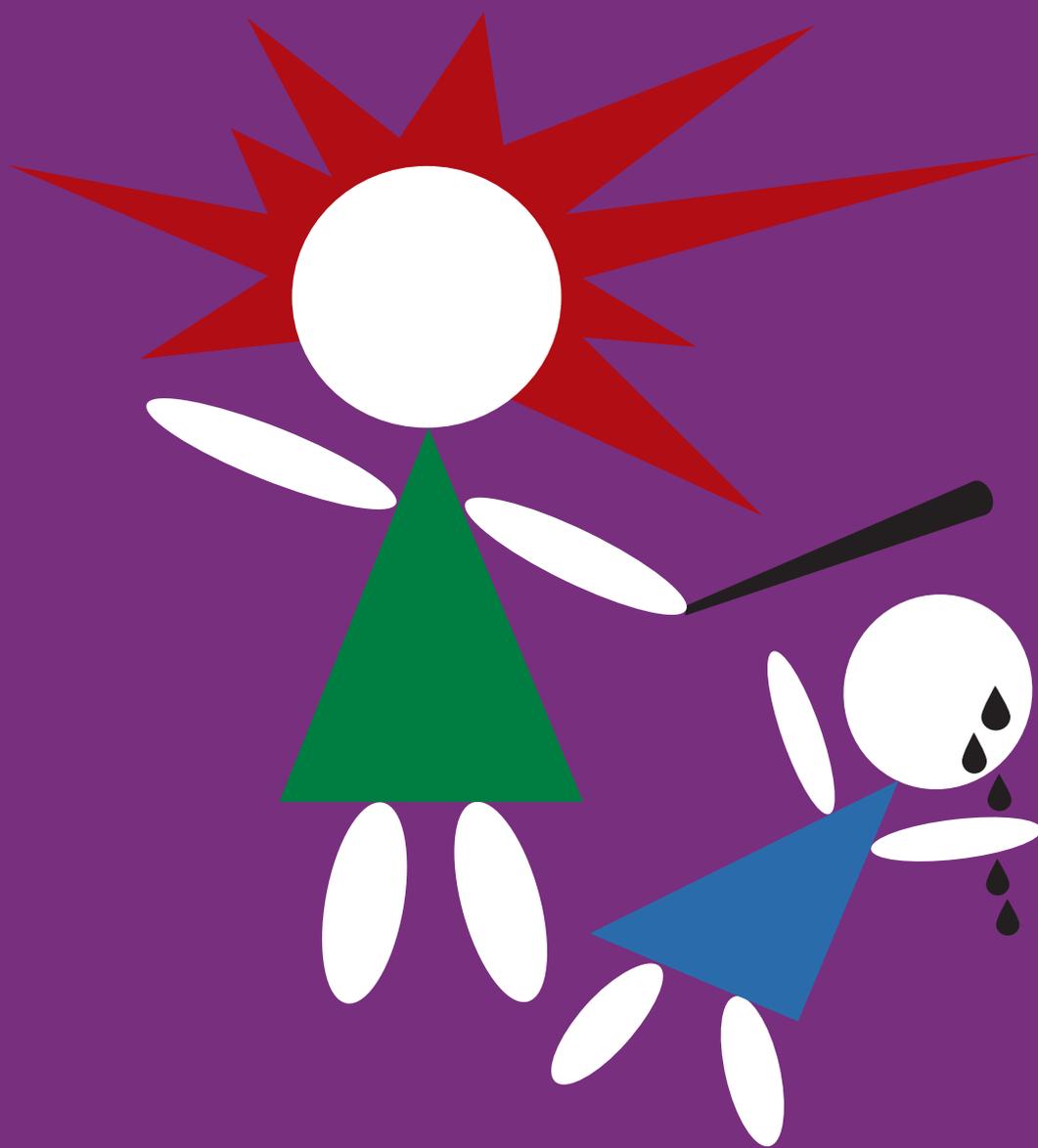


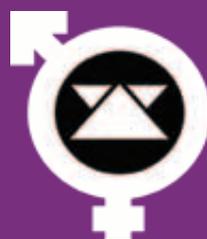
# National and International Perspectives

# CORPORAL PUNISHMENT



Gender Research & Advocacy Project  
LEGAL ASSISTANCE CENTRE

Windhoek, Namibia  
2010



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# **CORPORAL PUNISHMENT**

## **National and International Perspectives**

**Gender Research and Advocacy Project  
of the Legal Assistance Centre**

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**“One December night, we were having a family barbeque when suddenly I accidentally knocked down a glass of wine and it broke. My dad was so furious that he came at me full speed, looking straight in to my eyes, and before I knew it, he was in front of me. In the blink of an eye I felt my cheek burning like fire and the pain was so bad that I cried. Then he kicked me three times and punched me two more times. Now imagine over just a glass you should be beaten like that. Please parents, let’s stop corporal punishment. At least let’s talk and solve our problems.”**

**Quote from a Namibian child**

**“One day my aunt sent my cousin to the shop to go and buy her sugar. Then on his way to the shop, he lost the money and went back to tell his mom. His mom got angry and attacked him badly instead of telling him to go search for it.”**

**Quote from a Namibian child**

**“I don’t like it when my parents beat us with the sharp object.”**

**Quote from a Namibian child**

**“One day there was a girl who went to clubs every night and one day when she was walking back late at night, a man raped her. She didn’t tell her mother and became pregnant. Her mother was furious and beat her. When the girl gave birth, the baby was dead and the girl also died. The mother felt sorry. So people don’t beat women or girls, you might regret it.”**

**Quote from a Namibian child**

# I. Introduction

Corporal punishment is “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.

**Committee on the Rights of the Child,**  
*General Comment No 8 (2006), CRC/C/GC/8, 2 March 2007, at paragraph 11*

Corporal punishment is when a person in authority uses physical force with the intention of causing pain or discomfort for disciplinary purposes. Corporal punishment of children usually includes things like smacking, slapping, spanking or beating with the hand or with some implement (like a stick or a belt). It can also involve other things, like kicking, shaking, pinching or burning.<sup>1</sup>

**“When a parent punishes a child by using sticks and sharp objects, or beating by using a wire, that’s corporal punishment.”**

**Quote from a Namibian child**

The Committee which monitors the Convention on the Rights of the Child defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.<sup>2</sup> It elaborates on forms of corporal punishment as follows:

**Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and**

<sup>1</sup> A study conducted by Straus and Stewart examined six “types” of corporal punishment (1) slaps on the hand or leg; (2) spanking on the buttocks; (3) pinching; (4) shaking; (5) hitting on the buttocks with a belt or paddle and (6) slapping in the face. MA Straus and JH Stewart, “Corporal punishment by American parents: national data on prevalence, chronicity, severity, and duration, in relation to child and family characteristics”, *Clinical Child and Family Psychology Review*, Vol 2, No 2: 55-70 (1999).

<sup>2</sup> Committee on the Rights of the Child, *General Comment No 8 (2006), CRC/C/GC/8, 2 March 2007, at paragraph 11.*

thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.<sup>3</sup>

The Committee also provides a useful discussion of physical interventions which do *not* constitute corporal punishment; it draws a distinction between physical punishment and the use of physical force to protect a child or to restrain a child who might otherwise injure others:

The Committee recognizes that parenting and caring for children, especially babies and young children, demands frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.

The Committee recognizes that there are exceptional circumstances in which teachers and others, eg those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish....<sup>4</sup>

The use of corporal punishment is global, with reports suggesting that the practice is widespread in all regions.<sup>5</sup> International agreements such as the 1990 Convention on the Rights of the Child (to which Namibia is a signatory) prohibit the use of corporal punishment.<sup>6</sup> However whilst this and other international agreements have increased awareness about the use of corporal punishment, debate persists about whether or not corporal punishment should be permitted.<sup>7</sup>

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<sup>3</sup> Ibid.

<sup>4</sup> Id at paragraphs 14-15.

<sup>5</sup> United Nations Secretary-General's Study on Violence against Children, *World Report on Violence Against Children*, Geneva: United Nations, 2003, [hereinafter "*UN World Report on Violence Against Children*"] at page 52.

<sup>6</sup> Article 19 of the Convention on the Rights of the Child requires that State Parties take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child". In 1994, the Committee on the Rights of the Child stressed that corporal punishment of children is incompatible with the Convention and noted the need for revision of existing legislation, as well as the development of awareness and educational campaigns, to prevent child abuse and the physical punishment of children. (Committee on the Rights of the Child, Report on the Seventh Session, CRC/C/34, 8 November 1994, at 63.)

<sup>7</sup> *UN World Report on Violence Against Children* at page 53.

*“How can we expect children to take human rights seriously and to help build a culture of human rights, while we adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people.”*

**P Newell & T Hammarberg,**

“The right not to be hit” in *Children’s rights: Turning principles into practice*,  
Stockholm: Save the Children Sweden, 2000 at page 135

There are widely varying views amongst adults in different countries about the use and effectiveness of corporal punishment. For example, a Canadian study found that 59% of those surveyed believed that spanking is harmful whilst 86% believed that spanking is ineffective. In contrast, a US study found that 84% of people agreed “that it is sometimes necessary to discipline a child with a good hard spanking.” A study in the Republic of Korea found that 90% of parents thought corporal punishment “necessary”, while 92% of the population in Sweden is opposed to all forms of physical punishment of children.<sup>8</sup>

There is more agreement amongst children in different regions, with most children surveyed around the world being opposed to the practice. For example, research by the Save the Children Alliance found that children around the world overwhelmingly disagreed with the idea that physical and degrading forms of punishment accomplish anything positive. The report noted that while children may comply with adults’ wishes immediately after being hit, this type of punishment “frightens children into certain behaviours: it does not help children to want to behave, or teach them self-discipline or promote any alternative”. The report also found that young children frequently do not remember why they were hit.<sup>9</sup> A UNICEF survey in Europe and Central Asia found that over 75% of children said that hitting was never a good solution to problems at home.<sup>10</sup> Children who were consulted in various regions during the preparation of the *UN World Report on Violence Against Children* repeatedly called for other methods of discipline, such as being offered a proper explanation of what they had done wrong, and emphasised how hurtful it is to be hit and humiliated by those who supposedly love them.<sup>11</sup>

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<sup>8</sup> Id at page 53; “Submission by Save the Children Sweden to the Department of Social Development on the Children’s Bill (dated 12 August 2003)”, South Africa, 29 September 2003.

<sup>9</sup> International Save the Children Alliance, *Ending Physical and Humiliating Punishment of Children: Making It Happen, Part 2, Global Submission to the UN Secretary-General’s Study on Violence against Children*, Stockholm: Save the Children Sweden, 2005, as reported in *UN World Report on Violence Against Children* at page 53.

<sup>10</sup> UNICEF, *Young Voices Opinion Survey of Children and Young People in Europe and Central Asia*, Geneva: UNICEF, 2001. The poll is based on face-to-face interviews with 15 200 children, between the ages of 9 and 17, conducted between December 2000 and February 2001. The results reflect the voices of over 93 million children from 35 countries. See <[www.unicef.org/polls/cee/index.html](http://www.unicef.org/polls/cee/index.html)> (last accessed 15 May 2010).

<sup>11</sup> *UN World Report on Violence Against Children* at page 53.

The purpose of this monograph is to provide relevant information on corporal punishment to policy-makers, stakeholders and other interested parties. It discusses research findings on the impact of corporal punishment, the international and national framework which surrounds corporal punishment and public opinion on the issue in Namibia - particularly from children. It presents new data on the opinions of Namibian children based on responses from over 2000 children collected as part of the public consultation process around Namibia's Child Care and Protection Bill. The monograph also reports how a range of countries have addressed the issue of corporal punishment in their legal systems, to provide insight into options for addressing the issue of corporal punishment in Namibia. Finally the monograph provides a chapter on alternatives to corporal punishment.

The public opinion reported in this monograph is taken from the feedback received during consultations led by the Ministry of Gender Equality and Child Welfare in 2009 on the revision of the draft Child Care and Protection Bill. The Legal Assistance Centre provided technical assistance for this revision process, and UNICEF provided financial and technical support. Feedback was obtained from both adults and children. A substantial amount of feedback was collected from discussions with learners and out-of-school youth facilitated by the Ombetja Yehinga Organisation (OYO), a Namibian trust which aims to create social awareness among young people using the arts.

*“There is no more obvious sign of the low status which children still enjoy in most of the world than the readiness of adults to defend smacking, slapping, and beating them”.*

**P Newell**, “Respecting children’s right to physical integrity”,  
in Bob Franklin, ed, *The Handbook of Children’s Rights: Comparative Policy and Practice*, London: Routledge, 1995



Namibian children reading one of the Legal Assistance Centre’s comics on corporal punishment

## Corporal punishment in Namibia: a sample of recent media reports

A corporal punishment scandal at a private school in Windhoek might see senior teachers in the dock soon. After his grade 9 son was allegedly assaulted by four teachers at Windhoek Gymnasium, Leon van Eck laid charges of assault against the four – three men and a woman. He claims that he did this after various means of intervention exploded in his child's face in the form of alleged intimidation. He was forced to remove his son from the school last week, Van Eck said. That was the final straw, he said, which forced him to go to the Police on Friday.

**“Teachers face assault charges”**, *The Namibian*, 14 April 2010

An 11-year-old pupil from a Windhoek primary school ended up in hospital after his class teacher allegedly hit him on the head with a chalkboard duster. According to the boy's father, he and the child's mother were summoned to the school that day, and were told that their child had had an accident. They took him to the Katutura State Hospital, where the boy remained the whole weekend. The school had initially told the boy's father that the boy had fallen off his chair and had collapsed. However, the teacher told the parents that he had called the boy to the front of the class, presumably for being noisy. “It seems he wanted to hit him on the hands, but the child refused and was being difficult, then he hit him on the head”, the father recalled. When the boy returned to his desk, he collapsed and was taken to the sickbay.

**“Parents claim teacher beat child unconscious”**, *The Namibian*, 4 February 2010

The police in the Ohangwena Region have arrested a 55-year-old woman at Onamafila Village for allegedly burning her two grandchildren with coals because they ate a piece of chicken without her permission. A police spokesman, Constable Abner Itumba, said that Ndateelela Lukas was cooking a chicken on Sunday afternoon and asked her granddaughters to keep an eye on the pot while she went to visit a neighbour. She apparently stayed away long and the children became hungry and ate a piece of the cooked chicken. When Ndateelela returned, she was angry and allegedly started beating the children. She then allegedly took burning coals from the cooking fire, burnt the children's lips and forced the coals into their mouths. Itumba said the children's mouths were burnt severely inside and out and they were taken to the Okongo Hospital.

**“‘Greedy’ children's mouths burnt”**, *The Namibian*, 23 October 2008

The grandmother and a neighbour of the late Michael Olugodhi – a boy who died a violent, painful death after a prolonged beating at his home in northern Namibia almost three and a half years ago – were each sentenced to 15 years' imprisonment for his murder on Wednesday. The grandmother, who had raised Olugodhi since shortly after his birth, had discovered that four dried fish were missing from her home and had presumably been eaten by her grandson. Dr. Yury Vasin told Acting Judge Manyarara that he counted more than 70 injuries on the front of Olugodhi's body, and more than 70 injuries on the back. The grandmother had summoned a neighbour to her home so that he could help her punish her grandson. Olugodhi was then tied to a tree with a long piece of electrical cord and severely beaten with sticks, it was alleged. “That child must have been through hell in the last parts of his life”, state advocate Sandra Miller remarked when she addressed the court before the sentencing.

**“Grandmother jailed over deadly beating of boy”**, *The Namibian*, 2 May 2008

When Kapurunje Uirab, 13, was accused of stealing a classmate's cellphone, his sixth-grade teacher beat him with a heavy metal pipe until he could barely walk. His family took him to a clinic where he was treated for lacerations and sore kidneys, according to medical records. "It really hurt to move my legs", said Kapurunje, speaking by phone from the distant town of Rundu, where he now attends a different school. "He had bleeding welts on his back and more on his legs", said his mother, Rita Uirab, 40, a housekeeper. "And his face, it had changed from a boy's face to a serious face of a man. We had to do something." Corporal punishment was far from unusual at Olof Palme primary school, where most classrooms had a metal pipe, goatskin whip, or wooden paddle leaning in one corner. If students got a math problem wrong or arrived late, they could be beaten.

**"Children's beatings by schoolteachers draw scrutiny in Africa"**, *The Boston Globe*, 20 November 2005

A 74-year-old woman was arrested in the Omusati Region on Wednesday and charged with child abuse. According to Sergeant Lineekela Shikongo of the Namibian Police, Ndatila Aimbili from Omushii village in the Omusati Region is accused of abusing her four-year-old grandson. Aimbili, who is believed to be the child's guardian, burned both his hands earlier this month to "teach him not to play with fire". The child needed treatment at Outapi District Hospital after the incident.

**"Woman charged with child abuse"**, *The Namibian*, 17 January 2005

## Some recent international news stories on corporal punishment

*South Africa*: A 9-year old died after allegedly being beaten by a teacher with a plastic pipe for making a noise in the classroom. The teacher was suspended pending an investigation. (*Sowetan*, 21 April 2010)

*Sri Lanka*: A 13-year old girl was hospitalised after being caned and forced to eat inedible food, despite corporal punishment being unlawful. (*Asian Human Rights Commission*, 7 May 2010)

*Jordan*: A 12-year-old boy lost his right eye after being hit by his teacher. The teacher, who has since been fired, slapped him, causing him to fall and hit a closet. Corporal punishment is unlawful in schools but it continues to be used; it is also widely used in the home. (*globalpost*, 8 May 2010)

Taken from the **Global Initiative Newsletter**, May 2010

# 2. The effects of corporal punishment

## 2.1 Negative effects

Advocates of corporal punishment argue that it is an effective and innocuous means of disciplining children,<sup>1</sup> but a number of empirical studies suggest otherwise. A range of negative physical, social and psychological consequences have been shown to result from the use of corporal punishment on children.

Child discipline is very important – without it, society would have many problems. The question is: *what kind* of child discipline is most effective?

- (1) **Escalation to physical abuse:** Physical punishment carries an in-built risk of escalation.<sup>2</sup> Research confirms that where corporal punishment is administered too severely or too frequently, the result can be child abuse. Parents who admit to having abused their children reveal that as many as two-thirds of abusive incidents began as attempts to change children's behaviour or to "teach them a lesson". When the child does not comply, the parents increase the severity of the punishment.<sup>3</sup> The

<sup>1</sup> See, for example, D Baumrind, RE Larzelere and PA Cowan, "Ordinary Physical Punishment: Is it Harmful? Comment on Gershoff (2002)", *Psychological Bulletin*, Vol 128, No 4: 580-89 (2002), available at <<http://pjackson.asp.radford.edu/BaumrindLarzelereCowan2002.pdf>> (last accessed 15 Feb 2010). These authors argue that a distinction should be made between "the harsh, punitive parental discipline that all experts would regard as both harmful and unethical" and "the more normative parental actions that involve the infliction of mild physical pain but not injury", and then conclude that the evidence "does not justify a blanket injunction against mild to moderate disciplinary spanking" (at page 586).

<sup>2</sup> David Elliman and Margaret Lynch, "The Physical Punishment of Children," *Archive of Diseases of Childhood Online* 83: 196-198 (2000), available at <[www.facmed.unam.mx/cainm/publicaciones/biblio/14/14.pdf](http://www.facmed.unam.mx/cainm/publicaciones/biblio/14/14.pdf)> (last accessed 15 Feb 2010).

<sup>3</sup> See Elizabeth T Gershoff, "Corporal Punishment by Parents and Associated Child Behaviours and Experiences: A Meta-Analytic and Theoretical Review" in *Psychological Bulletin*, Vol 128, No 4: 539-579 (2002), available at <[www.endcorporalpunishment.org/pages/pdfs/Gershoff-2002.pdf](http://www.endcorporalpunishment.org/pages/pdfs/Gershoff-2002.pdf)> (last accessed 15 Feb 2010). This article is an extensive literature review of 88 studies on corporal punishment. See also Murray Straus, "Physical Abuse" in *Beating the Devil Out of Them: Corporal*

American Academy of Pediatrics explains why spanking often escalates to physical abuse:

Although spanking may immediately reduce or stop an undesired behaviour, its effectiveness decreases with subsequent use. The only way to maintain the initial effect of spanking is to systemically increase the intensity with which it is delivered, which can quickly escalate into abuse.... [B]ecause spanking may provide the parent some relief from anger, the likelihood that the parent will spank the child in the future is increased.<sup>4</sup>

Physical punishment carries an in-built risk of escalation to child abuse.

“I stole brown sugar at a shop and the shop owner called my parents. My mum arrived and paid for the sugar cost amount. Then we went home and she locked the door and took a broom stick. She broke it in the middle and started beating me until I started bleeding from the head. I will never forget that day.”

Quote from a Namibian child

- (2) **Lack of moral internalisation:** Moral internalisation is the taking over of the values and attitudes of society as one’s own so that socially acceptable behaviour is motivated by intrinsic factors rather than by fear of external consequences.<sup>5</sup> For example, moral internalisation would be when someone refrains from stealing because they believe that stealing is wrong, and not because they fear that they will be caught and arrested. Researchers have found that corporal punishment does not facilitate moral internalisation because it does not teach children the reasons for good behaviour. Moral internalisation is enhanced by discipline strategies that use minimal parental power, promote choice and autonomy, and provide explanations. Discipline strategies based on corporal punishment tend to generate good behaviour only where external consequences are anticipated.<sup>6</sup>

Corporal punishment does not facilitate moral internalisation because it does not teach children the reasons for good behaviour.

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*Punishment in American Families and Its Effects on Children*, 2<sup>nd</sup> edition, New Brunswick, New Jersey / London: Transaction Publishers, 2001.

<sup>4</sup> American Academy of Pediatrics Committee on Psychosocial Aspects of Child and Family Health, “Guidance for Effective Discipline” *Pediatrics*, Vol 101 No 4: 723-728 (1998), at page 726, available at <<http://aappolicy.aappublications.org/cgi/content/full/pediatrics%3b101/4/723>> (last accessed 19 July 2010).

<sup>5</sup> Gershoff (n3) at page 541.

<sup>6</sup> Id.

**“I do believe that corporal punishment is not the way to rectify children's mistakes. There are quite a lot of things that parents can do for them not to hurt their children. One bad day, my mother started beating me so bad that I even started vomiting. And I was vomiting blood. It was so shocking. Afterward, my granny came and she told my mother that it was bad to beat me. Therefore I say that beating a child is not a good thing. The best way is to tell the child the bad effects of what she/he is causing as they say that a wise person will not fail to solve a problem by mouth.”**

**Quote from a Namibian child**

- (3) **Increased aggression:** The link between the use of corporal punishment and aggressive behaviour in children is well documented. Notably, corporal punishment in childhood was found to be the strongest predictor of adolescents' aggression eight years later.<sup>7</sup> Also, corporal punishment was found to result in a greater amount of fighting in school five years later, and a higher probability that a child will assault a parent.<sup>8</sup> Researchers hypothesise that higher levels of aggression are created because corporal punishment models aggression, promotes hostility and initiates cycles of negative interaction between parent and child.<sup>9</sup> A 2010 multinational study that assessed discipline used by parents in 292 families in China, India, Italy, Kenya, the Philippines and Thailand reported a significant relationship between aggressive behaviour in children and the use of corporal punishment, expressing disappointment and yelling.<sup>10</sup> This study is supported by a US study of 2500 children in 2005, which also reported a link between spanking and aggressive behaviour by children, finding that children who were subjected to corporal punishment more frequently at age 3 were much more likely to be aggressive at age 5 – and ruling out other factors which might have accounted for the children's increased aggression. The authors posited a cycle of violence, where children learn to be aggressive when they are treated with aggression, and concluded that prevention of violence in society should begin with efforts to prevent the use of corporal punishment of children.<sup>11</sup>

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<sup>7</sup> Id.

