

Eliminating corporal punishment – a worthy aim for the current United Nations Secretary General’s Study on Violence Against Children

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Unfortunately I must begin this presentation with an apology from Peter Newell who is unable to be here. He assures us that he would much rather be with us at this important conference and taking part in this crucial stream of papers on “discipline and guidance of children”, than at home in Britain, recovering from surgery. I will be reading Peter’s paper.

Peter Newell is an international authority on and advocate for children’s human rights. He is Coordinator of the Global Initiative to End All Corporal Punishment of Children. The Initiative was launched during the 2001 session of the Commission on Human Rights in Geneva to highlight the growing human rights consensus against all corporal punishment of children and to support its elimination by sharing information and strategies. In the UK, he coordinates the Children are Unbeatable! Alliance (an alliance of more than 400 organisations campaigning for equal protection for children). Peter is a member of the Editorial Board for the UN Secretary General’s Study on Violence against Children and attended eight of the nine regional consultations for the Study held during 2005. He is co-author of UNICEF’s “Implementation Handbook for the Convention on the Rights of the Child” and has worked closely with the Committee on the Rights of the Child since its first session in 1993.

I am sure you will agree that Peter is well-placed to give us a global perspective on ending corporal punishment of children. And I am sure you will also agree that this global view, with its focus on children’s rights, is a fitting start to these sessions on “the discipline and guidance of children”.

Background

The UN Secretary General, authorised by the General Assembly, is carrying out a global study on violence against children which will report to the General Assembly towards the end of 2006. As part of the Study, nine regional consultations have been held, including one for East Asia and Pacific region in June 2005. At each the Global Initiative to End All Corporal Punishment of Children has presented a regional report on the legal status and prevalence of corporal punishment in each state. Information about the regional meetings can be viewed on www.endcorporalpunishment.org and include an analysis of the state of corporal punishment in every state and dependent territory in the world. Peter attended all but one of the regional consultations in 2005 and I was fortunate to be part of the South East Asia and Pacific consultation in Bangkok last June, as were others in a delegation from New Zealand comprised of two young people, NGO representatives and Government representatives.

Corporal Punishment

Hitting people is wrong, and children are people too. This is both a very simple issue, and a hugely difficult one. The difficulty comes from the personal dimension. Most people in almost every country 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. And this makes it difficult for many people, including politicians and community leaders, to think humanely or logically about the issue.

Corporal punishment has received much publicity in New Zealand in recent years and you will have heard all the arguments against it before - but I will briefly review some.

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 forms of violence that children in many states are facing. But what we are challenging is not just one particular category of violence, but the whole idea that some arbitrary degree of violence against children should, uniquely, be legal and socially approved. 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. 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 and forced labour, more likely and easier.

Most countries now claim to have some sort of child protection system. Yet 77 of these states still allow whipping or caning of children as part of their penal system for young offenders, and 89 still allow teachers to beat children with sticks or belts.¹ It is unbelievable, but unfortunately true, that many adults, even those working in child protection, are still trying to defend, or turn a very blind eye, to corporal punishment. Physical abuse of children is corporal punishment. Maybe a tiny minority of perpetrators are psychotic and don't have any punitive motive for assaulting their children. But most 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.

Not a Eurocentric or "western" movement

Sometimes, when I speak about this issue in continents outside Europe, people suggest that outlawing corporal punishment is a Eurocentric idea. It certainly doesn't feel like that if you live in the UK. It is true that progress towards outlawing it is now proceeding particularly fast in Europe. But that is because of the relatively strong European human rights mechanisms, forcing governments to act well ahead of public opinion.

My own country, UK, has a particular responsibility for promoting the habit of corporal punishment of both children and adults around the world in its colonial past, in the context of military occupation, of slavery and certain missionary teaching. The

¹ Details of the legal status of corporal punishment in every state and dependent territory worldwide are at www.endcorporalpunishment.org

ancient English common law defence of “reasonable chastisement” exists in more than 70 countries worldwide, including many in this region. While the UK has been forced by the European human rights mechanisms to prohibit all corporal punishment outside the family, our Government is still defending its use within the home.

