementing these recommendations rests with the State, the participation of other actors at national, regional and international level (such as United Nations entities, civil society, national human rights institutions, community associations, educators, parents, professional bodies such as doctors' and nurses' associations and children) is critical to assist the State to carry out its task. From this it is clear that the responsibility to protect children from all forms of violence is a responsibility to be shared by all actors within a child's life and thus, no one, not even parents, shall have any excuse in subjecting their children to any form of violence. ●

“... the responsibility to protect children from all forms of violence is a responsibility to be shared by all actors within a child's life...”

FORTHCOMING CONFERENCES

The Vth African Regional Conference on Child Abuse and Neglect will focus on HIV/AIDS and Children: The Challenges of Care for and Protection of Children in Africa.

The conference will be held from 27-29 March 2007 at Hotel Africana, Kampala , Uganda.

The conference will share ideas, experiences and good practices and research findings on the care and protection of children in the era of the HIV/AIDS pandemic in Africa. Practitioners, researchers and children will also explore strategies for developing and scaling up effective and sustainable responses towards the protection of children living with and those affected by HIV/AIDS.

For more information contact ANPPCAN Uganda Chapter at anppcan@infocom.co.ug or conference@anppcanug.org

The Children's Rights International (CRI), a body established by the World Congress on Family Law and Children's Rights, is organising a conference on exploitative child labour which is to be held in Cairns, Australia from 14 - 17 October 2007.

The World Summit on Exploitative Child Labour will evaluate the success or failure of domestic and international efforts to control and eradicate the worst forms of child labour.

It will do so by focussing discussion on the roles of both national and international organisations representing employers and workers, non-government organisations and governments. It will engage the corporate sector, so that the extent to which responsible corporate citizenship is being practiced in both developing and developed countries can be tested.

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