<sup>8</sup> M Gunnoe and C Mariner, “Toward a developmental-contextual model of the effects of parental spanking on children's aggression,” *Archives of Pediatric and Adolescent Medicine* 151: 768-775 (1997), cited in Straus (n3) at pages 198-199. An important exception to this finding is where the corporal punishment is experienced by a toddler or an African American child, in which case the opposite is true. Straus hypothesises that this is because where there is no corporal punishment there is no discipline at all. This could be important when looking at Namibia's situation.

<sup>9</sup> Gershoff (n3) at page 541.

<sup>10</sup> ET Gershoff, A Grogan-Kaylor, JE Lansford, L Chang, A Zelli, K Deater-Deckard, and KA Dodge, “Parent discipline practices in an international sample: associations with child behaviours and moderation by perceived normativeness”, *Child Development*, Vol 8, No 2: 487-502 (2010).

<sup>11</sup> Catherine A Taylor, Jennifer A Manganello, Shawna J Lee, and Janet C Rice, “Mothers' Spanking of 3-Year-Old Children and Subsequent Risk of Children's Aggressive Behaviour”, *Pediatrics* published online, 12 April 2010 at <<http://pediatrics.aappublications.org/cgi/reprint/peds.2009-2678v1>> (last accessed 30 April 2010). See also Alice Park, “The Long-Term Effects of Spanking”, *Time* magazine, 3 May 2010.

The link between the use of corporal punishment and subsequent aggressive behaviour by children is well documented.

**“The other night, my dad hit me and it made me cry. I wish I could hit him back.”**

Quote from a Namibian child

- (4) **Adult abuse of spouse and children:** Research shows strong associations between receiving corporal punishment as a child and abusing a spouse or child later on in life. The resulting increase in general aggressive tendencies and development of the view that violence is a legitimate reaction are likely to lead to later manifestations of violence against family members.<sup>12</sup> One study found that corporal punishment in adolescence was associated with an increased probability of violence against one’s spouse, experiencing depression as an adult, and elevated levels of marital conflict. The theory is that a child who has less opportunity to observe non-violent modes of influencing others will inevitably encounter more conflict as an adult.<sup>13</sup> Another study similarly found that the more a parent was hit as an adolescent, the greater the chances the parent will physically abuse his or her own children, with this association growing stronger in correspondence with higher levels of corporal punishment.<sup>14</sup>

Research shows strong associations between receiving corporal punishment and abusing a spouse or child later in life.

**“If kids grow in an abusive environment, they will absorb that behaviour when they grow up and pass it on to their children. The solution is to discipline the kids in appropriate manner because if you apply abusive discipline, then it just ruins their future. Parents should just apply a verbal warning.”**

Quote from a Namibian child



<sup>12</sup> Gershoff (n3) at page 542.

<sup>13</sup> Murray Straus and Carrie Yodanis, “Corporal Punishment in Adolescence and Physical Assaults on Spouses in Later Life”, *Journal of Marriage and the Family* 58: 825-884 (1995).

<sup>14</sup> “Part VI: Impact of Corporal Punishment”, in Human Rights Watch, *A Violent Education*, New York: Human Rights Watch, 2008, available at <[www.hrw.org/en/node/62078/section/1](http://www.hrw.org/en/node/62078/section/1)> (last accessed 13 July 2010).

- (5) **Antisocial behaviour:** Anecdotal evidence shows that a significant number of violent criminals and murderers experienced excessive corporal punishment as children. Many studies have found a link between corporal punishment and antisocial or criminal behaviour. Notably, a harsh disciplinary style has been associated with a greater arrest rate in men<sup>15</sup> and an increased tendency to antisocial behaviour (specifically lying, cheating, bullying, breaking things and getting in trouble at school).<sup>16</sup> In a longitudinal study of 807 mothers of children aged 6 to 9 years, Straus (1997) showed that the more spanking children received at the start of the research period, the higher the level of anti-social behaviour two years later. The researchers concluded that when parents use corporal punishment to reduce anti-social behaviour, the long-term effect tends to be the opposite.<sup>17</sup> A recent Namibian study of imprisoned perpetrators of gender-based violence found that significant numbers of these perpetrators had observed or experienced parental violence in the home during their childhoods.<sup>18</sup> One hypothesis is that this association is related to the child's failure to internalise parents' and society's morals and values.<sup>19</sup>

Anecdotal evidence shows that a significant number of violent criminals and murderers experienced excessive corporal punishment as children.

**“There was a kid who grew up in corporal punishment and his parents was always fighting. When he grew up, he had a girlfriend and he always beat them. One day he beat the girl with a chair and she died in front of him.”**

Quote from a Namibian child



<sup>15</sup> Gershoff (n3) at page 541.

<sup>16</sup> Straus (n3) at page 197.

<sup>17</sup> MA Straus, DB Sugarman, and J Giles-Sims, “Spanking by parents and subsequent antisocial behaviour of children,” *Archives of Pediatrics and Adolescent Medicine*, Vol 151, No 8: 761-767 (1997).

<sup>18</sup> Women’s Action for Development (WAD), the University of Namibia (UNAM) and the Namibia Prison Service (NPS), *Understanding the Perpetrators of Violent Crimes Against Women and Girls in Namibia: Implications for Prevention and Treatment*, Windhoek: WAD/UNAM/NPS, undated, at page 21. About half of the prison inmates interviewed in the middle age group (age 31-45) and the young age group (age 17-30), which together made up 90% of the sample, observed or experienced parental violence during their childhoods.

<sup>19</sup> Gershoff (n3) at page 542.

- (6) **Poor mental health:** Harsh punishment has been associated significantly with adolescent depression and distress, as well as with decreases in children's confidence and assertiveness.<sup>20</sup> A study of adults who were hit by their parents as teenagers found a clear tendency for depressive symptoms to increase with each increment of corporal punishment, especially in males, even when controlling for other variables (such as socio-economic status, the gender of the child, marital violence, excessive drinking, and witnessing violence between parents). Suicide has also been linked to more severe instances of corporal punishment.<sup>21</sup> The long-term impact of corporal punishment has also been assessed and a linear association has been shown between the frequency of slapping and hitting in childhood and a lifetime prevalence of anxiety disorders, alcohol abuse/dependence and externalisation of problems.<sup>22</sup> However, not all studies show such a significant impact on mental health. For example, a meta-analysis conducted in 2004 found that the use of corporal punishment had a limited impact on the development of emotional and behavioural problems.<sup>23</sup>

Harsh punishment has been associated with adolescent depression and distress, as well as with decreases in children's confidence and assertiveness.

**“When I grow up and have children I won't use corporal punishment on my kids. Beating a child makes the child feel worthless and unloved. You must show a child love. Beating a child makes the child turn to alcohol.”**

**Quote from a Namibian child**

- (7) **Poor relationship with parents:** The use of corporal punishment can seriously undermine the parent-child relationship. Corporal punishment has been found to evoke feelings of fear, anxiety and anger. It can incite children to be fearful of and avoid the parent. This can lead to the erosion of bonds of trust between parents and their children.<sup>23</sup> The more corporal punishment used, the greater the likelihood that the child will assault the parent a year and a half later.<sup>24</sup> The use of corporal punishment can promote anger in children and parents. Children think it is unfair

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<sup>20</sup> Ibid.

<sup>21</sup> M Straus, “Corporal Punishment of Children and Adult Depression and Suicidal Ideation” in *Beating the Devil Out of Them: Corporal Punishment in American Families and Its Effects on Children*, 2<sup>nd</sup> edition, New Brunswick, New Jersey / London: Transaction Publishers, 2001.

<sup>22</sup> HL MacMillan, MH Boyle, MYY Wong, EK Duku, JE Fleming and CA Walsh, “Slapping and spanking in childhood and its association with lifetime prevalence of psychiatric disorders in a general population sample”, *Canadian Medical Association Journal*, Vol 161, No 7: 805-809 (1999).

<sup>23</sup> Gershoff (n3) at page 542.

<sup>24</sup> Timothy Brezina, “Teenage violence towards parents as an adaptation to family strain: Evidence from a national survey of male adolescents,” *Youth & Society* 30: 416-444 (1999), cited in Straus (n3) at page 200.

and experience it as a form of humiliation.<sup>25</sup> One result of the altered parent-child relationship is that discipline may become increasingly difficult over time.<sup>26</sup>

A further reason that corporal punishment can be a problem is because parents may use this form of discipline not just to discipline the child, but also as a means of defining the parental role. A 1997 study which assessed parental accounts of using physical discipline identified the theme of control in the discourse by the parents, suggesting that some parents use corporal punishment for reasons other than discipline.<sup>27</sup> This provides further evidence to suggest that the use of corporal punishment can have a negative effect on the parent-child relationship.

The use of corporal punishment can seriously undermine the parent-child relationship.

“Oh dearest mum  
I've cried for so many months  
But no answer  
So many weeks have passed wanting to commit suicide  
Because you beating too much  
And wouldn't handle this any longer  
You always told me it was just discipline  
But for me it felt much more than just discipline.  
  
In class I hardly listen any more  
Instead I spend my time thinking what I have done to deserve all this.  
  
If only you'd punish me with something else  
Maybe stop me from watching my favourite soopies or hang out with  
friends on Saturdays.  
  
I've become a sad girl  
Nothing matters anymore  
This has finished me  
My flesh has faded away with all your beatings; and bones is what's left.  
  
If only you could understand me and maybe I'd be happy again.”

**Poem from a Namibian child**

<sup>25</sup> Susan H Bitensky, “Spare the Rod, Embrace Human Rights: International Law’s Mandate Against All Corporal Punishment of Children”, 21 *Whittier Law Review* 147 (1999).

<sup>26</sup> Straus (n3) at page 200; American Academy of Pediatrics Committee on Psychosocial Aspects of Child and Family Health, “Guidance for Effective Discipline”, *Pediatrics*, Vol 101 No 4: 723-728 (1998), at page 726, available at <<http://aappolicy.aappublications.org/cgi/content/full/pediatrics%3b101/4/723>> (last accessed 19 July 2010) [hereinafter *Pediatrics*].

<sup>27</sup> B Gough and P Reavey, “Parental accounts regarding the physical punishment of children: discourses of dis/empowerment”, *Child Abuse and Neglect*, Vol 21 No 5: 417-430 (1997).

- (8) **Poorer academic achievement:** The use of corporal punishment has been associated with poor performance at school. One study found that children who were not spanked had a faster than average mental development – perhaps because the parents of these children engaged in verbal methods of behaviour control which in turn enhances a child’s cognitive ability.<sup>28</sup> Likewise, the more corporal punishment that was received during adolescence, the lower the probability of graduation from university.<sup>29</sup>

The use of corporal punishment has been associated with poor performance at school.

*“Oh God what did I do  
to be punished like this  
Everytime, everyday; I have to cry.*

*Can you please give me another punishment beside this  
Every day I feel the pain  
Why don't you understand  
That I'm human like you  
Dad, don't hit me  
Mom leave me on my throat  
Teacher don't punch me  
Please realise that I'm just  
Another human like you.”*

Poem from a Namibian child



**Comments from Namibian stakeholders during discussions about corporal punishment.**

<sup>28</sup> Straus (n3) at pages 200 and 202.

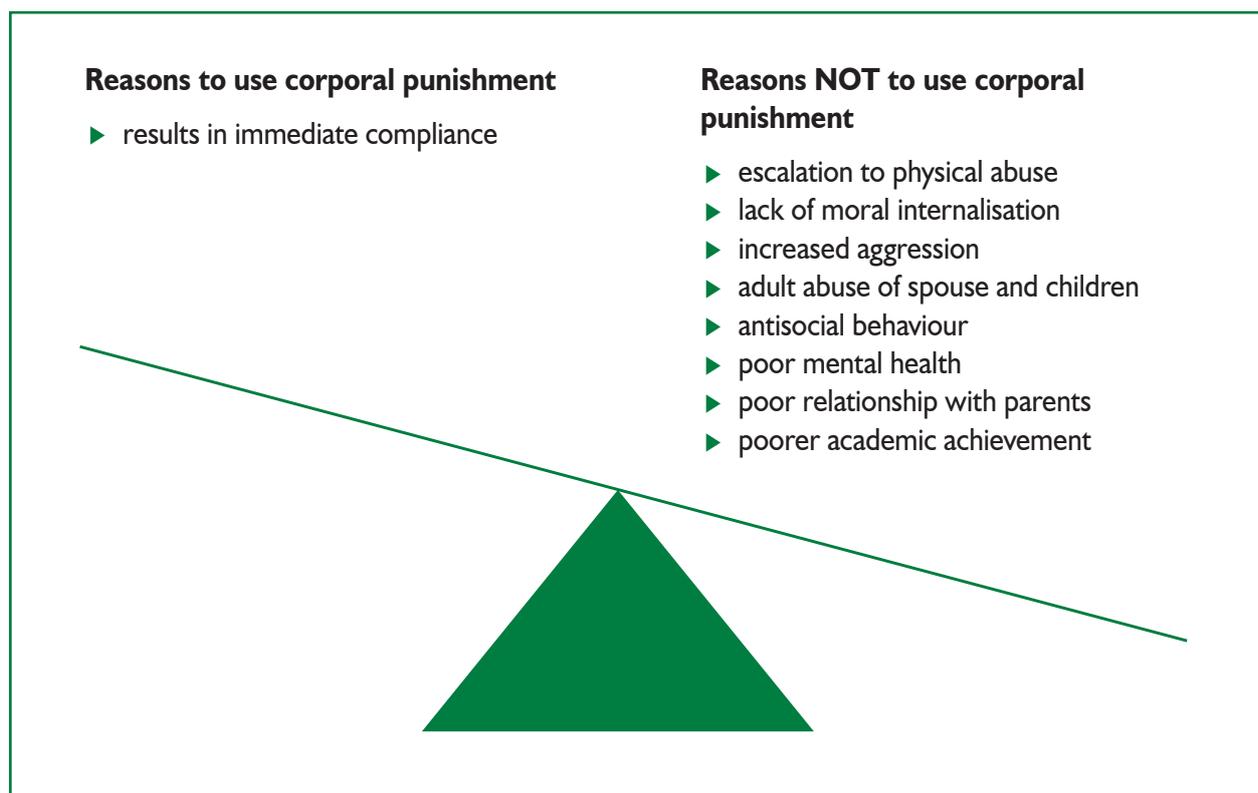
<sup>29</sup> Murray A Straus and Anita Mathur, “Corporal Punishment and Academic Achievement,” paper presented at the annual meeting of the Pacific Sociological, San Francisco, 7 April 1995, available at <<http://pubpages.unh.edu/~mas2/cp70mss.htm>> (last accessed 18 July 2010).

- (9) **Immediate compliance:** Researchers generally agree that there is one positive outcome of corporal punishment – immediate compliance by the child.<sup>30</sup> But this positive outcome must be qualified because the continued use of corporal punishment will tend to increase undesirable behaviour. As noted above, the use of corporal punishment is associated with a lower level of moral internalisation and a poorer relationship with parents. The more corporal punishment is used, the less effective it will become over time and the more difficult it will become to use other methods of discipline.<sup>31</sup> Furthermore, spanking has not been demonstrated to be any more effective than other approaches for managing undesired behaviour in children in the short term.<sup>32</sup>

There is one positive outcome of corporal punishment – immediate compliance by the child.

*“I am a young child and when I came home late, my parents started to beat me with a whip. I saw one parent beat a small baby even though that baby did not make any mistake.”*

Quote from a Namibian child



<sup>30</sup> Gershoff (n3) at pages 541 and 549.

<sup>31</sup> *Pediatrics* (n26) at page 726.

<sup>32</sup> *Ibid.*

## 2.2 Research limitations

Although a number of studies have shown that the use of corporal punishment can have short- and long-term negative consequences, the limitations of these studies must be acknowledged.<sup>33</sup> For example, the best quality trial design would be a randomised controlled study where randomly-chosen groups of children receive corporal punishment whilst others do not. However, because of the evidence suggesting that corporal punishment has a negative impact on children, it would not be ethical to run such an experiment.

Another challenge is that many of the studies rely on reports from the participants. When these reports are retrospective, for example asking the participant to look back and consider his or her childhood, their perception of reality can be distorted by time. Even asking parents to describe their use of corporal punishment at the time of the study may misrepresent reality, as some parents may not admit to using more severe forms of corporal punishment.

A further challenge is that because the use of corporal punishment is common, many samples are skewed as they include a large cohort of families that use corporal punishment versus a much smaller cohort of families that do not use corporal punishment.

Therefore whilst the studies cited in this chapter present convincing evidence that the use of corporal punishment can cause long-term problems, the data must be considered within the context in which it was gathered.

One of the methods to overcome these problems is to conduct qualitative studies to supplement the quantitative data. For example, a qualitative assessment of the use of corporal punishment might ask: (1) is the practice safe? (2) is the practice effective? (3) is the practice safer and more effective than alternatives? If the data do not support affirmative answers to these three questions, then there is good reason to promote the use of alternative forms of discipline.<sup>34</sup> Another approach could be focus on *when* and *why* parents use corporal punishment as a disciplinary method, and then to use this deeper understanding of corporal punishment to develop an appropriate range of alternative forms of discipline.<sup>35</sup>

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<sup>33</sup> EO Paolucci and C Violato, "A Meta-Analysis of the Published Research on the Affective, Cognitive, and Behavioural Effects of Corporal Punishment", *The Journal of Psychology*, Vol 138, No 3: 197-221 (2004); LJ Bauman, "Assessing the causal effect of childhood corporal punishment on adult violent behaviour: methodological challenges", *Pediatrics*, Vol 4, Part 2: 842-844 (1996); Baumrind et al (n1); GW Holden, "Perspectives on the Effects of Corporal Punishment: Comment on Gershoff (2002)", *Psychological Bulletin*, Vol 128, No 4: 590-595 (2002).

<sup>34</sup> Bauman (n33).

<sup>35</sup> RD Parke, "Punishment Revisited – Science, Values, and the Right Question: Comment on Gershoff (2002)", *Psychological Bulletin*, Vol 128, No 4: 596-601 (2002).

# 3. Responding to defences of corporal punishment

## 3.1 Overview

Various arguments have been raised in defence of the imposition of corporal punishment by parents or in the home. Some claim that it is part of their religious belief to impose physical punishment to discipline their child. Others claim it is part of their culture and childrearing tradition; that parents have the right to bring up their children as they see fit and that this should only be challenged in extreme cases like child abuse; that there is a difference between a vicious beating and the little smacks that parents give their children which do not cause real pain and cannot therefore be called abuse; that they themselves as children were hit by their parents and that it did not do them any harm; that children learn from smacking to respect their elders, to obey rules, to work hard and to distinguish between right and wrong and that physical punishment is a necessary part of their upbringing.

However, it can be argued that many of these arguments have no valid foundation; for example, to merely say that parents themselves were hit as children does not make the practice right nor does it mean that this is the way children will learn to obey rules and become responsible adults. Further, there is no clear indication for drawing the line between reasonable and unreasonable chastisement or discipline. Often, in circumstances where parents do resort to corporal punishment, tempers are high and there are certainly no guarantees that parents have the insight or knowledge to determine factors that would inform the severity of the punishment.<sup>1</sup>

In a pamphlet produced by Save the Children Sweden,<sup>2</sup> the authors ask the question “but is there ‘a reasonable amount’ of corporal punishment that that can be quantified, and that international law would permit?”. The answer is no, and the authors use a

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<sup>1</sup> Daksha Kassan, “Draft discussion paper: Children’s Bill – Focus on Corporal Punishment and the changes in Children’s Bill between SALC draft and the June 2003 draft”, Community Law Centre, University of the Western Cape, July 2003.

<sup>2</sup> Save the Children Sweden, “Hitting children is wrong: A plea to end corporal punishment in South Africa”, 2002 at page 10.

particularly effective analogy – violence against women. People do not ask whether there is a reasonable level of violence that can be used against a woman. This then begs the question, why do we want to look for a reasonable level of violence that can be used against children? The authors also question whether it is reasonable to set a time limit for when it is permissible to beat a child: “How can it be prohibited to smack a child aged 2 years and 11 months and 29 days, but then be permitted on the very next day that the same child reaches his or her third birthday?”. They similarly question whether the manner in which the punishment is administered is relevant: “Why is an implement – stick, slipper, wooden spoon – necessarily more harmful than a tightly clenched fist or booted foot?”<sup>3</sup>

The following are some of the questions frequently asked about corporal punishment. (These are repeated on page 109 of this publication in a single-page format that can be photocopied as a handout.)

## Frequently asked questions

### **If many people in Namibia support the use of corporal punishment, shouldn't the government follow public opinion?**

No, in this situation the government must provide a positive lead that the public can follow. Corporal punishment is a form of violence that should not be allowed to continue. From an international perspective, in countries where legislation has been changed to prohibit the use of corporal punishment, this has usually taken place *before* overall public opinion has supported the change. Furthermore, discussions in Namibia have shown that although many people consulted do not *want* the use of corporal punishment in the home to be abolished, they understand the *need* to prohibit the use of corporal punishment.

### **Even children support the use of corporal punishment. Why can't we follow their opinion?**

Children may support the use of corporal punishment because they do not know that there are other, better methods of discipline. Although some children may support the use of corporal punishment, many children in Namibia do not. (See chapter 4.)

### **Isn't the discipline of a child in the home a private matter?**

The impact of corporal punishment can have wide-reaching effects, as discussed in chapter 2. Domestic violence is not a private affair, nor is the use of corporal punishment.

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<sup>3</sup> Id at page 11.

### **But what if you need to smack a child to stop the child from hurting him or herself?**

Using pain to prevent pain does not make sense. There are other methods of discipline that will be effective in these situations. Also, there is a distinction between corporal punishment and restraining a child briefly in an emergency situation – such as holding back a child who is about to run in front of a moving car.

### **Aren't corporal punishment and child abuse different?**

A light smack and a violent beating are different and many people can differentiate between the two. However there are some people who do not see the difference, particularly when they act in the heat of the moment. There have been some children in Namibia who have been seriously injured by “punishment”, or even beaten to death.

### **Why can't the law define the level of force that can be used?**

Words cannot be used to define the level of force. What one person thinks is moderate may be severe to another person.

### **Why not leave the law unchanged and educate people about alternatives to corporal punishment?**

It will create confusion if the law permits corporal punishment but people are told not to use it. In such an instance, many people will not believe or accept training about alternatives. Changing the law will support the education people need to receive about alternatives to corporal punishment.

Some of these questions and answers were modelled on the **Global Initiative to End All Corporal Punishment of Children** and **Save the Children Sweden** publication *Prohibiting all corporal punishment of children*.

## **3.2 Religion and corporal punishment**

Given the prevalence of Christianity in Namibia, it is relevant to note the stances taken by Christian churches on the issue of corporal punishment. Many religious groups support the use of physical violence to discipline children, and even actively advocate the use of corporal punishment. However, this section focuses on international church opposition to corporal punishment, which is apparently not as well-known in Namibia.

Whilst some Christians defend corporal punishment as a Biblical imperative, there are varying interpretations of what the Bible actually says on this issue. These are summed up on the following four pages.