Abolishing all corporal punishment of children

So how far has abolition got? 100 states have prohibited school corporal punishment, and 99 have prohibited it in their penal systems – the most recent, last year, being Afghanistan and Sri Lanka. Only 17 have so far completed the task by prohibiting it in the home as well.

At least 14 countries in Europe have enacted explicit bans on corporal punishment by parents and all other carers: Sweden (1979); Finland (1983); Norway (1987); Austria (1989); Cyprus (1994); Denmark (1997); Latvia (1998); Croatia (1999); Germany (2000); Bulgaria (2000), Iceland (2003); Romania (2004); Ukraine (2004), Hungary (2004). In addition, Supreme Court judgments in Portugal (1994) and Italy (1996) have declared all corporal punishment to be unlawful, but this has not yet been confirmed in legislation. And six more states have committed themselves to full law reform in the near future: Netherlands, Greece, Lithuania, Luxembourg, Slovakia and Slovenia.

Beyond Europe, in 2000 Israel removed the common law defence and its Supreme Court declared all corporal punishment to be unlawful.² In Latin America there are bills to prohibit corporal punishment in the family before parliaments in five countries – Brazil (where the Bill passed the House of Representatives unanimously in January and is now in the Senate), Costa Rica, Colombia, Peru and Uruguay – and in October last year there was a hearing, on ending corporal punishment in the region, before the Inter American Commission on Human Rights. The Inter-American Court of Human Rights has already issued an advisory opinion confirming states’ obligations to fully protect children including in the private sphere.³ South Africa has prohibited all corporal punishment outside the family and a proposal to take the logical last step is currently being debated. There are also private member’s bills to prohibit corporal punishment in the family before Parliaments in Canada and here in New Zealand.

Of course law reform on its own will not achieve the necessary change in attitudes and practice. Clear, explicit law reform must be linked to comprehensive awareness-raising of the law and of children’s right to protection, together with promotion of positive, non-violent forms of child-rearing and education. There are now many, many examples of programmes and materials available which can be adapted for use in all countries and cultures.⁴

In relation to law reform, of course the purpose of prohibiting parental corporal punishment is not to prosecute more parents. That would certainly not be in the best

² For details of abolition and further references, see www.endcorporalpunishment.org; global progress

³ Inter-American Court of Human Rights. (2002). Advisory Opinion OC-17/2002, 28 August 2002, Legal Status and Human Rights of the Child, requested by the Inter-American Commission on Human Rights. San Jose, Costa Rica.

⁴ The Global Initiative website includes an extensive list of links to sites providing positive discipline materials www.endcorporalpunishment.org

interests of children. The purpose of the law is to set a standard and send a clear message into the privacy of the family, that it is no more acceptable to hit a child than to hit anyone else. Prosecution and other formal interventions should only proceed when they are judged necessary to protect the child from significant harm and to be in the best interests of the child.

UN Secretary General's Study on Violence against Children

One immediate context for accelerating prohibition is the current UN Secretary General's study on violence against children. Professor Paulo Pinheiro of Brazil, the independent expert appointed by Kofi Annan to lead the Study, is convinced of the central importance of prohibiting and eliminating all corporal punishment of children and will certainly recommend this in his report to the UN General Assembly next Autumn.

When he delivered a progress report to the UN General Assembly in October, a side event focusing on ending corporal punishment was organised by UNICEF and UNESCO. At it, Paulo Pinheiro said: *"A major aim for the Study must be to challenge social norms which condone any form of violence against children and end legalized violence. It is impossible to do so without including corporal punishment. This has to be seen as a starting point: we cannot demonstrate a serious commitment to violence prevention and child protection while states continue to authorize corporal punishment in the home, in schools and other institutions and in penal systems."*

In December last year, Professor Pinheiro addressed a meeting in the Westminster Parliament in London, and stated: *"I have to say I have been surprised at the controversy aroused in some quarters by my statement, made after the regional consultations, that the study report will certainly recommend a universal ban on all corporal punishment. Surely, it would be strange indeed if the "expert" leading a study on violence against children would suggest that it is OK to hit children? ... The fact is, I could not look those many children I have met around the world in the eyes and say that I had decided they were worthy of less legal protection from assault than myself or other adults. Really, it is absurd..."*