# Corporal punishment and Christianity

## “Spare the rod and spoil the child”?

The phrase “*spare the rod and spoil the child*” is often incorrectly attributed to the Bible. It does not appear there. The phrase was actually coined by Samuel Butler in a poem called “Hudibras”, written in the 1660s.

Most of the Bible verses concerning the discipline of children appear in the book of Proverbs, quoted here from the King James Version:

- **Proverbs 13:24:** “He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes.”<sup>4</sup>
- **Proverbs 19:18:** “Chasten thy son while there is hope, and let not thy soul spare for his crying.”
- **Proverbs 22:15:** “Foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him.”
- **Proverbs 23:13:** “Withhold not correction from the child: for if thou beatest him with the rod, he shall not die.”
- **Proverbs 23:14:** “Thou shalt beat him with the rod, and shalt deliver his soul from hell.”
- **Proverbs 29:15:** “The rod and reproof give wisdom: but a child left to himself bringeth his mother to shame.”

The book of Proverbs is a collection of moral and religious teachings in the form of sayings and proverbs. It is on its own account a collection of the proverbs of King Solomon (Prov 1:1).<sup>5</sup> Various commentators have made several interesting points about the interpretation and application of the verses from Proverbs quoted above. We summarise some of these alternative interpretations here to stimulate discussion and debate on the Biblical injunctions regarding child discipline, as they are often quoted in Namibian discussions of the topic to support corporal punishment by parents.

### 1) The meanings of “rod”:

The Hebrew word translated in these verses as “rod” is “*shebet*”, which also refers to a king’s scepter (a sign of authority) or a shepherd’s stick or staff (a tool used to herd sheep). These two meanings are connected, with the scepter originating in the idea that a ruler should be a shepherd of his people. A version of the “*shebet*” is still carried by some bishops to symbolise leadership and authority, not to threaten violence. The same word is most often translated elsewhere in the King James Version of the Bible as “tribe”, because the root of the word means a scion which branches off. “*Shebet*”

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<sup>4</sup> New International Version: “He who spares the rod hates his son, but he who loves him is careful to discipline him.”

<sup>5</sup> Proverbs 25:1 also makes reference to proverbs of Solomon “which the men of Hezekiah king of Judah copied out”. Other authors mentioned in the text are Agur (Prov 30:1) and Lemuel (Prov 31:1).

is translated as “rod” 36 times in the King James Version of the Bible, but only a few of these verses could be understood to mean literally using a stick to hit someone; most of them use “rod” to denote authority.<sup>6</sup> Accordingly, some commentators suggest that the quoted verses from Proverbs referring to the use of a “rod” refer to the assertion of parental authority over a child rather than literal “beatings with a stick”.<sup>7</sup>

There are, however, instances where the term “*shebet*” is clearly used to denote the literal use of a heavy instrument which could cause death, such as Exodus 21:20 “*And if a man smite his servant, or his maid, with a rod, and he die under his hand; he shall be surely punished.*” Against this backdrop, it is argued that a figurative interpretation is the only one that can make sense of Proverbs 23:14, where the use of the “rod” ensures that the child shall not die. Since the verse quoted from Exodus shows that a literal beating with a rod can cause death, understanding “rod” in its literal meaning in Proverbs 23:13-14, which refers to *preventing* death, would be contradictory.<sup>8</sup> Thus, it is argued that rod in this verse must refer to “parental authority”. A parent can strike a child with authority by using authority to discipline, teach and guide the child – thus saving the child from spiritual death, and so delivering the child’s soul from Hell.<sup>9</sup>

Other commentators make a connection between the “rod” in Proverbs and the shepherd’s rod, as in Psalm 23:4 “*Yea, though I walk through the valley of the shadow of death, I will fear no evil: for thou art with me; thy rod and thy staff they comfort me*”. It is asserted that a good shepherd would never use a rod to beat sheep, but that the rod is used to guide the sheep, to gently point them in the direction which they should go.

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<sup>6</sup> Some examples are

- **Micah 7:14** *Feed thy people with thy rod, the flock of thine heritage, which dwell solitarily in the wood, in the midst of Carmel: let them feed in Bashan and Gilead, as in the days of old.*
- **Job 21:9** *Their houses are safe from fear, neither is the rod of God upon them.*
- **Psalm 125:3** *For the rod of the wicked shall not rest upon the lot of the righteous; lest the righteous put forth their hands unto iniquity.*

<sup>7</sup> There is a useful internet text on this topic, “The Rod or Shebet: An Indepth Examination”, which is attributed to Joan Renae at <[www.gentlechristianmothers.com/articles/rodstudy.php](http://www.gentlechristianmothers.com/articles/rodstudy.php)>. The same text appears without clear attribution at <[www.freewebs.com/suffer-the-little-children/therodorshebet.htm](http://www.freewebs.com/suffer-the-little-children/therodorshebet.htm)> and <[http://joanneaz\\_2.tripod.com/positivedisciplineresourcecenter/id4.html](http://joanneaz_2.tripod.com/positivedisciplineresourcecenter/id4.html)>. (All websites listed above were last accessed 6 May 2010.)

See also Christy Hemstreet and Keith Vermeulen, “Religions, the Promotion of Positive Discipline and the Abolition of Corporal Punishment”, *Article 19*, Vol 3, No 3: 6-8, Cape Town: Children’s Rights Project, Community Law Centre, December 2007, <[www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf](http://www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf)> (last accessed 25 July 2010).

<sup>8</sup> *Shebet* is most often used in the scripture to refer to a shepherd’s staff, walking stick, or ruler’s scepter, which is rather large and thick, while there are other Hebrew words for smaller or thinner rods, such as *matteh*, which is a branch or vine, or *choter*, which is a branch or twig.

<sup>9</sup> In addition to the texts cited above, see “Spare the Rod and Spoil the Child?”, <<http://gracethrufaith.com/selah/spare-the-rod-and-spoil-the-child/>> (a non-denominational Christian website). A sample of arguments for both literal and figurative understandings of the term “rod” in the verses in Proverbs is collected in Consultants on Religious Tolerance, “What is the “rod” mentioned in Proverbs?”, <[www.religioustolerance.org/spankin13.htm](http://www.religioustolerance.org/spankin13.htm)>. (All websites listed in this footnote were last accessed 6 May 2010.)

## 2) The stages of childhood:

The Hebrew word “*na’ar*” is translated as “child” in the verses from Proverbs on child discipline. However, the Hebrew term normally refers to a youth or adolescent who is old enough to begin to acquire some independence but has not yet married<sup>10</sup>, in contrast to other Hebrew words which are used to denote young children and the period of childhood just before adolescence. Thus, some commentators emphasise that whatever form of discipline is being recommended in the quoted verses, the discussion applies only to adolescents and youth.<sup>11</sup>

## 3) King Solomon and his son:

Some commentators note that, if the quoted verses from Proverbs are a record of Solomon’s style of discipline, then they provide a rather negative example of the result of this approach to parenting. As an adult, Solomon’s son, Rehoboam, became a widely hated ruler who was vicious, unfeeling and inconsiderate to his subjects. He eventually fled to avoid assassination by his own people.<sup>12</sup>

## 4) The Old Testament understood through the prism of the New Testament:

Some analysts note that the Old Testament must be read in light of the changes wrought by the life of Jesus, noting that some of the things of the Old Testament were done away with when the New Testament came into place. One example cited is the approach to adultery; while Old Testament law prescribed death as a punishment for adultery, according to John 8:3-11, Jesus protected an adulterous woman from being stoned to death saying “*He that is without sin among you, let him first cast a stone at her*”.

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<sup>10</sup> The Hebrew word literally means “he who shakes off” or “he who shakes himself free.”

<sup>11</sup> Samuel Martin, “Thy Rod And Thy Staff They Comfort Me: Christians and the Smacking Controversy”, <<http://parentingfreedom.com/samuelmartinbook.pdf>> at pages 18-33 (last accessed 6 May 2010). Martin concludes at page 33 that “this evidence shows that the book of Proverbs is referring to a specific phase in the life of a person. It is not referring to “children” in the non-specific way. We have to be very careful in handling the information that we do have from this book because this information is sparse and terse. We also need to be very careful not to read things into the texts that are not there on the basis of an English translation. We have to let the original Hebrew words and their meanings come through into our understandings or else we can lose the richness of meaning that is there for the interested party to investigate. This advice must be especially heeded when it comes to such issues of immense social importance as how we bring up the next generation. For their sakes, we need to be right and protect them from teachings that are not directed at them in the first place.”

<sup>12</sup> 1 Kings 12:13-14: “And the king [Rehoboam] answered the people roughly, and forsook the old men’s counsel that they gave him; And spake to them after the counsel of the young men, saying, My father made your yoke heavy, and I will add to your yoke: my father also chastised you with whips, but I will chastise you with scorpions.”; see 1 Kings 12:18 on how Rehoboam fled. See BA Robinson, “Biblical passages concerning spanking”, Ontario Consultants on Religious Tolerance, <[www.religioustolerance.org/spankin8.htm](http://www.religioustolerance.org/spankin8.htm)> ; “Religion and Discipline”, Centre for Effective Discipline, at <[www.stop hitting.com/index.php?page=faithmaterial](http://www.stop hitting.com/index.php?page=faithmaterial)>; and Samuel Martin, “Thy Rod And Thy Staff They Comfort Me: Christians and the Smacking Controversy”, <<http://parentingfreedom.com/samuelmartinbook.pdf>> at page 145. (All websites listed in this footnote were last accessed 6 May 2010.)

According to one writer, Jesus did not change the moral principle that was in the law (telling the woman to “*Go and sin no more*”), but rather changed the way in which the moral principle was enforced.<sup>13</sup> In the same vein, it has been pointed out that Christians generally do not argue that anyone should stone to death stubborn, rebellious, gluttonous and drunken sons as in Deuteronomy 21:18-21, or burn adulterous daughters of priests at the stake as in Leviticus 21:9. The writer who makes this observation asserts that there is an eternal and unchangeable principle underlying all Scripture which remains applicable to every generation, such as the divine requirement of an orderly society in the verses on discipline, but that the appropriate methods for upholding the principle will vary from generation to generation and from culture to culture.<sup>14</sup>

Some commentators who draw on the New Testament point to Jesus’ example of non-violent enforcement of Biblical principles.<sup>15</sup> It is also been noted that Jesus always treated the vulnerable and defenceless with love and compassion, and that all the recorded encounters between children and Jesus were kind, gentle and respectful. Several writers note that Jesus demonstrated enormous regard for children when He set a little child in the midst of the disciples and said “*Suffer the little children to come unto me, and forbid them not, for of such is the kingdom of heaven*” (Mark 10:14). It is also noted that Jesus had particularly strong words for those who stand in the way of humble and defenceless children: “*It were better for him that a millstone were hanged about his neck, and he cast into the sea, than that he should offend one of these little ones.*” (Luke 17:2; see also Matthew 18:6).<sup>16</sup>

Others cite the different tone in the teachings of Paul who wrote, “fathers, provoke not your children to wrath: but bring them up in the nurture and admonition of the Lord” (Ephesians 6:4) and “Fathers, provoke not your children to anger, lest they be discouraged” (Colossians 3:21).<sup>17</sup>

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<sup>13</sup> Rick Creech, “Should Christian Parents Spank Their Children?”, as quoted in Consultants on Religious Tolerance, “What is the “rod” mentioned in Proverbs?”, <[www.religioustolerance.org/spankin13.htm](http://www.religioustolerance.org/spankin13.htm)> (last accessed 6 May 2010).

<sup>14</sup> Ken Chant, “ ‘Spoil the Rod and Spare the Child!’ or ‘a study on how not to read scripture”, <[http://joanneaz\\_2.tripod.com/positivedisciplineresourcecenter/id4.html](http://joanneaz_2.tripod.com/positivedisciplineresourcecenter/id4.html)> (last accessed 6 May 2010).

<sup>15</sup> One example cited is Jesus’ treatment of the money-changers in the Temple; they were driven out, their tables turned over, and a whip cracked at the sheep and oxen – but (at least according to some Bible translations) no violence was directed at the people (John 2:15). See Gregory K. Popcak, “Ten Reasons I Can’t Spank: A Catholic Counsellor’s Critical Examination of Corporal Punishment”, <[www.nospank.net/popcak.htm](http://www.nospank.net/popcak.htm)> (last accessed 6 May 2010).

<sup>16</sup> For example, see Churches’ Network for Non-Violence, <[www.churchesfornon-violence.org](http://www.churchesfornon-violence.org)>, cited in Global Initiative to End All Corporal Punishment of Children, *Ending Legalised Violence Against Children: Report for East & Southern Africa Regional Consultation – the UN Secretary General’s Study on Violence against Children*, Johannesburg, South Africa, 2005 and “Religion and Discipline”, Centre for Effective Discipline, at <[www.stophitting.com/index.php?page=faithmaterial](http://www.stophitting.com/index.php?page=faithmaterial)> (last accessed 6 May 2010).

<sup>17</sup> For example, see “Spare the Rod and Spoil the Child?”, <<http://gracethrufaith.com/selah/spare-the-rod-and-spoil-the-child/>> (last accessed 6 May 2010).

Internationally, there is a Churches Network for Non-Violence (CNNV) which developed “out of concern that physical punishment of children has been largely unchallenged by Christian and other religious communities”.<sup>18</sup> CNNV rejects all forms of violence against children, including corporal punishment in all its forms, and works with others to develop a network of support, information and practical resources to promote positive, non-violent discipline.<sup>19</sup> The following is the basic position of CNNV on Biblical teachings on child discipline:

**Some Christians who still advocate corporal punishment refer to this as “Biblical discipline”. This term implies that hitting children is the way Jesus would want us to treat children, but there is no evidence that Jesus instructed parents to physically punish their children. All the recorded encounters between Jesus and children were kind, gentle and respectful. Positive, non-violent discipline best models Christ’s teachings.**

**The book of Proverbs is often quoted as authorising physical punishment but its ethos and teachings derive from ancient times not from the new commandment of Christ, which established a new relationship between God and humanity based on love instead of fear. Christians believe in a loving, compassionate, inclusive and forgiving God – not a God of wrath and punishment. We believe the Bible should always be read and understood in the light of Christ’s teachings.**

The group has developed the Coventry Charter for Children and Non-violence, a multi-faith charter first dedicated in 2006.<sup>20</sup> This Charter acknowledges the strength and influence of religious communities in protecting children from violence, and by joining it, churches pledge to work in solidarity towards preventing and ending all forms of violence against children. It is reproduced in full in the box on the next two pages.<sup>21</sup>

The World Conference of Religions for Peace has also made a statement on corporal punishment. This group, in partnership with UNICEF, convened a global consultation of religious leaders and experts in Toledo, Spain in May 2006. At this meeting, participants from 30 countries representing many faiths produced a Declaration entitled “A Multi-Religious Commitment to Confront Violence against Children”. This Declaration was endorsed at the Religions for Peace Eighth World Assembly, which brought together more than 800 senior religious leaders from every region of the world and all major faith traditions, representing 70 national and regional inter-religious councils and groups, in Kyoto, Japan, in August 2006.<sup>22</sup>

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<sup>18</sup> Churches Network for Non-Violence website: <[www.churchesfornon-violence.org](http://www.churchesfornon-violence.org)> (last accessed 25 July 2010).

<sup>19</sup> Id.

<sup>20</sup> Id. The name of the Charter comes from Coventry Cathedral in England, where it was first dedicated.

<sup>21</sup> See <[www.churchesfornon-violence.org/Coventry Charter web.pdf](http://www.churchesfornon-violence.org/Coventry%20Charter%20web.pdf)> (last visited 25 July 2010).

<sup>22</sup> See UNICEF Press release, “Eighth World Assembly of Religions for Peace endorses declaration on violence against children”, <[www.unicef.org/media/media\\_35485.html](http://www.unicef.org/media/media_35485.html)> (last accessed 25 July 2010).

## Coventry Charter for Children and Non-Violence

**1. All children are entitled to equal respect for their inherent human dignity.**

Working actively towards a culture of respect for all children is a key towards ending violence against children. We will, in cooperation with others foster respect for all children.

**2. All children are entitled to grow up in family and all other settings free from corporal punishment and all other forms of violence and humiliating treatment.**

Children are entitled to more not less protection from violence than adults, including protection from physical, spiritual, emotional, verbal, sexual, psychological and gender-based violence. We will use every opportunity to work with others to create awareness about the negative effects of violence against children. Preventing violence against children and urging governments to pass legislation to end legalised violence against children, including corporal punishment, will be a priority.

**3. All children have the right to speak out and be listened to.**

The knowledge, ideas, gifts, competence, life experiences and perspectives of children should be respected, encouraged and listened to in both family and community life. We will demonstrate full respect and regard for the dignity of children by facilitating children's participation and involvement in issues of concern to them.

**4. All adults have the responsibility to enable children to feel safe enough to speak out when they feel hurt or threatened.**

All adults who are in contact with children should have an understanding of the needs of children and of different stages of child development. Adults should be aware of the best ways of creating an environment where children feel safe to express themselves. Adults should also develop skills for communicating with children at different life stages. Our training will promote these actions.

**5. All children are entitled to positive, non-violent relationships with the adults who care for them.**

In our work and contact with children we will strive to build relationships between adults and children which are positive and life-enhancing. Adults can teach children by their own example and demonstrate ways of resolving

conflict without the use of hitting or any other form of violence, however supposedly 'reasonable'. Adults are the protectors, guides and supporters of children and as such responsible for their quality of life.

**6. The protection of children from violence is the responsibility of the whole community.**

Children should be active equal participants with adults in solving problems of violence in community whether it is adult to child, child to child or adult to adult violence. We will encourage children to use their capacity to make a positive contribution in keeping with their age and development.

**7. All children are entitled to learn about their Convention (United Nations Convention on the Rights of the Child) in a way that is appropriate to their age and development.**

We will use every opportunity to support initiatives to enable children to become fully conversant with the United Nations Convention on the Rights of the Child and to raise adults' awareness and understanding of the Convention.

**8. All children are entitled to the highest standard of care and protection from those who work with them.**

All adults working with children in our religious communities will receive high standards of training, support, resources and clear lines of accountability for working with children. Adults are responsible for creating networks for the prevention of violence against children.

**9. Children who have endured any form of violence are entitled to emotional, physical, spiritual and psychological support from people qualified to help them.**

Our religious communities will, whenever possible, work with qualified people to bring support, compassion, spiritual help and healing to children who have endured forms of violence.

**10. All children are entitled to learn non-violent ways to resolve conflict.**

We commit ourselves to providing positive guidance in resolving conflict that leads to compassion, justice and fairness and respect for the human rights of others.

*We commit ourselves to addressing violence against children in all its forms and settings and resolve to work with others towards eliminating violence against children.*

**Churches Network for Non-Violence (CNNV),**  
*Coventry Charter for Children and Non-violence: Charter for Faiths,*  
available at <[www.churchesfornon-violence.org/Coventry Charter web.pdf](http://www.churchesfornon-violence.org/Coventry%20Charter%20web.pdf)>

*“What child would Jesus hit? Let’s get real. Jesus demonstrated in his life and on the cross that it’s non-violence that changes the world. The tough love of Gandhi, Martin Luther King and Desmond Tutu. And violence is never the answer with children.”*

“Children are unbeatable”, **The Rt Revd John Pritchard, Bishop of Oxford**,  
at a Prayer Vigil dedicated to ending corporal punishment of children,  
St Margaret’s Church, Westminster Abbey, 7 October 2008

The Declaration calls upon national governments to adopt legislation to prohibit all forms of violence against children, including corporal punishment.<sup>23</sup> It states:

**We must acknowledge that our religious communities have not fully upheld their obligations to protect our children from violence. Through omission, denial and silence, we have at times tolerated, perpetuated and ignored the reality of violence against children in homes, families, institutions and communities, and not actively confronted the suffering that this violence causes. Even as we have not fully lived up to our responsibilities in this regard, we believe that religious communities must be part of the solution to eradicating violence against children, and we commit ourselves to take leadership in our religious communities and the broader society.**

The full list of recommendations contained in this statement is reproduced in the box below.

## **A Multi-Religious Commitment to Confront Violence against Children recommendations and commitments**

**Kyoto, Japan, 28 August 2006**

1. We will create greater awareness in our communities about the impact of all forms of violence against children, and work actively to change attitudes and practices that perpetuate violence in homes, families, institutions and communities, including corporal punishment, emotional and sexual violence.
2. We will promote the child as a person with rights and dignity, using our religious texts to provide good examples that can help adults to stop using violence in dealing with children.
3. We have an important obligation to teach and train our children, which involves discipline and helping children understand their responsibilities.

<sup>23</sup> Id.

We will educate and train parents, teachers, religious leaders and others who work with children to find non-violent forms of discipline and education that will ensure their proper upbringing and protect them from violent actions.

4. We will develop curriculum to use in theological training and in parental education to raise awareness about child rights and ways to eliminate the use of violence.
5. We are committed to inter-religious cooperation to address violence and will make use of the synergies among our religious communities to promote methodologies, experiences and practices in preventing violence against children.
6. We call upon our governments to adopt legislation to prohibit all forms of violence against children, including corporal punishment, and to ensure the full rights of children, consistent with the Convention on the Rights of the Child and other international and regional agreements. We urge them to establish appropriate mechanisms to ensure the effective implementation of these laws and to ensure that religious communities participate formally in these mechanisms. Our religious communities are ready to serve as monitors of implementation, making use of national and international bodies to maintain accountability.
7. We encourage religious communities and other public actors to use special days, such as the International Day of the Child, to bring public and media attention to child rights issues, particularly violence against children.
8. We call on UNICEF and the World Conference of Religions for Peace to facilitate the sharing of information and developing of resources to assist our communities to more effectively address violence against children.

available at <[www.churchesfornon-violence.org/Violence Against Children-FINAL.pdf](http://www.churchesfornon-violence.org/Violence%20Against%20Children-FINAL.pdf)>  
(last visited 25 July 2010)

In South Africa, Archbishop Emeritus Desmond Tutu has spoken out strongly against corporal punishment of children:

**I support the global initiative to eliminate all corporal punishment at home, in institutions and community... Millions of the world's children still suffer from humiliating acts of violence and these violations of their rights as human beings can have serious and lifelong effects. Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery, and I look forward to church communities working in solidarity with others and**

using the context of the Study to make further progress towards ending all forms of violence against children. If we really want a peaceful and compassionate world, we need to build communities of trust where all children are respected, where homes and schools are safe places to be and where discipline is taught by example. May God give us grace to love our children as He loves them and may their trust in us lead them to trust in Him”.<sup>24</sup>

The South African Council of Churches made a submission in support of a legislative ban on corporal punishment in the home in South Africa, asserting that this would “advance a culture of dignity, respect and equity of relations within which our children may be able to flourish as human beings”. It stated further that it

welcomes the ongoing support for the role of parental responsibilities by the State as it makes available programs on positive discipline and parenting in line with the Constitutional values of human dignity, respect and equity. We welcome too the prospect that outcomes of such programmes are likely to initiate an environment of trust, rather than fear, respect rather than control and, thereby, provide for a culture that contributes to order through respect, peace building and nonviolence.<sup>25</sup>

The Southern African Catholic Bishops’ Conference also supported the proposed ban on corporal punishment, emphasising the need to simultaneously support and strengthen family structures.<sup>26</sup>

In Namibia, although we are not aware of any official statement on corporal punishment by a church or church grouping, Rev Maria Kapere, Secretary-General of the Council of Churches in Namibia, in her personal capacity, has spoken out against corporal punishment, emphasising the distinction between corporal punishment and discipline (see box next page).

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<sup>24</sup> *Article 19*, Vol 3, No 3: 11, Cape Town: Children’s Rights Project, Community Law Centre, December 2007, <[www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf](http://www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf)> (last accessed 25 July 2010).

<sup>25</sup> The South African Council of Churches, “Submission to Portfolio Committee of the Department of Social Development The Children’s Amendment Bill [B19B-2006]” (undated).

<sup>26</sup> Southern African Catholic Bishops’ Conference Parliamentary Liaison Office, “Submission to the Portfolio Committee for Social Development on the Children’s Act Amendment Bill (B19b-2006)” (undated), quoting Archbishop Silvano Tomasi, Address to the Fourth session of the Human Rights Council, 1<sup>st</sup> April 2007:

The target of eliminating violence against children and of providing a constructive and healthy context for their development demands that the state and society concretely support and enable the family to carry out its task. A vital way, in fact, to counteract the vulnerability of children is to strengthen the families in which they are meant to grow, to thrive, and to be formed as responsible and productive citizens in their local communities and in the wider society.

# Against Corporal Punishment of Children



## Statement by Rev Maria Kapere

Windhoek, Namibia, July 2010

Corporal punishment's usefulness is very limited. When done in anger and with force by teachers and parents it may cause damage rather than transforming an undisciplined child. Parents' and teachers' attitude, language and actions will positively direct children into becoming responsible and accountable human beings. We as adults are given responsibility over children, and we need to nurture them and take care of them. As adults we should be able to distinguish between what is cruel and what is compassionate, between what is safe and what is unsafe. There is no evidence that hitting children does them good. My opinion is that hitting a child can do more harm than good. How can we, who are given the responsibility over children, inflict violence and pain upon them? We must remember that the main goal of corporal punishment is to immediately stop inappropriate behaviour; it is a means to inflict pain to stop a certain type of behaviour. Yes, the behaviour may stop for that given moment, because the child may feel pain. But soon that pain will disappear and the behaviour will reappear. The gains of corporal punishment are thus short-term.

Raising three children has taught me that corporal punishment tends to cultivate deceitfulness, fear, violence, resentment and rejection of parental authority. Violence is not a good teaching tool, discipline is. There is a big difference between discipline and corporal punishment. I am in support of disciplining children. And let it be made clear that discipline does not mean hitting a child. To discipline is to teach a child to do right instead of merely stopping inappropriate behaviour through pain. Discipline, unlike corporal punishment, always leaves a positive impression, it is a means to teach and parent children through love. The goal behind discipline is for children to develop personally, socially and spiritually. We should discipline children in a way that they will feel they are still good and capable people who can make positive changes, versus disciplining them in a way that makes them feel they are bad people who are not capable of anything and who cannot do anything worthwhile. I end with an extract from the Holy Bible: "Train a child in the way he should go and when he is old he will not turn from it." – Proverbs 22:6.

**Rev Maria Kapere,**  
Secretary-General of the Council of Churches in Namibia,  
writing in her personal capacity

## 3.3 Customary law and corporal punishment

The position of corporal punishment under customary law was considered in a recent book about children's rights in Namibia, where the authors concluded that the right to culture cannot be used to defend corporal punishment in this context. The argument is reproduced in the box below.

### The perception of corporal punishment under customary law

Under customary law, corporal punishment is viewed as the only effective means of instilling discipline: it symbolises a belief in a good and proper life, restores and maintains peace in community, and teaches people to behave themselves. Corporal punishment intends to convey the message to others contemplating similar misconduct that they will be dealt with in the same way.

Apart from the above, corporal punishment is used as a means to teach and maintain children's respect towards their elders. It is traditionally believed that, if children are not beaten when they do wrong, they will not respect their elders and will keep misbehaving since they believe nothing will happen to them. Parents or elders are therefore obliged to beat children in order to obtain the respect they feel is due to them from children. The limits of a parent's power to correct his/her child are culturally defined. However, what may be seen as reasonable under customary law could well be regarded as inhuman and degrading treatment under common law and the new constitutional regime.

African thinking on parental power tends to be conditioned by a belief that children are wayward and irresponsible and, hence, in need of discipline. By contrast, Western thinking emphasises the vulnerability of children with a consequent need for protection, and a child's right to self-determination. Common law accordingly interprets parental powers restrictively in favour of the child. It follows in the opinion of these schools of thought that a child's best interest should always be the overriding consideration, and a child who is old enough should be allowed to express a considered opinion to decide his or her own future. The question now arises whether the fundamental rights violated by corporal punishment are interpreted to express these common-law views in preference to African ideas about a "proper upbringing of the child"...

Many traditionalists would argue that, in their culture, they punish children physically and they will be denied their right to culture by being prohibited from doing what their forebears did in the disciplining of their children. Their argument is based on their right protected under Article 19 of the Constitution, which provides as follows:

**Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion ...**

However, although everyone has a right to culture, a limitation is attached to this right. The same Article that protects one's right to culture further states that this right is –

**... subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.**

This is reflected in what has been stated by Ruppel, namely that –

**[c]ulture can strengthen and validate human rights perspectives; however, certain cultural practices may also violate human rights principles. Cultural aspects of customary law that are inhuman and discriminatory should not endanger the existence of customary law as a system of laws that governs the way of life of most Africans. The solution is not to abolish customary law, but rather to have such law ascertained. One should not be too hasty, making sweeping judgments of customary practices from the outside; rather, one should try to see the customs from the viewpoints of the people who practice them on a daily basis. The abolition of customary law would mean erasing the modus operandi of various ethnic groups from the broad spectrum of Namibian society. Instead, one should identify the sensitive aspects under customary practices that do not conform to the constitutional principles of equality, fairness, and justice, and apply law reform.**

Violence is a grave social problem in Namibia. It has been acknowledged to be rooted in traditional attitudes and culture, and even sometimes underpinned by religion. But a practice which violates basic human rights cannot be said to be owned by any culture in Namibia, because, in terms of Article 24(3) of the Constitution, no one is permitted to derogate from another person's right to dignity and freedom. What may have been traditionally acceptable as a just form of punishment some decades ago appears to be manifestly inhuman and degrading today.

As stated earlier, hitting a child may stop its offensive behaviour immediately, but it does not necessarily stop a child from repeating that behaviour in future.

This is because children are less likely to learn from this punishment and more likely to resist the parent and find ways to avoid getting caught. Parents are to exercise their authority and customary rights only to protect or nurture their children. They need to bear in mind that discipline is not the same as punishment. Real discipline is not based on force, as traditionally believed, but grows from understanding, mutual respect and tolerance.

Discipline needs to be administered humanely in the way that is consistent with the child's dignity, and children have to be protected from violence and abuse. Instituting the necessary legal changes is not expensive; what is required is the explicit and well-publicised removal of any defences which – either culturally or otherwise – currently justify physically assaulting children. In this way, children will be ensured of equal protection under the law. The focus of law reform should be on prevention and early intervention in order to protect children; the focus should not be on prosecuting parents – unless the assault is violent. The prosecution of parents is seldom in the best interest of the child: it is more important for systems to be available for the family to receive support. Diversion to parenting programmes can be used to achieve this. The promotion of positive discipline can also be built into other health promotion, education and early child development programmes.

In conclusion, it can be observed that the corporal punishment of children – also under customary law, whether in the home setting by a parent or otherwise – is in conflict with the Namibian Constitution.

**Lotta N Ambunda and Willard T Mugadza,**  
“The protection of children's rights in Namibia: Law and policy”,  
in Oliver C Ruppel, ed, *Children's Rights in Namibia*,  
Windhoek: Konrad Adenauer Stiftung, 2009, (footnotes omitted),  
available at [www.kas.de/proj/home/pub/8/2/year-2009/dokument\\_id-18139/index.html](http://www.kas.de/proj/home/pub/8/2/year-2009/dokument_id-18139/index.html)

***“If a teacher wants to teach children respect for others and to always treat other persons with dignity, how can he/she justify corporal punishment which is intended to invade those very rights, namely the dignity and self-respect of the pupil?”***

**Beatrix Grayvenstein** (Legal Assistance Centre),  
“Do Teachers Still Beat Your Child?”, *The Namibian*, 13 April 2006



**Approximately 75 000 people in Namibia have received copies of the two comics on alternatives to corporal punishment published by the Legal Assistance Centre in 2010 (see page 103 for details).**

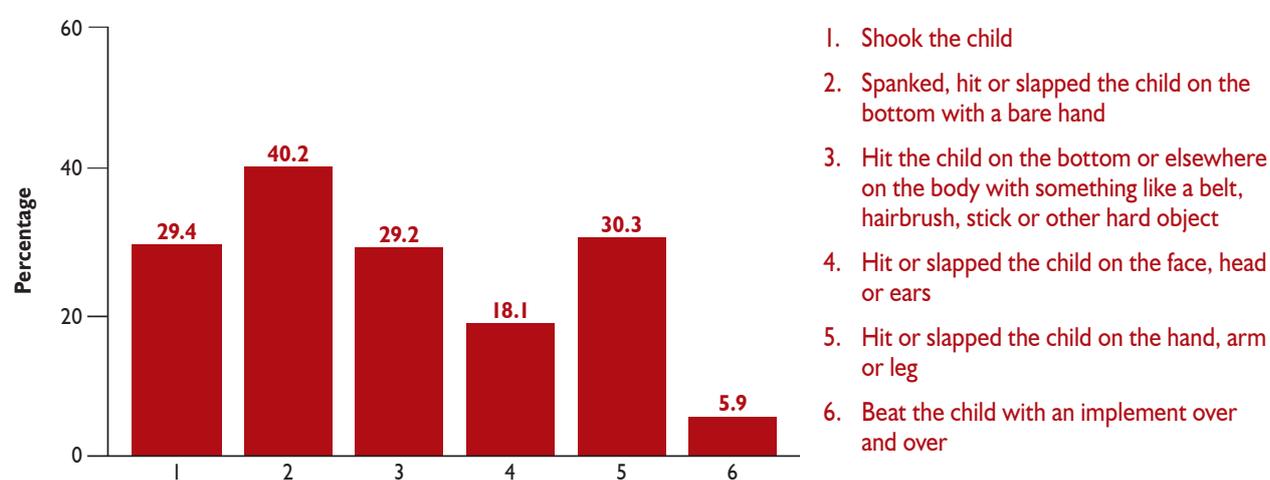
# 4. Corporal punishment in Namibia

## 4.1 Research on corporal punishment in Namibia

In Namibia, the use of corporal punishment by parents is unquestioned and occurs daily in many families.<sup>1</sup>

A 2007-2008 study conducted by the Social Impact Assessment and Policy Analysis Corporation (SIAPAC) in 8 regions in Namibia found that 40% of respondents spanked, hit or slapped a child on the bottom with a bare hand, and approximately 30% hit a child on the bottom or elsewhere with something such as a belt, hairbrush, stick or other hard object.

### Percentage of people who use corporal punishment in 8 regions, 2007-2008



**Source:** SIAPAC, *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare (MGE CW), 2008 at page 66 (based on interviews with 1680 respondents: 210 in each of the eight regions, half men and half women).

<sup>1</sup> See, for example, H Becker and P Classen. *Violence Against Women and Children: Community Attitudes and Practices*. Draft. Prepared for the Women and Law Committee of the Namibian Law Reform and Development Commission, 1995 at 19 and SIAPAC, *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare (MGE CW), 2008 [hereinafter "SIAPAC"].

Almost 61% of survey respondents in Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions felt that it was common in their communities for children to be slapped or caned, and almost 37% thought that it was common for children to be seriously physically abused.<sup>2</sup>

Respondents in these regions were asked about the circumstances in which it is acceptable to “hit” a child, with this being described as “slapping or something similar that does not leave scars or bruises or does not threaten the child’s life”<sup>3</sup> (see table below). For every reason suggested other than poor school performance by the child, 40% or more of the respondents believed that hitting the child was justified, with over three-quarters of the respondents saying that it is acceptable to hit a child for being “disobedient” or “talking back” to the parent.<sup>4</sup> It is noteworthy that for every reason suggested, men were more likely than women to think that a violent response was justifiable (see table below).

<b>BELIEFS ABOUT JUSTIFICATIONS FOR HITTING CHILDREN – CAPRIVI, ERONGO, KARAS, KAVANGO, KUNENE, OHANGWENA, OMAHEKE, AND OTJOZONDJUPA REGIONS, 2007-2008</b>			
<b>Statement</b>	<b>Agree or strongly agree with right to hit</b>		
	<b>Men</b>	<b>Women</b>	<b>All</b>
<b>A parent has a right to hit his or her child ...</b>			
... if the child is disobedient	79%	77%	78%
... if the child talks back to the parent	79%	77%	78%
... if he/she does not want to go to school	65%	60%	63%
... if the child brings shame to the family	58%	50%	54%
... if the child runs away from home	54%	47%	51%
... if the child has sex with someone	50%	47%	49%
... if daughter brings home a boyfriend much older than her	54%	41%	47%
... if he/she has body piercing/tattoos	47%	42%	44%
... if he/she dresses inappropriately	44%	42%	43%
... if a son brings home a girlfriend much older than him	48%	37%	43%
... if the child performs poorly in school	30%	24%	27%

**Source:** Based on SIAPAC, *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare (MGECW), Table 5 at page 52 (based on interviews with 1680 respondents: 210 in each of the eight regions, half men and half women). Percentages are rounded to the nearest whole percent, with all 0.5 percentages been rounded upwards.

Despite the many justifications offered for hitting children, more than half of the respondents said that it was NOT necessary to physically punish children as part of their upbringing,<sup>5</sup> and many people understood domestic violence as including family violence against children.<sup>6</sup>

Earlier studies have produced similar findings that corporal punishment is widely used and accepted by parents. For example, in the Hardap and Karas regions, 89% of Nama parents interviewed in 1995 believe that it is all right for parents to beat up their misbehaving

<sup>2</sup> SIAPAC (n1), Figure 26 at page 66, Tables A157 and A158, Annex at page A71.

<sup>3</sup> Id, Annex at page A82.

<sup>4</sup> Id, Table 5 at page 52.

<sup>5</sup> Id at page 66 and Table A152, Annex at page A69.

<sup>6</sup> Id at page 13 (box).

children.<sup>7</sup> Other studies conducted in the 1990s reveal a similar attitude in other regions and ethnic groups of Namibia.<sup>8</sup>

Part of the SIAPAC study involved focus group discussions, in which participants expressed opinions that young people were more rebellious than in the past, and that the removal of corporal punishment from the school setting may have contributed to making children less disciplined. Some participants felt that outlawing corporal punishment in schools discouraged parents from using physical punishment in the home, which they did not necessarily view as a positive development. Older participants in particular felt that the result was increased misbehaviour. Some also argued that misbehaviour, in turn, led to more violence against young girls because such girls “were ill-disciplined and removed from the social control of their families”.<sup>9</sup>

The SIAPAC study included some questions about child discipline of graduated forms of severity, asking respondents from households with children between the ages of 2 and 14 whether anyone in that household has ever employed various forms of discipline against a child in the household. The results can be seen in the table below, with the various methods of discipline in order of their popularity.

USE OF VARIOUS FORMS OF CHILD DISCIPLINE IN CAPRIVI, ERONGO, KARAS, KAVANGO, KUNENE, OHANGWENA, OMAHEKE, AND OTJOZONDJUPA REGIONS, 2007-2008		
Type of discipline	Yes	No
Explained why the behaviour was wrong	70%	30%
Shouted, yelled at or screamed at the child	55%	44%
Gave the child something else to do	47%	52%
Took away privileges, forbade something the child liked, or did not allow the child to leave the house	42%	58%
Spanked, hit or slapped the child on the bottom with a bare hand	40%	59%
Called the child stupid, lazy, or another name	31%	67%
Hit or slapped the child on the hand, arm or leg	30%	67%
Shook the child	29%	69%
Hit the child on the bottom or elsewhere on the body with something like a belt, hairbrush, stick or other hard object	29%	70%
Hit or slapped the child on the face, head or ears	18%	79%
Beat the child with an implement over and over	6%	90%

**Source:** SIAPAC, *Knowledge, Attitudes and Practices Study on Factors and Traditional Practices that may Perpetuate or Protect Namibians from Gender Based Violence and Discrimination: Caprivi, Erongo, Karas, Kavango, Kunene, Ohangwena, Omaheke, and Otjozondjupa Regions (Final Report)*, Ministry of Gender Equality and Child Welfare (MGEWCW), 2008, Table 80 at page 66 (based on interviews with 1680 respondents: 210 in each of the eight regions, half men and half women). Percentages are rounded to the nearest whole percent, with all 0.5 percentages been rounded upwards. The two columns do not always total 100% because of missing answers.

<sup>7</sup> RF Zimba and B Otaala. *A family in transition: A study of childrearing practices and beliefs among the Nama of the Karas and Hardap Regions of Namibia*, Windhoek: UNICEF & UNAM, 1995.

<sup>8</sup> See for example, H Becker and P Classen. *Violence Against Women and Children: Community Attitudes and Practices*, unpublished paper prepared for the Women and Law Committee of the Namibian Law Reform and Development Commission, 1995 at page 19 (Windhoek, Mariental, and Owambo regions); *Participatory rural appraisal of early childhood development in Tsandi, Omasati*, Windhoek: Ministry of Regional and Local Government and Housing/!Nara/ACORD, 1997; *Participatory rural appraisal of early childhood development in Sacto, Karas*, Windhoek: Ministry of Regional and Local Government and Housing/!Nara/ACORD, 1997.

<sup>9</sup> SIAPAC (n1) at page 66.

Although milder forms of discipline were the most commonly employed, some of the actions reported as “discipline”, such as beating a child repeatedly with an implement, probably went beyond the bounds of “reasonable chastisement”. This study concluded on the basis of its findings that almost half of all children in the study had been subjected to one form of physical punishment or other, with over one-third being subjected to punishment serious enough to leave bruises.<sup>10</sup>

The data collected in Namibia is similar to that reported in respect of South Africa. In a national survey of 2497 people conducted to assess partner violence, attitudes to child discipline and use of corporal punishment, 57% of all the parents with children under 18 reported using corporal punishment. A total of 33% reported the use of severe corporal punishment (beating with a belt or stick). Analysis of the data showed that children who are smacked are most commonly 3 years old, while children who are beaten with a belt or other object are most commonly 4 years old. A far higher proportion of women (70%) compared to men (30%) reported hitting their children. The use of corporal punishment was more common in older parents compared to younger parents. The study identified a link between non-empathic parenting and the use of corporal punishment. Participants who experienced high levels of partner violence were also more likely to agree with physical discipline of children. Unfortunately data of this kind is not available for Namibia.<sup>11</sup>

More disturbing insights about parent-child discipline in Namibia are suggested by the results of the Global School-based Student Health Survey (GSHS) conducted under the auspices of the World Health organisation in 2003-2005. This survey covered students aged 13-15 in Namibia and other countries. It is based on a self-administered questionnaire.<sup>12</sup> In Namibia, a total of 6367 students participated in the survey, which was conducted in 2004 and covered four broad study areas (central, northeast, northwest and south).<sup>13</sup>

The datasets for this study include the following findings about a worrying lack of close parental involvement in students’ lives during the last 30 days:

- 59% of the students surveyed reported that that parents or guardians did NOT check to see if their homework was done most of the time or always.
- 67% of the students said that their parents did NOT understand their problems and worries most of the time or always
- 70% of students said that their parents or guardians did NOT know what they were doing with their free time most of the time or always.<sup>14</sup>

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<sup>10</sup> Id at page 68. The basis for the conclusion about punishment severe enough to leave bruises is not clear from the questionnaire or the reported data.

<sup>11</sup> A Dawes et al, *Partner violence, attitudes to child discipline and the use of corporal punishment: A South African national survey*, Cape Town: Human Sciences Research Council, 2004.

<sup>12</sup> See <[www.who.int/chp/gshs/en/](http://www.who.int/chp/gshs/en/)> (last accessed 20 July 2010).

<sup>13</sup> See <[www.who.int/chp/gshs/namibia/en/index.html](http://www.who.int/chp/gshs/namibia/en/index.html)> (last accessed 20 July 2010).

<sup>14</sup> “2004 Global School-based Student Health Survey Results, Namibia Survey: Public Use Codebook”, available at <[www.who.int/chp/gshs/NBH2004\\_public\\_use\\_codebook.pdf](http://www.who.int/chp/gshs/NBH2004_public_use_codebook.pdf)> (last accessed 20 July 2010).

These findings suggest that there is scope for a greater degree of positive parental involvement in guiding children, as opposed to simply applying negative discipline. One paper which analysed this data noted that parental supervision is associated with low levels of aggression in children, as well as less risky behaviour on their part, and concluded that “parents need to be reminded of their role in supporting adolescents to become responsible citizens”.<sup>15</sup>

<b>PARENTAL INVOLVEMENT WITH LEARNERS AGED 13-15, 2004</b>		
<b>Percentage of students whose parents or guardians checked to see if their homework was done most of the time or always during the past 30 days</b>		
1. Yes	2 382	41.4%
2. No	3 507	58.6%
<b>Percentage of students whose parents or guardians understood their problems and worries most of the time or always during the past 30 days</b>		
1. Yes	2 089	32.9%
2. No	3 941	67.1%
<b>Percentage of students whose parents or guardians knew what they were doing with their free time most of the time or always during the past 30 days</b>		
1. Yes	1 842	30.2%
2. No	4 115	69.8%

**Source:** 2004 Global School-based Student Health Survey, Namibia (involving 6367 students in 100 schools in various parts of Namibia). Missing answers are not reflected here; the table indicates weighted percentages.

There is also evidence that corporal punishment in Namibia becomes child abuse in too many instances. A recent Namibian court case tragically illustrates the difficulty of drawing distinctions between acceptable and unacceptable punishment, and shows how matters can escalate. A father was convicted of culpable homicide for the death of his 6-year-old daughter in a horrifying incident of discipline gone wrong. The father forced the child to eat dinner after she had had enough. After she vomited onto the food and refused to eat more, he broke off two branches from a nearby bush and started hitting the child all over her body until she ran away. The father gave chase and the child ultimately died of a fractured skull. The court found that the father’s initial intent was to chastise his child – but that the boundaries of chastisement were clearly exceeded.<sup>16</sup>

The Namibia 2004 GSHS Questionnaire apparently included some other questions which would be very informative on corporal punishment:

- During the past 12 months, how many times were you verbally abused by a teacher?
- During the past 12 months, how many times were you physically attacked by a teacher?
- During the past 12 months, how many times were you physically attacked by an adult family member?

See <[www.who.int/chp/gshs/gshs\\_namibia\\_questionnaire2004.pdf](http://www.who.int/chp/gshs/gshs_namibia_questionnaire2004.pdf)> (last accessed 20 July 2010). However, we were unable to obtain any more information on these questions, or to find out why the answers to these questions were not reported in the codebooks and reports made available to the public.

<sup>15</sup> Emmanuel Rudatsikira, Seter Siziya, Lawrence N Kazembe and Adamson S Muula. “Prevalence and associated factors of physical fighting among school-going adolescents in Namibia”, *Annals of General Psychiatry* 6:18, 2007; citation form unpaginated version of article available at <[www.annals-general-psychiatry.com/content/6/1/18](http://www.annals-general-psychiatry.com/content/6/1/18)> (last accessed 20 July 2010).

<sup>16</sup> *S v Nkasi* (CC 02/2010) [2010] NAHC 9 (24 March 2010).