Nine regional consultations were held in connection with the Study across the world last year. Each included a mix of representatives of governments, UN agencies, NGOs and children and at each the adopted recommendations included proposals to prohibit all corporal punishment, including in the family. The Study is committed to the active participation of children and young people - and at each consultation they spoke out strongly in favour of law reform and highlighted the hurt that routine and apparently socially approved violence causes them. At the consultation for the East Asia and Pacific region, held in Bangkok in June last year, the children's declaration began: *"We believe that corporal punishment must be banned – in the home, schools and the justice system. Children should be treated the same as adults, with respect, dignity and fairness"*.⁵

⁵ For details of the UNSG's Study on Violence against Children, see <http://www.violencestudy.org/r25>; for details of the Regional Consultations, including children's contributions, see website of the Children's Rights Information Network – CRIN: <http://www.crin.org/violence/unstudy/index.asp>; for reports submitted to each Regional Consultation by the Global Initiative to End All Corporal

I believe that the presence of children at these consultations made it very much more difficult for the adults and governments involved to stay in denial about the scale and the hurt caused by this daily, routine violence against children in their homes.

A New Zealand note

The Human Rights Amendment Act 1993 gave the Human Rights Commission in New Zealand responsibility for developing a national human rights action plan. In 2004 the Commission released a report *Human Rights in New Zealand Today* the conclusions of which were the basis for the *New Zealand Action Plan on Human Rights*⁶ released in March 2005.

The Action Plan” has identified what must be done over the next five years so that the human rights of everyone who lives in New Zealand are better recognised, protected and respected. The report fully recognises children as humans entitled to rights. The section “Safety and Freedom from Violence” lists as two of its priorities:

- Strengthen public education programmes aimed at promoting positive, non-violent forms of discipline and respect for children’s rights to human dignity and physical integrity.
- Repeal section 59 Crimes Act 1961.

These priorities are entirely congruent with international directions but who is responsible for ensuring they will be met? The Human Rights Commission Report says that responsibility for implementation rests with the agencies that have the relevant statutory or community mandate. The call for a change in legislation is a challenge to the Government who are pressured from various directions to honour children’s rights. They may also be under pressure to avoid socially controversial legislation that will give rise to criticism of “state interference in family lives”. Surely the responsibility to honour children’s human rights is a matter of leadership not interference.

Conclusion

There is, at last, rapidly accelerating progress in ending corporal punishment of children. The context is the adoption and almost universal ratification over the last 15 years of the United Nations Convention on the Rights of the Child. The body that monitors compliance with the UN Convention on the rights of the child, the Committee on the Rights of the Child consistently recommends an end to legalised corporal punishment. It has done so on two occasions in its reports to the New Zealand Government, in 1997 and 2003. Other human rights treaty bodies are echoing these recommendations and there have been key judgments by high level courts in many states, quoting the UNCRC and condemning corporal punishment.

Punishment, see www.endcorporalpunishment.org

⁶ Human Rights Commission. (2005). *Mana ki te Tangata: New Zealand Action Plan on Human Rights*. Wellington. Human Rights Commission.

Also over this period, the scale and extent of corporal punishment is becoming visible in all regions through interview research with parents and with children. And children are beginning to tell us how much it hurts them – and not just physically – *It hurts you inside* is the title of a research report of young children’s views on smacking in the UK.⁷ This study has been replicated, with similar findings, in New Zealand⁸.

Recommendations from the UN Secretary General Study will be clear and explicit in regard to measures, including explicit prohibition, to eliminate corporal punishment. New Zealand has a unique opportunity this year, with the private member’s bill currently before Parliament, to honour its obligations to children and make its decision in their “best interests”.

⁷ Carolyne Willow and Tina Hyder, *It hurts you inside — children talking about smacking*, National Children’s Bureau and Save the Children UK, London, 1998

⁸ Dobbs, T. (2005) *Insights: Children and young people speak out about family discipline*. Wellington. Save the Children.