Another Namibian case involved a man convicted of murder for beating his 4-year-old daughter to death. The daughter was very ill and consequently unable to walk. On the night in question, her father fetched her from the house of a neighbour. She pleaded with him to carry her but he beat her because, in his own words, “I thought she’s not walking very fast as I wanted, as I wished”. The court found that, although the father was drunk at the time, he still know what he was doing. The judge in the case commented:

**It is difficult for me to comprehend how any person can act in such an indescribably cruel manner towards his own young child. It is an horrendous offence that you had committed. When one takes the interest of society into account, I must consider that a child is normally entitled at least to love and affection from his own parents and not to the type of conduct that you had perpetrated upon her. Society cannot tolerate that those most vulnerable members of society, ie the children, be abused by those persons who are supposed to care for them with love and affection...<sup>17</sup>**

The father was initially sentenced to life imprisonment, but this was reduced to an effective 10 years in prison.<sup>18</sup>

In the same vein, a private educational psychologist interviewed for this report stated that she regularly deals with children affected by corporal punishment in homes and in schools. She has had two recent cases where corporal punishment against a child has been treated as a form of domestic violence resulting in a protection order against the parent and in one other case, the “punishment” was so severe that a 13-year-old girl had to be removed from the family home.

A 2004 incident which was reported widely in the media involved a grandmother who summoned a neighbour to help her “punish” a 10-year-old boy who ate four dried fish. The boy, who was tied to a tree and beaten with sticks, ultimately died from his injuries and the grandmother and the neighbour were each sentenced to 15 years imprisonment for his murder.<sup>19</sup> A 2006 case referred to the Legal Assistance Centre involved a 13-year-old girl who ran away from home because her father had beaten her, her five siblings and her mother with a sjambok on repeated occasions. When she sought refuge at a local school hostel, the school principal spoke to the father and suggested that the 13-year-old should receive counselling – which never happened. Another school employee then contacted a social worker, who called in the parents and interrogated the child in front of them, asking her, “What did you do wrong?”.<sup>20</sup> In 2008, police in Ohangwena Region arrested a 55-year-old woman on a charge of assault with intent to cause grievous bodily

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<sup>17</sup> *S v Moses* 1996 NR 387 (SC), quote from page 388B-D.

<sup>18</sup> *Ibid.*

<sup>19</sup> See Werner Menges, “Grandmother jailed over deadly beating of boy”, *The Namibian*, 2 May 2008; Werner Menges, “Day of judgement looms for beating suspects”, *The Namibian*, 25 April 2008; Werner Menges, “Granny on trial after boy beaten to death”, *The Namibian*, 24 April 2008.

<sup>20</sup> Client statement to Legal Assistance Centre.

harm, after she allegedly burnt her two grandchildren on the lips with hot coals and then forced the coals into their mouths, because they ate a piece of chicken without her permission.<sup>21</sup>

*“Assaulting children for any reason, let alone the reasons in this case, is unacceptable in Namibian society.”*

the late **Judge Manyarara**, *The Namibian*, 2 May 2008,  
commenting on the case where a 10-year-old was beaten to death  
by his grandmother and a neighbour after allegedly eating four dried fish

These are merely a handful of individual examples, but they illustrate the difficulty of keeping corporal punishment within boundaries, and how the acceptance of corporal punishment can mask child abuse.

## 4.2 Public opinion about corporal punishment

In 2009, the Ministry of Gender Equality and Child Welfare embarked on an extensive consultation process to guide the revision of a preliminary draft of the Child Care and Protection Bill. This bill, set to become the key piece of children’s legislation in Namibia, covers more than 200 pages and 20 different topics. The Ministry, working together with the Legal Assistance Centre and UNICEF, obtained public input to ensure that the final legislation would be based on the needs of people in Namibia.<sup>22</sup>

One of the areas for consultation was the issue of corporal punishment. The public and stakeholders were asked three main questions:

1. What should the new law say about how children should be punished?
2. If minor physical punishment such as spanking is still allowed, how can children be protected from physical abuse? For example, some countries prohibit “the use of force” or “violence” against children, or any form of discipline which causes “physical or psychological harm”.
3. What is the best way to raise public awareness of alternative forms of discipline which are more effective and better for children?

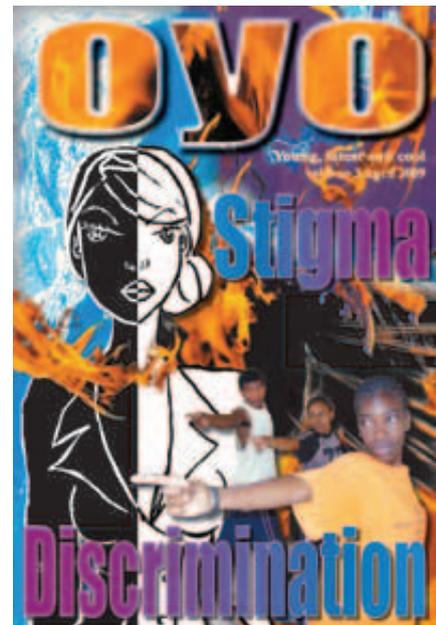
The consultation process for the Child Care and Protection Bill utilised not only meetings and workshops but also more innovative feedback methods such as Facebook

<sup>21</sup> Oswald Shivute, “‘Greedy’ children’s mouths burnt”, *The Namibian*, 23 October 2008.

<sup>22</sup> Ministry of Gender Research Equality and Child Welfare, Legal Assistance Centre and UNICEF, *Public Participation in Law Reform: Revision of Namibia’s Child Care and Protection Bill*, Windhoek: Government of the Republic of Namibia / UNICEF, 2010.

and SMS as well as email, fax and post. The issue of corporal punishment was one of the seven topics discussed on Facebook. It was also discussed in print through an article in the magazine *OYO, Young latest and cool* and through radio programmes on at least three different radio stations.<sup>23</sup>

The topic engaged substantial debate at all stages of the consultation process. The issue even caught international attention as the Ministry received comments from the Global Initiative to End All Corporal Punishment of Children. Overall, the feedback received from the public on the topic of corporal punishment supported the use of alternative forms of discipline and called for a reduction in the level of corporal punishment in Namibia.



## Sample public feedback on corporal punishment in 2009

### Email:

- The Act should include a clause that alternative forms of punishment are preferable to any kind of corporal punishment. It should also state that it is the duty and right of parents to discipline their children in a loving way, avoiding harsh corporal punishment.
- Spanking is a minor form of corporal punishment that is permissible. The Act should clarify what is meant by “harmful corporal punishment”. This clarification would be needed for social and police workers and medical staff in order to identify abuse of children.
- The Act should somehow state that punishment resulting in psychological harm should also be avoided. Parents could harm a child psychologically with humiliating words.
- Once the Act is in place an awareness campaign through the media would be needed. People directly involved with monitoring child welfare would need a workshop. The Ministry of Education could be involved by instructing headmasters that one parent evening at pre-schools and all schools should be conducted only about the new Act. Possibly somebody from the Ministry of Child Welfare could act as speaker.

<sup>23</sup> Programmes on corporal punishment and the Child Care and Protection Bill were broadcast on Namibian Broadcasting Corporation National Radio, Base FM and Radio Setswana.

## **Email from Global Initiative to End All Corporal Punishment of Children:**

There is accelerating progress globally towards prohibiting and eliminating corporal punishment of children, including within the family. More than 100 states have prohibited all school corporal punishment; nearly 150 have prohibited judicial corporal punishment. Twenty-four states have prohibited it in all settings, including the home, with reforms planned in up to a further 25.

Each of the nine regional consultations held in connection with the UN Secretary General's Study on Violence against Children called for prohibition of all corporal punishment. In October 2006, the report of the Study was presented to the General Assembly: it recommended that all corporal punishment of children be prohibited by the year 2009.

The Global Initiative respectfully urges the Namibian Government to re-draft the Child Care and Protection Bill 2009 to include explicit prohibition of all corporal punishment and all other forms of cruel or degrading punishment or treatment of children, including within the family home.

## **Facebook posting:**

There are a lot of aspects that needs to be taken in consideration with corporal punishment. From personal experiences corporal punishment has not killed anyone yet, at least to my knowledge. We were beaten by teachers in school and at home by parents and most of us didn't turn out that bad. A little punishment from time to time is not so bad, it's just to get the kid back on the right track. Look at what is currently happening in schools, kids doing what they want and that leads to the poor passing rate in our schools and all this after corporal punishment went out.

Corporal punishment can be controlled, especially at home where parents normally go overboard with the punishments and can lead to fatalities. Kids need to know that they will be heard in cases of abuse and excessive punishment.

Corporal punishment has got its positives and negatives, but a little discipline hopefully won't kill anyone.

## **4.2.1 Regional consultations**

A total of four regional workshops were held to consult on the draft Child Care and Protection Bill.<sup>24</sup> Corporal punishment was discussed at some but not all of the meetings. Most participants were unhappy that the final provisions on corporal punishment would probably be more restrictive than under current law. However the participants generally understood the rationale for the proposed provisions and, although they did not want

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<sup>24</sup> Regional workshops were held in the following locations: Keetmanshoop (28–30 April 2009); Rundu (12–14 May 2009); Ongwediva (26–28 May 2009); and Otjiwarongo (7–9 July 2009).

the change, they accepted that it was likely due to the international agreements that guarantee respect for human dignity and prohibit the use of degrading treatment or punishment

## Feedback from children and youth

To ensure that children were adequately consulted through this process, a dedicated children's consultant obtained direct input from 188 children and youth. These dedicated children's consultations were supplemented by presentations about the draft bill at other workshops and conferences targeting children, in an effort to reach as many children as possible.

Corporal punishment was deemed unacceptable by the majority of the 188 children who were consulted directly. None felt that all types of corporal punishment should be allowed, although a small number of children thought that spanking and hitting a child with the hand was acceptable. Here are some of the reasons offered by children for opposing corporal punishment in the home:

- Corporal punishment is like child abuse.
- Corporal punishment teaches children that abuse and violence is acceptable and they will use this in the future themselves.
- Corporal punishment will not solve the problems and will only make matters worse.
- The child will hold a grudge against the abuser.
- The child will have low self-esteem.
- The child's way of thinking and acting will become disturbed.
- The child might become abusive towards others.
- It might kill the child.

Various responses were given by the children as to how they would like to be disciplined by their parents. Top answers were that parents should explain what they have done wrong and/or take away privileges. Some children also felt that, in the first instance, parents should set ground rules so a child knows what is expected.

**“Taking away privileges connected to the wrongdoing, for example:**

- 1) *talking on the cell phone while cooking and the food burns, then take away the phone for a set period of time;***
- 2) *if grades are dropping because watching too much TV, then take out the TV antenna;***
- 3) *if I carelessly spend my pocket money then I should have to work for it, such as washing dishes.”***

**Comments from children at the youth consultations**

## Song

**What is acceptable for punishment?**  
**Jobs like watering, raking, and removing weeds in a garden.**  
**What is not acceptable is corporal punishment?**  
**Smacking, spanking, slapping, beating and kicking!!**  
**What should be done?**  
**We should just advise the child.**  
**And take to the social worker for more advice**  
**and prevent corporal punishment.**

submitted by a child workshop participant

A teen intern from the youth group *Young Achievers*<sup>25</sup> facilitated an additional workshop with approximately 18 members of her youth group specifically to discuss the issue of corporal punishment. Opinions were mixed; some of the comments are shown in the table below.

<b>OPINIONS ON CORPORAL PUNISHMENT, YOUNG ACHIEVERS WORKSHOP, MAY 2009</b>	
<b>For corporal punishment</b>	<b>Against corporal punishment</b>
Consider the values that society holds. The Bible and the Koran both talk about corporal punishment being OK for punishment once in a while, when necessary. We need to have boundaries and be able to say that the child will be spanked next time.	I know of a case where the child didn't want to study and the mother beat her. That child went to the police and showed marks on her body and the police said the mother would be in big trouble if it ever happened again
Like the daughter of my friend. If you say not to do something she just doesn't get it. You have to spank her.	You shouldn't make a child feel pain or make him feel very bad just to punish him.
Gentle talk doesn't protect a child from a hot pot! And if the child spills the hot pot, he/she will get hurt by that anyway. <i>(But the reply was that you wouldn't wait for that to happen, you'd move the child.)</i>	If I say DONT, I don't do the child any emotional harm.
If you hit a child after he has done something wrong, he will realise that he has done something wrong. The children who grow into abusive adults are the ones that get beaten every day for no good reason, not the ones who get spanked for doing something bad.	I never said I didn't want to study but forcing me with beatings would never have made me more obedient. I know why I am going to school.
I'll tell you who becomes a violent adult. It's a boy who watches his mother get abused every day by his father, it's not the ones who get punished for doing wrong.	I tried beating my younger sister but it didn't make her obey.

<sup>25</sup> Young Achievers is a group founded by the US Peace Corps. Its goals are to ensure that every member of the group completes tertiary education. To help reach this goal, the members meet once a week to discuss their progress, hear about peoples' successes, choose people to attend interesting events in town and listen to guest speakers.

I think that corporal punishment should be brought back into the schools as well. In the old days kids passed their grades and the system was much better. Now it's worse since corporal punishment was stopped	Beating breaks kids down; it doesn't do them any good.
Parents know why their kids should stay in school. That's why they beat them.	My little cousin knows I study and I talk to her and she wants to study too. I talk to my little sister as well. Talking works.
For shoplifting, beating is the only thing to do	If children are really bad you should take them to prison and show them how bad it is and tell them that is where they will end up.
Corporal punishment is a solution when children don't listen at a certain point	Parents should be educated to alternate ways of punishing children, like taking away toys, giving them time out, talking to them with respect – NOT beating, kicking. etc.

An additional group of some 30 learners from Khomas Regional High School who participated in a series of two discussions around the draft Child Care and Protection Bill also focussed on issues relating to discipline and corporal punishment. The majority of students admitted to being beaten in one form or another at their homes, but said they did not want to beat their own children in the future. It became clear from these discussions (as well as many others) that education about alternatives to corporal punishment is needed, as the learners reported that many parents know only of corporal punishment as a form of discipline. The learners acknowledged that discipline is required when children misbehave, but felt that children should not be disciplined using corporal punishment. They recommended that discussion should almost always be the first remedy. In response to the question “how would you like your parents to discipline you?”, only one participant suggested the use of corporal punishment. The most common recommendations for appropriate discipline were taking away privileges, such as sweets, toys or permission to go out with friends.

### **Opinions about corporal punishment at Khomas High School, July 2009**

*“I will make sure to talk to (my child) and make them aware they did wrong and why it was wrong. Then I would expect an apology. I would also double check what people around them are doing and look at what they are watching, reading and listening to.”*

*“I as a parent will personally sit down my child and talk to them in the most convincing and calm manner. I cannot insult, I have to set an example. I would ground them for misbehaving and being disrespectful. I think that's the only way he will understand.”*

*“I would love my parents to treat me in a way that benefits my future. I would love my parents to buy me the necessary materials that contribute to better grades. If I don't show any improvement then they can come and check the environment where I have my classes.”*

A substantial amount of feedback was collected from discussions with learners and out-of-school youth in Kunene Region, facilitated by the Ombetja Yehinga Organisation (OYO), a Namibian trust which aims to create social awareness among young people using the arts. OYO works with young people to target social issues through writing, drama, dance, music and the visual arts. The issues they cover include HIV prevention, sexual and reproductive health, children's and human rights, gender, gender-based violence, alcohol and drug abuse, stigma and discrimination. One of the programmes run by the organisation is the creation of a bimonthly magazine *OYO, Young, latest and cool*. The magazine provides young people with a platform to share their stories, poems, drawings and questions about HIV/AIDS and social issues that affect them, their families and communities. The magazine is currently distributed to AIDS Awareness Clubs and Youth Groups in Kunene and Erongo regions as well as to schools, libraries, youth centres, governmental organisations and non-governmental organisations throughout Namibia. It is estimated that the magazine is read by over 80 000 children, young people and adults across Namibia. However, the real achievement is that the magazine is not a passive product; each issue is actively discussed and debated by the OYO youth groups, which submit the bulk of the content that is published.<sup>26</sup>

OYO collaborated with the Legal Assistance Centre to develop the concept for the September 2009 edition of the magazine. This edition was entitled "*Discipline and Punishment*". To generate input for the magazine, the OYO team ran workshops about the topic in question in the Kunene Region. The Legal Assistance Centre provided a training blueprint about alternatives to corporal punishment and background materials.

Comments on corporal punishment in response to the dedicated magazine issue on this topic were collected by the OYO team. OYO estimates that, in addition to the comments published in that issue of the magazine, they received over 2000 comments from young people on corporal punishment.

An analysis of the responses shows that the majority – approximately 1200 of the respondents – considered the use of corporal punishment to be bad, especially when beatings were combined with withholding of food. Those children who expressed positive feelings about corporal punishment – approximately 450 of the respondents – stated that it cultivated discipline and prepared children for life as responsible adults.

With respect to beatings administered by teachers, children felt anger; many knew that corporal punishment in schools was illegal. Numerous children wrote of reporting such teachers to the police or to Woman and Child Protection Units.

With respect to beatings administered by parents, however, children felt sadness more than anger; many stated that this showed parents didn't love them, or encouraged them to think about committing suicide or running away from home.

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<sup>26</sup> For more information see the Ombetja Yehinga Organisation website: <<http://ombetja.org/index.html>>.

Out of approximately 2000 responses on corporal punishment from children and youth, approximately 1200 respondents (60%) thought that it was bad, and 450 (23%) thought that it was good. The remainder made general comments.

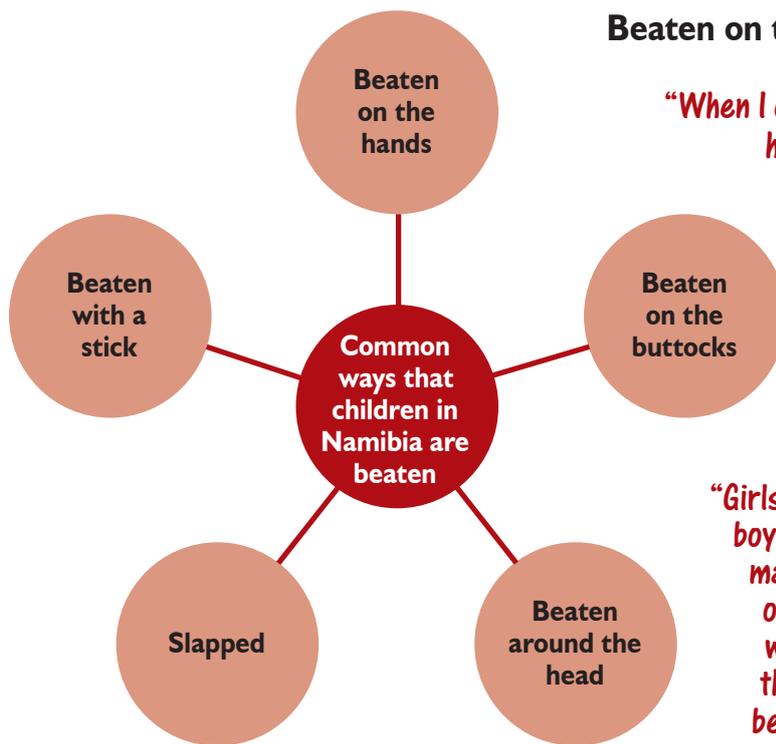
The responses received covered a range of experiences, emotions and outlooks. Many young people recounted being beaten with a sjambok or a stick. Some talked about being forced to go for days or even a week without food. The most common sentiments involved anger over being punished without reason, sadness, depression, a belief in the power of discipline without violence, regret for misbehaving and lessons learned from being beaten. Those who thought corporal punishment was warranted or valuable often spoke of the need for discipline in order to have a regulated and ordered society. These children also thought that corporal punishment was necessary to instil good manners and ensure future success in life.

Key themes identified in the responses were:

- **How the child was beaten** – Responses often showed that children were beaten on the hands, buttocks and around the head. The use of a stick to beat the child appears to be common, as is slapping.
- **Who has beaten the child** – The mother of the child was most commonly cited as the person beating the child. The father was also frequently mentioned as the person playing this role. Other people who administered corporal punishment to the children included the grandparents (more commonly the grandmother as opposed to the grandfather), an aunt or sister, and step-parents.
- **Reason for beating** – Common reasons for beatings were failure at school or failure to help with chores around the home. Failure to mind cattle or goats was also commonly mentioned. (It should be noted that the responses were collected from children in the Kunene region, which is a predominantly rural area).
- **Responses to beating** – Common responses to beatings were anger and unhappiness. In a number of responses, the children discussed thoughts of committing suicide.
- **The long-term impact of corporal punishment** – The main response about the long-term impact of corporal punishment was that it causes increased aggression.
- **Alternatives** – Many children gave examples of alternatives to corporal punishment that they would like to see their parents and teachers use.

Some of the children's statements are recounted on the following pages. Feedback was received in a range of languages, and where necessary translated into English by OYO staff. Grammar and spelling have been corrected in some cases for clarity.

# Common ways that children in Namibia are beaten



## Beaten on the hands, buttocks or head

*“When I do something wrong I get beaten on my hands or legs. I don’t like to get beaten because it makes me feel bad and I would prefer another type of punishment. Even my mother must not beat me because when she does I think of running away from home. I am beaten but I know it’s wrong to beat someone.”*

*“Girls in my school are beaten on hands and boys on buttocks. I don’t like it because it makes me feel bad and I sometimes think of committing suicide. If I do something wrong I should be punished by cleaning the school yard. I feel hurt when I get beaten and my heart breaks. My body is left with pain and so I feel really bad.”*

*“My grandfather beat me because I am stealing money. He take a big stick and beat me in my head.”*

## Beaten with a stick

*“I get beaten a lot all over my body. Sometimes I get scars which later become sores. I feel bad that I get beaten because I get serious physical injuries. My mom uses a stick to beat me and it hurts a lot.”*

*“Corporal punishment is bad because it might hurt your body so much so blood comes out. One time, my teacher punished me by taking a stick and beating me on the heart and blood starts to run, I don’t like it.”*

*“We have a serious problem in our school. Teachers beat us and even give names to the sticks they beat us with. If you fail a test you get beaten and if you start crying you get an extra beating. Some of us even want to drop out of school because of this beating. Sometimes we get scars due to the beatings.”*

## Slapping

*“Once in a private school, there was a teacher used to beat the class, whenever they whispered. One day a newcomer came to this school. She asked were the dustbin is in the class. Suddenly the teacher came and slapped the girl at the back of her chest. She fell from the chair and the teacher kicked her all over. The next day the parents came to shout and the teacher was fired. From there on teachers were not allowed to beat kids, they must punish but not harsh punishment.”*

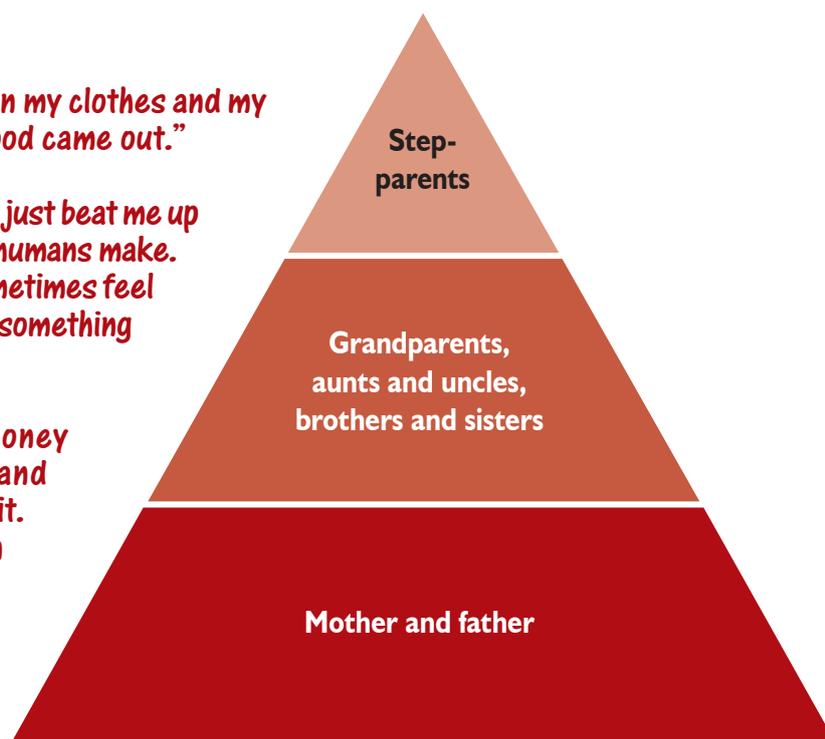
# People who most commonly administer corporal punishment

## The mother

*“Last Friday, I went swimming in my clothes and my mother sjamboked until the blood came out.”*

*“There was a time when my mom just beat me up because of the simple mistakes humans make. She likes beating, and I even sometimes feel she does not love me. But that’s something I have to get used to.”*

*“My friend took her mum’s money when her mother did not see and the mother thought that I took it. So she beat me up with the pan and I was bleeding. When I come out of the hospital, she was very sorry because she beat me up for something I have not done.”*



## The father

*“One day I was home alone because my parents went to Swakopmund for a week. I had a party for four days, but my parents phoned me because a neighbour told them we were partying. When they arrived home, my father beat the hell out of me with the big stick.”*

*“When I refused to get water, my mother beat me with a big stick she took from the stove. Then my father also started to beat me until I became sick.”*

## Grandparents

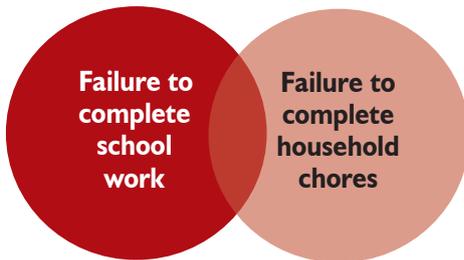
*“One time my grandmother beat me very badly for a week. I had to go to the hospital and the doctor asked me to go fetch a paper for the police, and then I told them that I fell down when I was up getting fruit and I fell down on the soil. I did not tell anyone that I was beaten until I have just written it here.”*

## A step-parent

*“I remember a lady who burnt her stepkids with hot coals in their mouths, because they ate chicken meat from the pot. Put yourself in the kids’ shoes and imagine how painful that could be. If I was the mother, I would rather not give them meat for at least a month, rather than burning them.”*

## Reason for administering corporal punishment

### Most common reasons for administering corporal punishment



### Failure at school

*“I experienced many problems in my life. One day I was beaten by my grandmother, because I was failing many school activities especially maths. Now I am repeating a grade which is a problem because life after school is difficult.”*

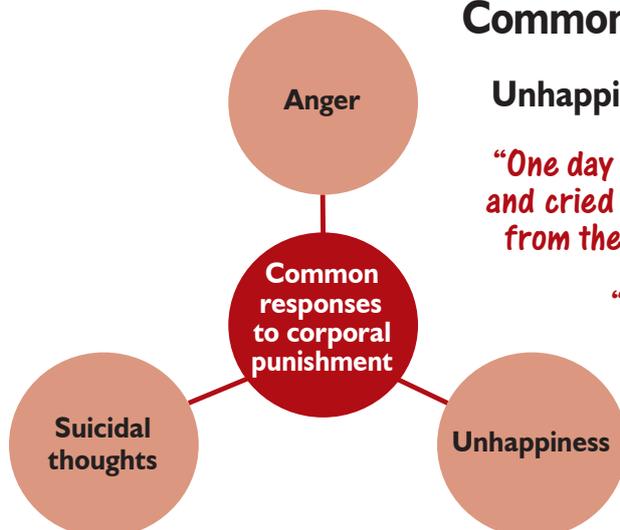
*“I got beaten on my hands because of school work. When I come late to school or when I tease another child I get beaten. I also get beaten when I’m not paying attention in class or when the teacher asks me questions for a couple of times and I fail to answer. I get beaten a lot, even six times. The only way teachers discipline me is by beating me for doing small things even sometimes I’m sent home to get my parents.”*

### Failure to mind the cattle properly

*“One day my parents told me to take the cattle in the bush but I refused. They begged me to go but I said I don’t want to do it. My father grabbed me and started beating me. I felt so bad I decided to run away; I thought my parents didn’t love me. I cried for that whole day until my eyes were red and my voice was gone.”*

*“I used to look after the cattle every Monday but one Monday I was hungry and I refused to go. My mom said she’ll beat me, if I don’t go but I just sat there. She took a big stick and hit me on the head, it was so painful I started crying. I ran far away and my mom started screaming that she’ll come beat me when I get back. I didn’t return that night and went to sleep at my aunt’s house.”*

## Common responses to corporal punishment



### Unhappiness

*“One day I was beaten while I was asleep, I got a big fright and cried hard. I don’t like getting beaten at all. I hate it from the bottom of my heart.”*

*“When my parents beat me, it makes me so sad and I used to think that they are not really my parents and they died long time ago and they do not like me and I am just scared.”*

### Anger

*“We are beaten at school when we don’t do our homework. I feel hurt by this because I get angry. My parents never laid a hand on me but I’m just experiencing beating at school. I get angry and don’t want corporal punishment to be continued.”*

*“I don’t want anyone to beat me because I don’t like it. When I get beaten I’m filled with so much anger. The other reason is that corporal punishment causes us physical harm.”*

## Suicide

*“One day me and my little brother went to basketball training at the court. My mum told us to come back before the sun sets, but the basketball was so nice and we came late that day so my mum beat us up. I felt so useless and lonely and my little brother cried so much and we wanted to kill ourselves. Since that day I started beating my little brother if he did something wrong but one day I thought that it was useless to beat someone so I stopped.”*

*“One day I was beaten by my father. I did not do anything, my father was drunk. My father just came home and starting beating me. I feel very bad and I thought that better to kill myself. Later on decided that I will not kill myself.”*

*“After being beaten, I feel so bad that I plan to go and commit suicide or throw myself in the river. Therefore, I don’t like corporal punishment. You can get punished again and you start crying before being beaten because your heart feels so bad or you go in the field away from people.”*

## The long-term impact of corporal punishment

### Increased aggression and violence

*“If kids are beaten by parents, it is a huge problem because then the kid will think of committing suicide or murdering his parents because of the pain they cause him or her.”*

*“I’m 19 years old and my father used to beat me up each and every single day, if I make a simple mistake he used to beat me until neighbour come and stop him. I was in hospital 3 times every year. The problem is now in school those memories used to come back and in order to realise them I have to bear or bully another learner. Believe it or not I used to beat them up and I used to have bad dreams about my father beating me. Maybe I’m going to beat my children. Just as my father, like father like son.”*

*“One day my teacher beat me for something I didn’t do. He said I made a noise in class, while all my class mates said I didn’t. He beat me anyway and it hurt me a lot. It was pure injustice and I still hold a grudge against him. One day he will pay for beating me for something I didn’t do, because I will never forget him.”*

## Alternatives to corporal punishment

*“If we do something wrong our teachers and parents must tell us to stop this thing. We must also know to respect and learn, what is wrong and right. Be honest with our parents and teachers. One thing we want is that the parents should talk to us when we do something wrong.”*

*“Parents should not beat us but should discipline us in other ways, because beating only hurts us. They could use the following civil ways of discipline: milking cows, cooking, cleaning the yard, or running rounds.”*

*“I want to be punished by words, because I am mature enough to understand the correct actions. I am told what to do, and I want to be encouraged.”*

These sentiments have been echoed in other parts of the world. In 2004 and 2005, Save the Children Sweden funded extensive research into corporal punishment and other forms of humiliating and degrading punishment in the home and at school in South Africa, Swaziland and Zambia. These studies surveyed children aged 6-18 years and conducted focus group discussions involving children in three age groups (6-8 years, 9-12 years and 13-18 years). All three studies highlighted the negative impact of corporal punishment on children's physical and mental well-being. In all three studies, children said they would prefer to be disciplined in a non-violent and non-humiliating manner. They would like parents and teachers to talk to them and explain what they did wrong, instead of using corporal punishment and other forms of humiliating and degrading punishment.

In South Africa, as in Namibia, the two most common feelings children reported when they were punished were sadness and anger – with sadness being the most common reaction to corporal punishment in the home. Other reactions were crying, fear, embarrassment, withdrawal and compliance. A number of children reported aggressive behaviour, such as bullying or beating other children as a reaction to their own punishment.

In Swaziland, older children reported outrage, embarrassment, isolation, feeling hated, withdrawal, shock, injustice, worthlessness, guilt and humiliation. Across all age groups, the main feelings were sadness, regret, remorse or guilt. Many children in the lower income groups said anger was the primary feeling, as well as offence, unfairness and a desire to get away. Similar reactions were reported in Zambia, as well as crying, loneliness, depression, unhappiness, physical pain and aggression.<sup>27</sup>

## 4.2.2 Polarised points of view

The public debate about corporal punishment in Namibia appears to have recently intensified. For example, an exchange of letters to the editor which appeared in April 2010 in *The Namibian* illustrates the wide divergence of adult viewpoints, with one writer speaking in defence of “a disciplined and civilised hiding”<sup>28</sup>, and another reader responding that a hiding is inherently “uncivilised” and part of the violent culture inherited from the colonial era.<sup>29</sup>

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<sup>27</sup> *Ending Legalised Violence Against Children: All Africa Special Report – a contribution to the UN Secretary General's Study on Violence against Children*, London: Global Initiative to End All Corporal Punishment of Children / Save the Children Sweden, 2006, updated April 2007.

<sup>28</sup> JWF (Koos) Pretorius, “Spare The Rod, Spoil The Child”, *The Namibian*, 16 April 2010. This letter argued in particular that corporal punishment is and should be allowed in private settings, such as private schools. It should be noted that, although the writer states that “there is no law prohibiting private schools in Namibia from whipping undisciplined learners”, corporal punishment is in fact prohibited in both government and private schools by section 56(1) of the Education Act of 2001 (discussed in chapter 6).

<sup>29</sup> R Negonga, (Katutura), “The Oppression of Corporal Punishment”, *The Namibian*,

*“Do not confuse our children with an education (philosophy of life) in state schools that differs from that in their homes. Bring discipline, recognition of authority and civilized hiding back into our houses, schools, courts and traditional authorities.”*

**Election Manifesto of Monitor Action Group, 2009**  
(the party which JWF Pretorius represented in Parliament until 2005)

## **The Oppression of Corporal Punishment**

(responding to a letter from JWF Pretorius advocating the use of “disciplined and civilised hiding”)

Corporal punishment is central to justifying the oppression of someone else and continues to contribute to the unacceptably high levels of violence in this country. What on earth is a ‘civilized hiding’ that Pretorius refers to? This sounds like the ‘civilization’ brought to the country by colonialism. A hiding is simply uncivilized. Violence is simply violence. We are so tired of the violent culture that we inherited from colonialism. And this is what Pretorius wants to drag us back to.

Corporal punishment is a form of violence; it is about controlling – rather than educating – children. It is about being a soldier instead of a real teacher or an effective parent. Of course, during colonialism teachers and parents were encouraged to behave like soldiers and too many of them still do. Militarism is the exact opposite of democracy. It is always frightening to hear how disdainfully some teachers speak about the children. The little ones are expected to be submissive like slaves. They are not supposed to have their own feelings or volition.

We are really sick and tired of this backwardness being propagated by the control freaks. Children are not animals to be whipped. And, yes, not even animals should be whipped.

The usual argument from such perpetrators of violence is: ‘My parents gave me a hiding and I turned out okay’. Really? Well, the scientific research suggests that such people are emotionally immature and have very poor problem-solving skills. They are more likely to abuse substances and to be violent themselves. Look around us and see how true this is in Namibia.

The fact is that children who are raised in a non-violent way are just more mature. There exist many non-violent disciplining methods, e.g. some schools have a point system with consequences such as short detentions, suspensions, calling parents in, etc. This undoubtedly works well. At home parents could use effective methods such as time-out and suspension of privileges. There is no need for violence...

...In a democratic society we should use persuasion and logic with the next generation – not abuse them at every opportunity.

excerpted from **R Negonga**, Katutura  
*The Namibian*, 23 April 2010

There have been some recent calls by prominent government officials for the “reintroduction” of corporal punishment in schools. For example, the Deputy Minister of Education is reported to have threatened to “bring back” corporal punishment in school if necessary to prevent teachers from being “terrorised”<sup>30</sup>, and the Mayor of Keetmanshoop recently called for the return of corporal punishment in schools as a way to instil discipline, which is a prerequisite to education.<sup>31</sup> Children interviewed by *The Namibian* expressed very different views (see below).

“No, they should not bring corporal punishment back because it affects learners in a bad way. There are better ways to disciplining students such as giving them detention.” – **Colin Tuahimua**

“Corporal punishment should not be re-introduced because it does not teach a child anything. Teachers should instead use other alternatives.” – **Guilty Neumann**

“I say no to corporal punishment because it makes children uncomfortable and it is a bad form of punishment. There are other ways to discipline a child.” – **Henock Amaambo**

“I say no to corporal punishment because it will just give me a reason to stay away from school. If I get beaten everyday, then I will have that fear of coming to school.” – **Penny Shimba**

“Corporal punishment should not be re-introduced because without it children will be more comfortable going to school and the lack of corporal punishment in schools and in homes also promotes good communication between children and their teachers or parents.” – **Natangwe Nashidengo**

“No, corporal punishment should not be reintroduced in schools. Corporal punishment will just mislead children as they might end up thinking that in order to get someone to do something, you have to beat or hurt them.” – **Delorees Classen**

“We all know that constitutionally, corporal punishment is wrong as it goes against basic human rights though others still deem this method of discipline effective. The question that should be asked is to what extremes a child should be beaten? Too many times children are brutally beaten which goes against the definition of spank. I so NO to corporal punishment because I believe that all these troubled students crave for is attention. Schools currently have life skills teachers and these people are trained to help learners with their social problems, [and] we the stakeholders of education should strengthen that branch. Teachers should further receive quality psychological training. I stand firm in saying that we the youth work better with inspiration. A one on one with our troubled youth will be a step forward, This personal attention will boost their self esteem, in event, self actualisation will set off, and at this juncture motivation sets in. And this is what we need to reach Vision 2030 – a motivated and inspired youth.” – **Sharonice Busch**, Speaker of the Children’s Parliament

“Should corporal punishment be re-introduced in schools?”, *The Namibian Youthpaper*, 20 July 2010.



<sup>30</sup> Luqman Cloete, “Deputy Education Minister threatens to bring back spanking”, *The Namibian*, 13 July 2010.

<sup>31</sup> Luqman Cloete, “Bring back the cane: mayor”, *The Namibian*, 21 July 2010.

Furthermore, as discussed in chapter 6, it is not legally possible to “re-introduce” corporal punishment in government schools as the Supreme Court of Namibia has ruled that it is unconstitutional, relying on a portion of the Namibian Constitution which is entrenched against any amendment which would weaken it.<sup>32</sup>

Other news reports indicate that the problem of school discipline involves complex problems which go far beyond corporal punishment alone, with a recent meeting citing issues such as high student/teacher ratios, negative attitudes of teachers towards their work, the shortage of adequate infrastructure and the poor employment prospects even for those students who complete their education.<sup>33</sup>

One SMS sent to the Legal Assistance Centre on this topic expressed the following opinion:

*Do you really know how overcrowd the classes are? In a class with 48 learners do you think you will succeed? I think this will only put too much work on teachers. Let corporal punishment be there to build our kids up not to hurt them. It can be done but with love.*<sup>34</sup>

Another input made to the Legal Assistance Centre by a parent expressed a very different view:

*There are so many frustrated teachers and they take it out on kids. My 10-year-old prays, “Please God, don’t let the children be beaten today”, every morning when I drop her off at school. She is so scared, and some kids wet their pants in class because of the beatings. My kid is getting nightmares because the teachers are bullying kids at school.*<sup>35</sup>

Interestingly, one learner told the Legal Assistance Centre “My parents said they beat me because they love me”, while another learner said “My father said he can’t beat me because they love me”.<sup>36</sup>

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<sup>32</sup> The statement by the Deputy Minister of Education was perhaps a rhetorical one, as he is quoted as having said at another forum around the same time that “giving a child a hiding is illegal. The world has changed. We are not going to live the way we did [previously]; forget it”. Denver Kisting, “Capacity, indiscipline hamper education”, *The Namibian*, 16 June 2010.

<sup>33</sup> See, for example, Denver Kisting, “Capacity, indiscipline hamper education”, *The Namibian*, 16 June 2010.

<sup>34</sup> SMS sent to the Legal Assistance Centre in July 2010, spelling corrected.

<sup>35</sup> Comment made by telephone to the Legal Assistance Centre, July 2010. Identifying information and name of school provided by caller.

<sup>36</sup> Comments made by learners after screening of Legal Assistance Centre film on alternatives to corporal punishment, “A Betta Way”, in Khomas schools in June 2010.

# 5. International standards

## 5.1 Namibia's international commitments

Many international and regional agreements to which Namibia is a party guarantee respect for human dignity and prohibit the use of degrading treatment or punishment:

- Universal Declaration of Human Rights
- Convention on the Rights of the Child
- African Charter on Human and Peoples' Rights
- African Charter on the Rights and Welfare of the Child
- International Covenant on Civil and Political Rights
- International Covenant on Economic and Social Rights
- Convention Against Torture.

### **Rights that are affected by corporal punishment**

- right to dignity and bodily integrity
- right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment
- right to be protected from violence and abuse
- right to development, including the right to the highest attainable standard of physical and mental health.

Several of these agreements speak explicitly to corporal punishment of children in their texts, or in official comments intended to guide their interpretation.

### **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights provides the foundation for modern international human rights law, recognising “the inherent dignity” and “the equal and inalienable rights of all members of the human family.”<sup>1</sup> All people are “entitled to a social and international order in which the rights and freedoms” in the Declaration “can be

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<sup>1</sup> Universal Declaration of Human Rights, Preamble.

fully realized.”<sup>2</sup> Such rights and freedoms include the right of children to “special care and assistance”<sup>3</sup> and the right of all people to be free from “torture [and] cruel, inhuman or degrading treatment or punishment.”<sup>4</sup> The principles that the Declaration recognises are used to interpret other international documents and have been interpreted as providing support for the prohibition of corporal punishment in all places, including in the home.<sup>5</sup>

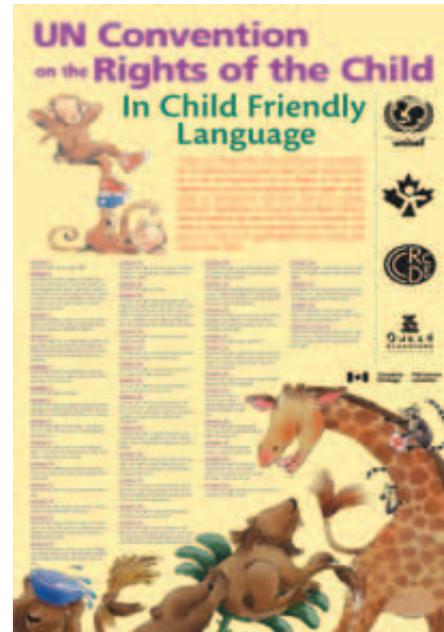
## Convention on the Rights of the Child

The clearest statement on corporal punishment of children is contained in Article 19 of the Convention on the Rights of the Child, which requires that State Parties take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child”.

In 1994, the Committee on the Rights of the Child stressed that corporal punishment of children is incompatible with the Convention and noted the need for revision of existing legislation, as well as the development of awareness and educational campaigns, to prevent child abuse and the physical punishment of children.<sup>6</sup>

In 2006, the Committee issued a General Comment on corporal punishment, which stated:

**Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.<sup>7</sup>**



<sup>2</sup> Id, Article 28.

<sup>3</sup> Id, Article 25.

<sup>4</sup> Id, Article 5.

<sup>5</sup> See, for example, Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN General Assembly, A/57/173 (2002), which contains the following statement at paragraph 48:

The Special Rapporteur notes that both of his predecessors took the view, which he fully shares, that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined in the Universal Declaration of Human Rights.

<sup>6</sup> Committee on the Rights of the Child, *Report on the Seventh Session*, CRC/C/34, 8 November 1994, at page 63.

<sup>7</sup> Committee on the Rights of the Child, *General Comment No 8 (2006)*, CRC/C/GC/8, 2 March 2007, at paragraph 3. The Committee’s definition of corporal punishment is quoted at page 1 of this monograph.

The Committee went on to emphasise that the Convention on the Rights of the Child “requires the removal of any provisions (in statute or common – case law) that allow some degree of violence against children (eg “reasonable” or “moderate” chastisement or correction), in their homes/families or in any other setting”. Thus, the defence that currently exists in Namibian law against a charge of assault by a child against a parent is inconsistent with Namibia’s commitment to the Convention.<sup>8</sup>

However, the Committee was also of the view that simply removing such defences is not adequate to end corporal punishment; “explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in ... civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or ‘smack’ or ‘spank’ a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed ‘discipline’ or ‘reasonable correction.’”

However, since trivial events are not generally prosecuted as criminal matters, minor assaults upon children by their parents would be unlikely to end up in court. Instead, all reports of violence against children should be appropriately investigated to ensure that the child in question is not in danger of significant harm. The overall aim should be “to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.”<sup>9</sup>

**Children’s dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children’s best interests. It is the Committee’s view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child’s views should be given due weight, according to his or her age and maturity.<sup>10</sup>**

The Committee notes that awareness-raising, guidance and training – in addition to law reform – are necessary to bring about change. Parents need examples of positive, non-violent forms of discipline. It observes that there are a number of ways to publicise the need for change, although challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. An important vehicle for societal change in this area is the media – television, radio, and newspaper are all valuable

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<sup>8</sup> Because international agreements to which Namibia is a party automatically form part of Namibian law by virtue of Article 144 of the Namibian Constitution, the current common law defence could be challenged as a violation of the Convention on the Rights of the Child as well as the Namibian Constitution.

<sup>9</sup> Committee on the Rights of the Child, *General Comment No 8 (2006)*, CRC/C/GC/8, 2 March 2007, at paragraphs 34 and 40.

<sup>10</sup> *Id* at paragraph 41.

ways to educate the public and raise awareness. Another important aspect of education and awareness-raising is the maintenance of points of contact between government and families within health, welfare and educational services, including early childhood institutions, day-care centres and schools. Finally, the Committee recommends that relevant information should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems.<sup>11</sup>

## **African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of the Child contains similar although somewhat less detailed provisions. It requires that states take legislative measures to protect children from all forms of torture and inhuman or degrading treatment (Articles 16 and 17) and ensure that discipline of children, whether at home or in schools, respects their human dignity (Articles 11 and 20).

## **International Covenant on Civil and Political Rights**

Article 24 of the International Covenant on Civil and Political Rights recognises the right of every child to receive from family, society and the State the protection required by the child's status as a minor.<sup>12</sup> States must take "special measures" to ensure that children are protected, including "every possible economic and social measure ... to prevent them from being subjected to acts of violence and cruel and inhuman treatment."<sup>13</sup>

The Committee which monitors this Covenant has made it clear that the bar on inhuman or degrading treatment and punishment in Article 7 of the Covenant extends to corporal punishment, including corporal punishment of children:

**The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.<sup>14</sup>**

The Committee has strongly rejected corporal punishment in its concluding observations on States' reports, calling such punishment a "primitive measure" that is "degrading",<sup>15</sup>

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<sup>11</sup> Id at paragraphs 44-49; quote from paragraph 48.

<sup>12</sup> Human Rights Committee, *General Comment No 17: Rights of the child (Art 24)*, 7 April 1989, at paragraph 1.

<sup>13</sup> Ibid at paragraphs 1 and 3.

<sup>14</sup> Office of the High Commissioner for Human Rights, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7)*, 10 March 1992, paragraph 5.

<sup>15</sup> Human Rights Committee, *Concluding Observations on Report of United Republic of Tanzania*, A/48/40 vol. I (1993), at paragraph 173.

asserting that it is incompatible with Article 7 of the Covenant,<sup>16</sup> and noting that Article 24 requires that “corporal punishment must be prohibited” by national law.<sup>17</sup>

The Committee has approved when States have reported that they have “prohibited all forms of corporal punishment of children” and has recommended that implementation of such prohibitions be accompanied by public information and education campaigns.<sup>18</sup>

## International Covenant on Economic, Social, and Cultural Rights

Article 10 of the International Covenant on Economic, Social, and Cultural Rights protects children and the family and states that “special measures of protection and assistance should be taken on behalf of all children and young persons.”<sup>19</sup> Its monitoring Committee has stated in its concluding observations on State reports that Article 10, when read in conjunction with “the principle of the dignity of the individual that provides the foundation for international human rights law”,<sup>20</sup> constitutes a prohibition on the physical punishment of children in families.<sup>21</sup>

According to the Committee, “child-rearing practices include corporal punishment of children in the home and in schools” and if such “acts are committed with impunity,” they constitute “a serious violation by the State party of its Covenant obligations.”<sup>22</sup> The Committee has expressed its concern with “the continued resort to corporal punishment at home”<sup>23</sup> and called on State parties “to prohibit effectively the use of corporal punishment in all areas of life.”<sup>24</sup> It has also encouraged State parties “to consider an explicit prohibition of corporal punishment within the family”.<sup>25</sup>

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<sup>16</sup> Human Rights Committee, *Concluding Observations on Report of Zimbabwe*, A/53/40 vol. I (1998), at paragraph 223.

<sup>17</sup> Human Rights Committee, *Concluding Observations on Report of Kyrgyzstan*, A/55/40 vol. I (2000), at paragraph 413.

<sup>18</sup> Human Rights Committee, *Concluding Observations on Report of Kenya*, A/60/40 vol. I (2005) at paragraph 86(6).

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, Article 10 (3).

<sup>20</sup> Committee on Economic, Social, and Cultural Rights, *Concluding Observations on Report of United Kingdom of Great Britain and Northern Ireland*, E/2003/22, 2002, at paragraph 239.

<sup>21</sup> Ibid.

<sup>22</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations on Report of Jamaica*, E/2002/22, 2001, at paragraph 937.

<sup>23</sup> Committee on Economic, Social, and Cultural Rights, *Concluding Observations on Report of Trinidad and Tobago*, E/2003/22, 2002, at paragraph 277

<sup>24</sup> Ibid at paragraph 300.

<sup>25</sup> Committee on Economic, Social, and Cultural Rights, *Concluding Observations on Report of Malta*, E/2005/22, 2004, at paragraph 369.

## Convention Against Torture

Even though the focus of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment is torture by state or other official actors,<sup>26</sup> the Committee Against Torture which monitors the Convention has repeatedly urged States Parties to prohibit corporal punishment in all settings, including the home.<sup>27</sup>

## 5.2 A recent international report

### World Report on Violence against Children<sup>28</sup>

The 2006 World Report on Violence against Children is the first comprehensive global report on all forms of violence against children and the impact this violence has. At the time of the study, it was estimated that only 2.4% of the world's children were legally protected from corporal punishment in all settings.<sup>29</sup> The central message of the study is that *no*



<sup>26</sup> Article 1(1) defines torture for the purposes of the Convention as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, **when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.** It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (emphasis added).

<sup>27</sup> See, for example, CAT/C/SRB/CO/1, 19 January 2009 (Serbia), where the Committee recommended that Serbia “taking into account the recommendation in the United Nations Secretary General’s Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, including the family, supported by the necessary awareness-raising and public education measures” (at paragraph 20) and CAT/C/BEL/CO/2, 19 January 2009 (Belgium) where the Committee recommended that Belgium “should take the necessary steps to include provisions banning corporal punishment of children within the family in its legislation” (at paragraph 24).

<sup>28</sup> Paulo Sérgio Pinheiro, *World Report on Violence Against Children*, Geneva, Switzerland: United Nations Secretary-General’s Study on Violence against Children, 2006.

<sup>29</sup> *Id* at page 12.

*violence against children is justifiable, and all violence against children is preventable.* The study recognises that despite the large scale of violence against children, there is still an opportunity to move towards its elimination. The overarching recommendations from the report are as follows:

1. Strengthen national and local commitment and action
2. Prohibit all violence against children
3. Prioritise prevention
4. Promote non-violent values and awareness-raising
5. Enhance the capacity of all who work with and for children
6. Provide recovery and social reintegration services
7. Ensure the participation of children
8. Create accessible and child-friendly reporting systems and services
9. Ensure accountability and end impunity
10. Address the gender dimension of violence against children
11. Develop and implement systematic national data collection and research efforts
12. Strengthen international commitment

***“A legal ban [on corporal punishment] is not a crusade against parents: it is the definite push that society needs to start resorting to non-violent and more efficient forms of discipline. A legal ban neither erodes parental authority nor questions the need for discipline. It just challenges the use of violence... I firmly believe that the existence of a legal defence for parents who “reasonably chastise” their children effectively halts the evolution towards a society more respectful of children’s rights and parents’ potential to improve their parental skills.”***

**Maud de Boer-Buquicchio**, Deputy Secretary-General, Council of Europe,  
letter to *The Telegraph* (UK), 4 May 2010



**The comics on alternatives to corporal punishment were distributed as inserts in *The Namibian* newspaper. On the day of release of the first comic, we received nearly 100 text messages from members of the public who had questions or comments, or just wanted to thank the Legal Assistance Centre. Only two people sent messages in support of corporal punishment.**

# 6. Current Namibian law

Corporal punishment of children in schools and other quasi-governmental institutions is clearly unlawful in Namibia, while the current legal status of corporal punishment in the home is somewhat uncertain. The key principle is Article 8 of the Namibian Constitution, which protects human dignity and prohibits “cruel, inhuman or degrading treatment or punishment”.

## **Namibian Constitution, Article 8: Respect for Human Dignity**

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
  - (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

## 6.1 The 1991 Supreme Court case

Shortly after Independence, the Namibian Supreme Court found that Article 8(1) of the Namibian Constitution prohibits corporal punishment by any “organ of state”, which would include government schools as well as the administration of corporal punishment to adult and juvenile offenders.

The court’s reasoning was as follows:

1. Every human being has an inviolable dignity. A physical assault on him sanctified by the power and the authority of the State violates that dignity. His status as a human being is invaded.
2. The manner in which the corporal punishment is administered is attended by, and intended to be attended by, acute pain and physical suffering ‘which strips the recipient of all dignity and self-respect’...
3. The fact that these assaults on a human being are systematically planned, prescribed and executed by an organised society makes it inherently objectionable. It reduces organised society to the level of the offender. It demeans the society which permits it as much as the citizen who receives it.

4. It is in part at least premised on irrationality, retribution and insensitivity. It makes no appeal to the emotional sensitivity and the rational capacity of the person sought to be punished.
5. It is inherently arbitrary and capable of abuse leaving as it does the intensity and the quality of the punishment substantially subject to the temperament, the personality and the idiosyncrasies of the particular executioner of that punishment.
6. It is alien and humiliating when it is inflicted as it usually is by a person who is a relative stranger to the person punished and who has no emotional bonds with him.<sup>1</sup>

The Court held that this reasoning applied equally to adults and juveniles, and to school settings as well as criminal justice ones.<sup>2</sup> It held that “the imposition of any sentence by any judicial or quasi-judicial authority, authorising or directing any corporal punishment upon any person is unlawful and in conflict with art 8 of the Namibian Constitution”, and that “the infliction of corporal punishment in government schools pursuant to the existing Code formulated by the Ministry of Education, Culture and Sport or any other direction by the said Ministry or any other organ of the Government, is unconstitutional and unlawful and in conflict with art 8 of the Namibian Constitution”.<sup>3</sup> The Court ruling did not strike down specific provisions on this law, although it quoted what it termed the “most important” laws from the “vast network of legislation” which was implicated.<sup>4</sup>

The scope of the ruling in this case was discussed by the High Court in *S v Sipula*<sup>5</sup>, which was a review of the conviction of a ‘tribal policeman’ on a charge of assault for whipping a man with a stick on the order of the Linyanti Tribal Khuta, a body established under customary law. The High Court here noted that the 1991 case “appears to be binding in the strict legal sense only on organs of the State, such as judicial, quasi-judicial and administrative organs, including government schools”.<sup>6</sup> The Court expressed the opinion for purposes of this review that although the “native law and custom providing for corporal punishment, was not expressly declared unconstitutional by the aforesaid decision of the Supreme Court”<sup>7</sup>, as a matter of necessary implication the Supreme Court probably also intended to declare corporal punishment applied in terms of customary law unconstitutional.<sup>8</sup> (The conviction of the accused was nevertheless overturned on the grounds that it was not clear that he had the requisite knowledge of the unlawfulness of his action.<sup>9</sup>)

<sup>1</sup> *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State*, 1991 NR 178 (SC) at 1881-189D.

<sup>2</sup> See 191G-196H.

<sup>3</sup> At 197C-E.

<sup>4</sup> At 180B-ff.

<sup>5</sup> 1994 NR 41 (HC).

<sup>6</sup> At 46B.

<sup>7</sup> At 48F-G.

<sup>8</sup> At 48G-49F.

<sup>9</sup> See *Namunjepo & Others v Commanding Officer, Windhoek Prison & Another* 1999 NR 271 (SC) for a useful summary of the line of cases which have interpreted Article 8 of the Namibian Constitution at 277-ff.

## 6.2 Corporal punishment in schools

The ruling of the Supreme Court on corporal punishment was codified in section 56(1) of the Education Act of 2001 which states that:

**A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.**

The 2001 Act clearly applied the prohibition on corporal punishment to hostels and to private schools, despite the fact that the 1991 court case referred only to “government schools”.

The Act is bolstered by the Namibian Code of Conduct for Teaching Service, which states that a teacher “may not administer corporal or any other degrading punishment upon a learner”.<sup>10</sup> Failure to comply with the Code of Conduct constitutes misconduct and must be dealt with in terms of Namibia’s Public Service Act.<sup>11</sup> This means that the misconduct could lead to suspension followed by an enquiry, with the ultimate result being reprimand, a fine, transfer to another post, a reduction in salary or rank, and possible dismissal, depending on the recommendation of the disciplinary committee which considers the case.<sup>12</sup> Depending on the seriousness of the infringement of the Code of Conduct, the teacher in question may also “be given the necessary counselling and advice and opportunity to correct his or her behaviour”.<sup>13</sup>

Despite these clear rules, the use of corporal punishment in some schools persists. In fact, in 2005, a school student was awarded N\$35 000 in damages after a teacher beat him several times in his face with an open hand and over his body with a plastic pipe with steel wire inside, in connection with an accusation that he had stolen a fellow student’s cellphone.<sup>14</sup>

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<sup>10</sup> Code of Conduct for Teaching Service, Government Notice No 15 of 6 February 2004 (Government Gazette 3144), regulation 64(2), Part A. Teacher and Learner.

<sup>11</sup> Code of Conduct for Teaching Service, Government Notice No 15 of 6 February 2004 (Government Gazette 3144), regulation 65(3).

<sup>12</sup> Public Service Act 13 of 1995, Part III.

<sup>13</sup> Code of Conduct for Teaching Service, Government Notice No 15 of 6 February 2004 (Government Gazette 3144), regulation 65(4).

<sup>14</sup> *Uirab v Minister of Basic Education*, SA 29/2008, available at <[www.superiorcourts.org.na/supreme/cases/index.htm](http://www.superiorcourts.org.na/supreme/cases/index.htm)>; Beatrix Greyvenstein. “Do Teachers Still Beat your Child?”, *The Namibian*, 13 April 2006.

## Is corporal punishment permissible in private schools?

The question of whether corporal punishment is permissible in private schools is still debated, most recently in a letter written to *The Namibian* newspaper in 2010.<sup>15</sup> However, the law is very clear on this issue as section 56(1) of the Education Act of 2001 states that:

*A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.*

This means that the use of corporal punishment in private schools is clearly unlawful.

The only way that this could change would be if this provision of the Education Act were amended, repealed or struck down on some Constitutional ground.

Even if the provision in question were repealed or amended, it is still possible that the Supreme Court would rule that Article 8 of the Namibian Constitution prohibits corporal punishment in all private schools, in private schools regulated or administered by the State, or in private schools which receive state subsidies; this question has not yet been argued before the Court.

## 6.3 Corporal punishment in the penal system and in alternative care

Two other contexts in which corporal punishment is connected to “organs of state” are the penal system and alternative care facilities. Corporal punishment is unlawful as a sentence for crime or a disciplinary measure in penal institutions as a result of the 1991 Supreme Court case quoted above. The Prisons Act 7 of 1998 is fully compliant with the court ruling.<sup>16</sup> The Criminal Procedure Act of 2004, passed by Parliament although not yet in force, contains no provision for corporal punishment as a sentence of the courts.<sup>17</sup> However, the Criminal Procedure Act 51 of 1977 currently still in force, still contains provisions which would contradict the court’s holding if applied in practice.<sup>18</sup>

<sup>15</sup> “Spare the rod, spoil the child”, *The Namibian*, 16 April 2010.

<sup>16</sup> Section 90 of this Act provides for restraint of prisoners as necessary, but there is no provision for whipping, caning or any other form of corporal punishment.

<sup>17</sup> See sections 307 and 319.

<sup>18</sup> See Chapter 28, “Sentence”, section 276(1)(g) (providing specifically for whipping as a sentence), and sections 292-95 (outlining procedures for imposition of whipping as punishment for males, including juveniles).

Furthermore, the Children’s Act 33 of 1960 authorises a court to sentence a child to “moderate whipping”, provides for the “right to punish and to exercise discipline” in penal institutions and authorises the Minister to make regulations concerning the “infliction of corporal punishment” in places of detention, observation centres, schools of industry and reform schools.<sup>19</sup>

There are also provisions on corporal punishment which apply to alternative care or any other childcare provided by the state. The existing parental power to impose corporal punishment is transferred to the relevant person in charge of a child in an alternative placement; section 59(1) of the Children’s Act 33 of 1960 states that when a child or pupil is placed in any custody other than that of the parent or guardian, the “right to punish and to exercise discipline” is vested “in the management of the institution to which the pupil was sent”, “in the person in whose custody the child was placed” or “in the case of any pupil to whom a license was granted... to live in the custody of any person or in any training institution, in such person or in the managers of such training institution”. Although the Supreme Court judgment does not appear to apply to privately-administered alternative care, discussions are underway to prohibit corporal punishment in alternative care by means of forthcoming legislation (as explained in more detail below).

## 6.4 Corporal punishment in the home

The Children’s Act 33 of 1960, inherited from South Africa, gives parents the “right to punish and to exercise discipline”.<sup>20</sup> Even in the rare case where a child may choose to pursue criminal charges of assault against a parent who used corporal punishment, Namibian common law provides the parent with the defence of “reasonable chastisement” – meaning that the parent could defeat the charge of assault by showing that the physical punishment fell into this category. This common-law defence is a fragment remaining from historical concepts of ownership, which applied to a parent “owning” a child, a husband having “marital power” over his wife and a master being able to beat his slaves or workers.<sup>21</sup> The problem is that whilst slavery and the concept of marital power have been abolished, children are still waiting for stronger legal protection against assault – a protection that adults take for granted.

Severe manifestations of corporal punishment could be addressed through the Combating of Domestic Violence Act. Passed in 2003, the Act allows victims of domestic violence, or anyone with an interest in their well-being, to seek a protection order and/or bring criminal charges against abusers in the domestic sphere.<sup>22</sup> For corporal punishment to

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<sup>19</sup> Sections 32(a)(iii), 59(1) and 92(1)(b) respectively.

<sup>20</sup> Section 59(1).

<sup>21</sup> P Newell and T Hammarberg, “The right not to be hit” in *Children’s rights: Turning principles into practice*, Stockholm, Sweden: Save the Children Sweden/UNICEF Regional Office for Southern Asia, 2000.

<sup>22</sup> Combating of Domestic Violence Act 4 of 2003.

fall under the terms of the Act, it would need to occur between people living in a domestic relationship.<sup>23</sup> Domestic relationships covered by the Act include parent and child, as well as extended family members related by blood, marriage, or adoption, provided that they share a domestic connection (such as living in the same home).<sup>24</sup> Although the Act's definition of domestic violence includes "any use of physical force",<sup>25</sup> corporal punishment would probably have to rise to a level of severity beyond the "reasonable chastisement" currently permitted by Namibian common law before corporal punishment could be successfully addressed as a form of domestic violence.

The Constitutionality of corporal punishment in the home has yet not been addressed by the Namibian courts. However, it is possible that the defence of reasonable chastisement would be struck down by the court on the grounds of its inconsistency with the Namibian Constitution as well as Namibia's commitment to the Convention on the Rights of the Child (and the other relevant international conventions discussed above).<sup>26</sup> Indeed in 1998, in a British case brought before the European Court of Human Rights, the Court found the use of corporal punishment by a stepfather on his stepchild to be degrading punishment which violated the European Convention on Human Rights despite domestic law which allowed for "reasonable chastisement", noting that this defence does not provide children with adequate protection. The British Government was ordered to pay the child £10 000 in compensation and to cover the legal costs.<sup>27</sup> As discussed below, the domestic courts in Israel, Italy and Nepal have also found corporal punishment in the home to be unlawful, as a violation of the right to dignity or as a form of torture or cruel punishment.<sup>28</sup>

It should be noted however that broader criminal justice coverage of corporal punishment would not require courts to address trivial instances of corporal punishment, nor is it envisaged that minor incidents would become targets of police investigation – in the same way that any other minor or trivial actions which might technically constitute assault are not sufficient to sustain legal action.<sup>29</sup> However, revised legal provisions might

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<sup>23</sup> Id, section 2(1).

<sup>24</sup> Id, section 3.

<sup>25</sup> Id, section 2(1)(a)(i).

<sup>26</sup> International agreements automatically form part of the law of Namibia, without the need for explicit domestication by virtue of Article 144 of the Namibian Constitution, which states: "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia". This is in contrast to the position in South Africa, for example, where international covenants require domestication to take effect. See Article 231 of the South African Constitution. However, section 39(1) of the South African Constitution requires courts to take "international law" into account when interpreting the Bill of Rights.

<sup>27</sup> European Court of Human Rights, *A v United Kingdom*, 1998, *Reports of Judgments and Decisions* 1998-VI. This case is discussed in Newell and Hammarberg (n21) at page 130.

<sup>28</sup> See pages 78-79 below.

<sup>29</sup> For example, in *S v Afrikaner* 2007 (2) NR 584 (HC), the High Court ruled that an alleged assault was too minimal to be prosecuted. The defendant, an inmate, had thrown dirty water and soup towards

provide a better basis for protecting children at risk of physical or psychological harm from corporal punishment, as well as providing a catalyst for encouraging parents to turn to alternative forms of discipline.

## 6.5 The draft Child Care and Protection Bill

The draft Child Care and Protection Bill is intended to replace the Children's Act 33 of 1960. The 1960 Children's Act was a South African law which came into effect in Namibia (or "South West Africa" as it was known pre-Independence) on 1 January 1977. This law was inherited by Namibia at Independence and has served as the key piece of children's legislation in Namibia for over 33 years. A process to replace this outdated legislation is currently underway.<sup>30</sup>

In 2009, the Ministry of Gender Equality and Child Welfare embarked on an extensive consultation process to guide the revision of a preliminary draft of the Child Care and Protection Bill with technical assistance and support from the Legal Assistance Centre and UNICEF. The opinions of service providers, parents, children, grandparents, extended family and community members were sought to ensure that the bill would be suitable for the Namibian context.

The revised draft of the Child Care and Protection Bill which incorporates the results of the public consultation process addresses the use of corporal punishment in the home in the following provision:

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another inmate, splashing a police officer in the process. The Court held that splashing with soupy water was not a serious enough offence to constitute assault, and called the case a waste of time and resources:

A magistrate, prosecutor, interpreter and full court staff were occupied for at least a full day, to listen to evidence which ultimately could only prove that a police uniform was stained. Moreover, two police officers who could have prevented crime or kept themselves busy with much more serious matters, had to attend court proceedings to testify. In my view, the prosecutor should have refused to proceed with the prosecution and, if he could not make such a decision, the magistrate should have applied the *de minimis* rule. Ultimately it appears as if the case was driven by a police officer whose ego was hurt because his tunic was stained. Preventing such personal feelings from triggering the whole justice system into action is exactly what the *de minimus* rule endeavours to do. (At 590E-G.)

As this case illustrates, courts are unlikely to devote precious resources to prosecuting minor instances of corporal punishment, and would probably apply the *de minimus* rule to dismiss frivolous charges.

<sup>30</sup> For more information on the Bill and the public consultation process, see *Public Participation in Law Reform: Revision of Namibia's Draft Child Care and Protection Bill*, Windhoek: Ministry of Gender Equality and Child Welfare, Legal Assistance Centre and UNICEF, 2010.

**211. (1) A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child's right to dignity as conferred by section 8 of the Constitution of the Republic of Namibia.**

**(2) Any legislative provision and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.**

**(3) A person may not administer corporal punishment to a child at any residential child care facility, place of care, shelter, early childhood development centre, school, including a private or government school, or to a child in foster care, prison or any other form of alternative care.**

**(4) The Minister must take all reasonable steps to ensure that –**

**(a) education and awareness-raising programmes concerning the effect of subsections (1), (2) and (3) are implemented across the country; and**

**(b) programmes and materials promoting appropriate discipline at home and in other contexts where children are cared for are available across the country.**

The Bill does not explicitly outlaw corporal punishment by parents, but it requires that the child's dignity must be respected in the administration of discipline. This follows the African Charter on the Rights and Welfare of the Child, which requires states to "take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child". However it is unequivocally forbidden for anyone to administer corporal punishment to a child at any place of safety, place of care (which covers crèches, day care centres etc), shelter, early childhood development centre, children's home or educational and vocational centre.<sup>31</sup>

The draft provision also states that any law allowing corporal punishment of a child by a court (including a traditional court) is no longer valid. This rule covers statutes, common law and customary law. This essentially codifies the ruling of the Namibian Supreme Court in the 1991 case on corporal punishment discussed above, which outlaws not only corporal punishment in schools but also any corporal punishment "inflicted by an organ of the state in consequence of a sentence directed by a judicial or quasi-judicial authority in Namibia".<sup>32</sup>

The subsection of the draft provision charging the minister responsible for child welfare to take all reasonable steps to implement education and awareness-raising programmes, including materials promoting appropriate child discipline at home and at school, was particularly welcomed in consultative meetings.<sup>33</sup> Alternatives to corporal punishment are discussed in chapter 8 of this report.

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<sup>31</sup> A "residential child care facility" includes a place of safety, children's home or an education and development centre, in terms of clause 1 of the bill.

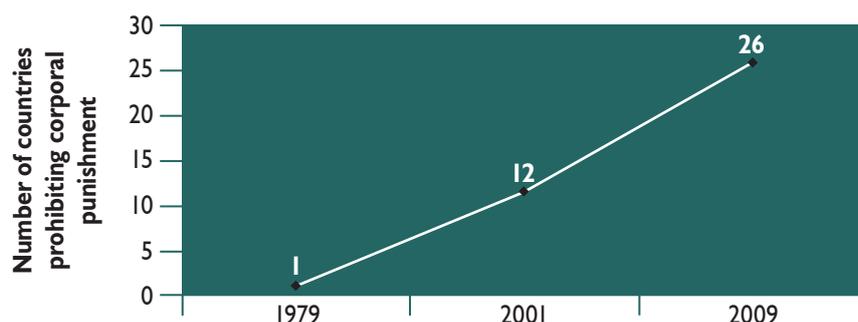
<sup>32</sup> *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State*, 1991 NR 178 (SC) at 191F-G.

<sup>33</sup> This provision was modelled on clause 139 of the South African Children's Amendment Bill (B19 of 2006), which was removed from the bill before it was passed.

# 7. Examples from other countries

In 1979, Sweden became the first country to explicitly prohibit all corporal punishment and other humiliating treatment of children. Six countries had prohibited corporal punishment by 1996, by 2001 this had risen to 12, and by 2009 it had been completely banned by legislation in 26 countries. Additional countries have legislation in preparation or have committed themselves to legal reform on this issue, and some have placed restrictions on corporal punishment that stop short of a total ban.<sup>1</sup>

## Increase in countries prohibiting corporal punishment



As of August 2010, there are at least 31 countries that explicitly forbid corporal punishment in the home. Most have done so by means of legislation (Austria, Bulgaria, Costa Rica, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, Latvia, Liechtenstein, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Moldova, Romania, Spain, Southern Sudan, Sweden, Tunisia, Ukraine, Uruguay and Venezuela), whilst Italy and Nepal have applied a prohibition through court rulings.<sup>2</sup>

<sup>1</sup> Global Initiative to End All Corporal Punishment against Children, “Ending legalized violence against girls: prohibiting corporal punishment in all settings”, Briefing for the 51st session of the UN Commission on the Status of Women, 26 Feb-9 Mar 2007, New York; Global Initiative to End All Corporal Punishment against Children; see also <[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)> and Global Initiative Newsletter 12 (May 2010) for updated information.

<sup>2</sup> *Ending Legalised Violence Against Children: Global Report 2009, Following up the UN Secretary General's Study on Violence against Children*, London: Global Initiative to End All Corporal Punishment of Children/Save the Children Sweden; Global Initiative Newsletter 12 (May 2010) [hereinafter *Ending Legalised Violence Against Children*]. A court ruling in Israel was subsequently embodied in legislative change.

The following countries still permit corporal punishment in one or more settings, but their governments have made a public commitment to full prohibition: Afghanistan, Bangladesh, Bhutan, Brazil, Czech Republic, Estonia, Ireland, Lithuania, Maldives, Pakistan, Peru, Poland, Serbia, Slovakia, Slovenia, Sri Lanka and Taiwan.<sup>3</sup>

Laws in some countries which would ban or restrict corporal punishment were under discussion at the time of writing.

This section provides information on the relevant legislation or actions taken to abolish corporal punishment in the home in a sample of other countries.

## Recent international developments

In July 2010, Tunisia became the first African state to prohibit all corporal punishment of children in all settings, including the home. Law No. 2010-40 of 26 July 2010 amends article 319 of the Penal Code to remove the clause which provided a legal defence for the use of corporal punishment in childrearing. Prior to the reform, article 319 of the Penal Code punished assault and violence which did not lead to serious or lasting consequences for the victim, but stated that “correction of a child by persons in authority over him is not punishable”. The new law explicitly repeals this clause, making it a criminal offence to assault a child even lightly.

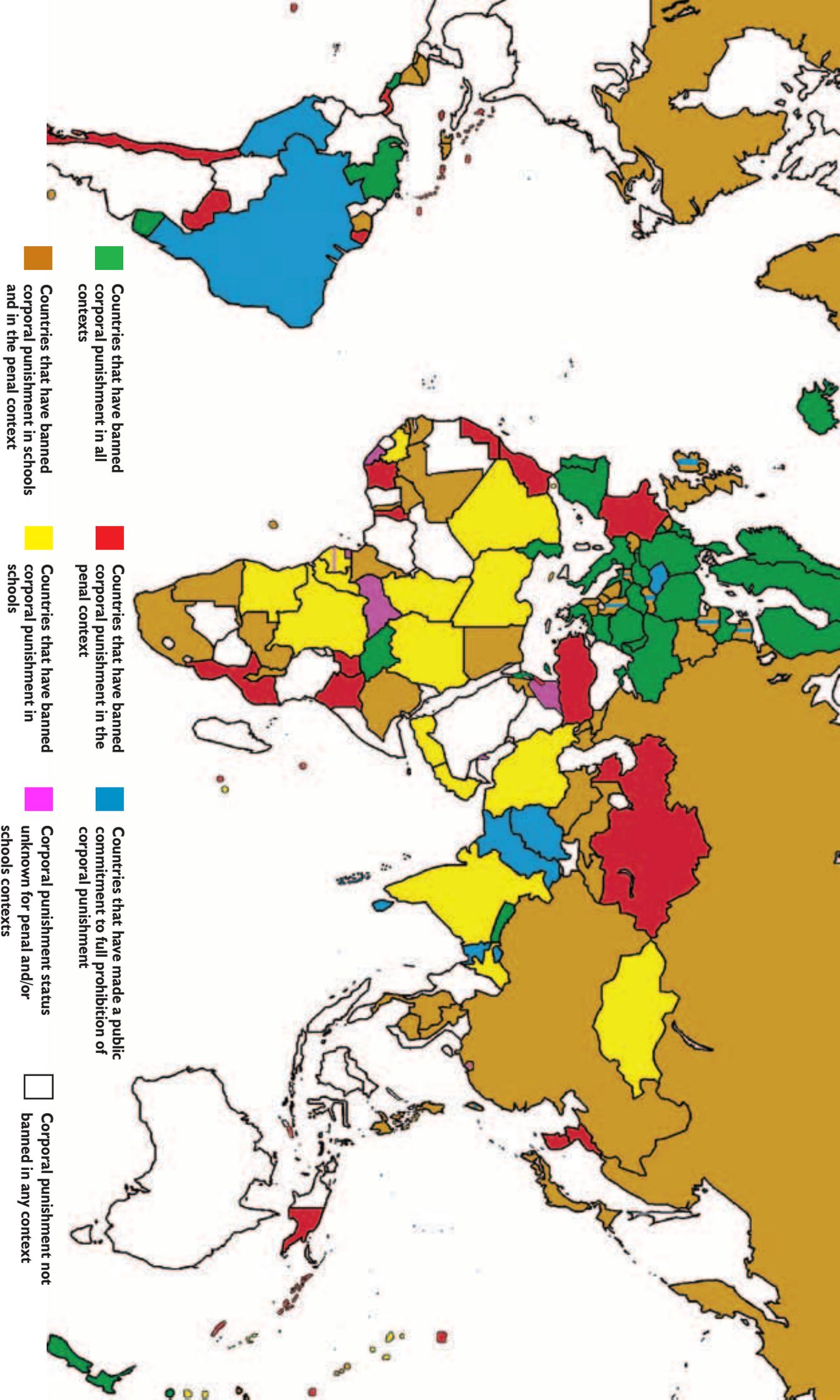
In Kenya, the Attorney-General has published a draft Constitution which includes the right of every person “not to be subjected to corporal punishment” (Article 29), and this draft was approved by a national referendum in August 2010.

On 1 August 2010, a new law came into force in Poland prohibiting all corporal punishment in childrearing. Article 2 of the Law of 6 May 2010 “On the Prevention of Family Violence” amends the Family Code (1964) by inserting a new article 96 which prohibits all corporal punishment in childrearing: It states: “Persons exercising parental care, care or alternative care over a minor are forbidden to use corporal punishment, inflict psychological suffering and use any other forms of child humiliation” (unofficial translation). This makes Poland the 22<sup>nd</sup> European state to prohibit corporal punishment.

Norway achieved prohibition of all corporal punishment in 1987, but a Supreme Court ruling in 2005 stated that light smacks remained lawful. The law was reviewed and in April 2010 amendments were passed to confirm that all corporal punishment of children, however light and whoever the perpetrator, is prohibited.

Based on information in the *Global Initiative Newsletter* 12, May 2010, and *Global Initiative Newsletter* 13, August 2010.

<sup>3</sup> *Ending Legalised Violence Against Children* (n2) at pages 24-25.



- Countries that have banned corporal punishment in all contexts
- Countries that have banned corporal punishment in the penal context
- Countries that have banned corporal punishment in schools
- Countries that have made a public commitment to full prohibition of corporal punishment
- Corporal punishment status unknown for penal and/or schools contexts
- Corporal punishment not banned in any context

The information used to produce this map was taken from [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org) and from the details reported on page 73. Please see the website for continually updated information.

# 7.1 Legislative bans

## Sweden

The first country to ban the use of corporal punishment in the home was Sweden, through a 1979 law (amended in 1983).<sup>4</sup> The current statute provides that “children are entitled to care, security and a good upbringing. They shall be treated with respect . . . and may not be subject to corporal punishment or any other humiliating treatment.”<sup>5</sup>

The Swedish reform, however, did not come easily, nor was it widely accepted at first. In 1920, when the Swedish Family Law was codified, it gave parents an express right to punish their children, which resulted in the “widespread use of severe corporal punishment”.<sup>6</sup> In 1949, in an attempt to discourage these severe punishments, the word “punish” was replaced with “reprimand”.<sup>7</sup> Gradual change continued until 1979, when the law expressly prohibiting corporal punishment was accompanied by a widespread campaign to increase public awareness – resulting in 96% public awareness of the law by 1981.<sup>8</sup>

The Swedish ban on corporal punishment provides an interesting study of the long-term effects of legislative reform on cultural attitudes about the legitimacy of corporal punishment in the home. The law is not designed to result in prosecution of parents so much as to provide a platform for the promotion of alternative forms of discipline. By relying on the law’s educational (rather than retributive) effect, its enactment resulted in a shift from only 47% of all Swedes being opposed to corporal punishment in 1966, to 78% believing that corporal punishment was unacceptable in 1996.<sup>9</sup> In 2000, research indicated that an overwhelming 92% of the population was opposed to all forms of physical punishment of children.<sup>10</sup> This change in perspective has been referred to as “one of the greatest changes in attitude and behaviour ever seen in adult Swedes”.

In Sweden, law reform has led to a dramatic shift in public attitudes about corporal punishment

<sup>4</sup> See DA Olson, Comment, “The Swedish Ban of Corporal Punishment”, 1984 *BYUL Rev* 447; “Submission by Save the Children Sweden to the Department of Social Development on the Children’s Bill (as dated 12 August 2003)”, South Africa, 29 September 2003.

<sup>5</sup> Swedish Children and Parents Code, Chapter 6, section 1.

<sup>6</sup> Olson (n4) at page 448.

<sup>7</sup> See *ibid.*

<sup>8</sup> See *id.*, page 454.

<sup>9</sup> See Statistics Sweden. *Demography, the Family and Children, Spanking and other Forms of Physical Punishment*, 1996.

<sup>10</sup> “Submission by Save the Children Sweden to the Department of Social Development on the Children’s Bill (as dated 12 August 2003)”, South Africa, 29 September 2003.

**Legal restrictions on corporal punishment of children imposed in Sweden beginning in 1979 gradually helped change public attitudes, so that more people became opposed to corporal punishment.**



## Denmark

Denmark strengthened its initial 1986 ban on corporal punishment in 1997, with the revised law stating that a child “may not be subjected to corporal punishment or any other offensive treatment”.<sup>11</sup> However, the Danish government has stated that no excessive action will be taken by law enforcement or social welfare authorities to monitor ordinary families’ private lives.<sup>12</sup> Given this statement, it appears that the Danish legal reform is primarily intended to have an educational, rather than punitive, impact.

## Finland

The 1983 Finnish law prohibiting corporal punishment provides that “a child shall be brought up with understanding, security and gentleness. He shall not be subdued, corporally punished or otherwise humiliated. The growth of a child towards independence, responsibility and adulthood shall be supported and encouraged.”<sup>13</sup> Matti Savolainen, the member of the Finnish Ministry of Justice responsible for drafting the prohibition, has stated that the Act provides three strategies for ending corporal punishment in Finland: (1) The Act attempts to establish positive guidelines for the upbringing of a child. (2) The Act makes it clear that violations against the integrity of a child that would constitute a criminal offence if committed by a third person (assault, libel, etc.), are punishable even if committed by a parent intending to discipline a child. Also, under the Criminal Code, even a petty assault committed against a child under the age of 15 in the home is subject to prosecution. (3) The Act forbids any treatment that is degrading, even if it would not otherwise constitute a criminal offence and even when there are no direct remedies available.<sup>14</sup> In interpreting the Act, the High Court of Finland has stated that “the

<sup>11</sup> Danish Act to Amend the Act on Parental Custody and Conviviality No 416, section 1, quoted in Susan H Bitensky, “Spare the Rod, Embrace Our Humanity: Towards A New Legal Regime Prohibiting Corporal Punishment of Children”, 31 *University of Michigan Journal of Law Reform* 353 (1998) at page 371.

<sup>12</sup> Vestergaard Letter 7/3/97, quoted in Bitensky (n11) at page 373.

<sup>13</sup> Finnish Child Custody and Right of Access Act, Chapter 1, section 1, subsection 3, quoted in Bitensky (n11) at page 368.

<sup>14</sup> See P Newell, *Children are People Too: The Case Against Physical Punishment*, London: Bedford Square Press, 1989 at page 87 (quoting Matti Savolainen of the Ministry of Justice in Helsinki, Finland); see also Bitensky (n11) at page 369.

guardian has no longer a right to corporally punish his child and that the provisions on petty assault ... shall be applied when parents or guardians employ physical violence on their child, even if they consider it a means of upbringing”.<sup>15</sup> Like the other Nordic prohibitions on corporal punishment in the home, the Finnish ban was supplemented by a nationwide campaign to educate parents on alternatives to corporal punishment.

## Austria

Austria’s law against corporal punishment, enacted by its Parliament in 1989, provides that “the minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological harm are not permitted.”<sup>16</sup> Following the passage of this law, the Supreme Court of Austria held that the use of corporal punishment was a permissible basis for the denial of child custody to a divorced parent.<sup>17</sup> The Austrian law provides no specific legal remedies, although parents who seriously injure a child may be prosecuted for assault and battery under the Austrian Penal Code.<sup>18</sup>

## Cyprus

The Cypriot ban on corporal punishment is contained in the 1994 Prevention of Violence in the Family Protection of Victims Law.<sup>19</sup> This law prohibits the use of violence against children, with violence being defined as any unlawful act or controlling behaviour which results in the direct actual physical, sexual or psychological injury to any member of the family...”.<sup>20</sup>

## Germany

In 1997, German law was amended to forbid “degrading methods of discipline including physical and psychological abuse.”<sup>21</sup> Then, in July 2000, Germany’s Bundestag introduced a new provision into the Civil Code providing that “children have the right to a non-violent upbringing. Corporal punishment, psychological injuries and other humiliating measures are prohibited.”<sup>22</sup> A further amendment to the German Civil Code stipulates that authorities are encouraged to provide families with advice on non-violent alternatives to

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<sup>15</sup> Quoted in Bitensky (n11) at page 370.

<sup>16</sup> Section 146a ABGB [Austrian Civil Code Section 146a], cited in Bitensky (n11) at page 375. The 1989 law was an attempt to clarify the 1977 repeal of a law authorising corporal punishment.

<sup>17</sup> See OGH 6/24/1992, 1 Ob 573/92, cited in Bitensky (n11) at page 376.

<sup>18</sup> See Bitensky (n11) at page 377.

<sup>19</sup> See Act of June 17, 1994, Law 147(1), Official Gazette of the Republic of Cyprus No 2886.

<sup>20</sup> Act of June 17, 1994, Law 147(1), Official Gazette of the Republic of Cyprus No 2886, section 3(1).

<sup>21</sup> Ibid.

<sup>22</sup> End All Corporal Punishment, States With Full Abolition: Germany, at <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 20 July 2010).

corporal punishment.<sup>23</sup> As in many other European countries, the German ban on corporal punishment in the home was complemented by a public campaign to educate parents and caregivers on the law and alternatives to corporal punishment. This campaign consisted of two tiers: 1) posters, advertisements, and television spots; and 2) individual projects and community initiatives with a focus on supporting parents in raising their children without resorting to violence.<sup>24</sup> The campaign also featured prominent personalities, including high-level government officials.<sup>25</sup> In a paper published in 2004, Bussmann reported that the ban on corporal punishment has reduced the level of family violence against children in Germany.<sup>26</sup>

## Southern Sudan

Southern Sudan, which has a government and legislative system separate from Northern Sudan under the Common Peace Agreement, enacted an Interim Constitution in 2005 which states that “Every child has the right ... to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions...”.<sup>27</sup> Despite this ban, research conducted by World Vision in 2006 found that the majority of children experience corporal punishment in both family and school settings.<sup>28</sup>

The constitutional prohibition was bolstered in 2008 by a provision in the Child Act which states that “Every child has the right to be protected from torture, cruel, inhuman or degrading treatment or punishment” and in particular that “no child shall be subjected to corporal punishment by chiefs, police teachers, prison guards or any other person in any place or institution, including schools, prisons and reformatories”.<sup>29</sup>

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<sup>23</sup> Ibid. This is also stated in an amendment to the German childcare law (*Socialgesetzbuch*).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> KD Bussmann, “Evaluating the Subtle Impact of a Ban on Corporal Punishment of Children in Germany”, *Child Abuse Review* 13: 292–311 (2004). Bussman compared data from 3800 surveys conducted in the 1990s with 3000 surveys conducted in 2001 and 2002.

<sup>27</sup> Interim Constitution of Southern Sudan, Article 21, as quoted in Sudan, report updated April 2010, <[www.endcorporalpunishment.org/pages/progress/reports/sudan.html](http://www.endcorporalpunishment.org/pages/progress/reports/sudan.html)> (last accessed 18 July 2010).

<sup>28</sup> Sudan, report updated April 2010, <[www.endcorporalpunishment.org/pages/progress/reports/sudan.html](http://www.endcorporalpunishment.org/pages/progress/reports/sudan.html)> (last accessed 18 July 2010).

<sup>29</sup> Section 21, Child Act, as quoted in Sudan, report updated April 2010, <[www.endcorporalpunishment.org/pages/progress/reports/sudan.html](http://www.endcorporalpunishment.org/pages/progress/reports/sudan.html)> (last accessed 18 July 2010).

See also *Ending Legalised Violence Against Children* (n2) at page 8 and Catherine Franks, “A legal ban alone will not be enough to end corporal punishment”, *Article 19*, Vol 5, No 2: 8–10 at page 9, Cape Town: Children’s Rights Project, Community Law Centre, December 2009, <[www.communitylawcentre.org.za/cle-projects/childrens-rights/article-19/archives/article19Dec09.pdf](http://www.communitylawcentre.org.za/cle-projects/childrens-rights/article-19/archives/article19Dec09.pdf)> (last accessed 25 July 2010). ►

Northern Sudan permits the use of corporal punishment in the home as the provisions against violence and abuse in the Child Act (2009) are not considered to prohibit the use of corporal punishment. The use of corporal punishment in schools is prohibited in both Southern and Northern Sudan. Sudan, report updated April 2010, <[www.endcorporalpunishment.org/pages/progress/reports/sudan.html](http://www.endcorporalpunishment.org/pages/progress/reports/sudan.html)> (last accessed 18 July 2010).

## Liechtenstein

In 2010, Liechtenstein became the 26<sup>th</sup> country in the world to prohibit all forms of corporal punishment, including corporal punishment in the home. The Global Initiative to End All Forms of Corporal Punishment of Children provides an unofficial translation of Article 3 of the Children and Youth Act 2008 which came into force January 2009:

- (1) Children and young people have the rights outlined in the Convention on the Rights of the Child and to the following measures: (a) protection notably against discrimination, neglect, violence, abuse and sexual abuse; (b) education/upbringing without violence: corporal punishment, psychological harm and other degrading treatment are not accepted...
- (2) Children can address the Ombudsperson when they believe their rights have been violated.<sup>30</sup>

## 7.2 Judicial bans

### Israel

Unlike most countries where the ban on corporal punishment evolved out of a series of legislative amendments, Israel's prohibition was the result of litigation. In 2000, the Supreme Court of Israel issued the *Plonit* decision, banning the use of corporal punishment as an "educational tool".<sup>31</sup> The court reasoned that "corporal punishment as an educational method not only fails to achieve its goals, but also causes physical and psychological damage to the child, that is liable to leave its mark ... even in maturity".<sup>32</sup> Although the court provided for an exception in cases where the use of force would prevent injury to the child or others, it held that "corporal punishment of children, or humiliation and derogation from their dignity as a method of education by their parents, is entirely impermissible".<sup>33</sup> The decision was based primarily on the Israeli Basic Law: Human Dignity and Liberty.<sup>34</sup> Following on the court decision, the "reasonable chastisement" defence was removed from Israeli legislation in the same year.<sup>35</sup>

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<sup>30</sup> Liechtenstein, report updated May 2010, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 18 July 2010).

<sup>31</sup> See Cr A 4596/98, *Roe v State of Israel*, 54(1) PD 145.

<sup>32</sup> Id at page 170.

<sup>33</sup> Id at page 180.

<sup>34</sup> See Basic Law: Human Dignity and Liberty, Provision 8, 1992, SH 1391.

<sup>35</sup> Global Initiative to End All Corporal Punishment against Children, "Global progress towards prohibiting all corporal punishment", <[www.endcorporalpunishment.org/pages/pdfs/charts/Chart-Global.pdf](http://www.endcorporalpunishment.org/pages/pdfs/charts/Chart-Global.pdf)> (last accessed 18 July 2010) at note 93.

## Italy

In May 1996 the Supreme Court of Italy held that “the use of violence for educational purposes can no longer be considered lawful”.<sup>36</sup> The opinion also established the legal principle that “parents in Italy are absolutely forbidden from using any violence or corporal punishment to correct their children’s conduct”.<sup>37</sup> The Italian court cited two primary reasons in support of its holding:

**[T]he first is the overriding importance which the legal system attributes to protecting the dignity of the individual. This includes ‘minors’ who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child’s personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals.**<sup>38</sup>

The court also predicted that this new principle would filter into society and stimulate an atmosphere in which the use of corporal punishment on children would no longer be socially acceptable.

## Nepal

Section 7 of Nepal’s Child Act 1992 originally stated: “No child shall be subjected to torture or cruel treatment: Provided that, the act of scolding and minor beating to the child by his father, mother, member of the family, guardian or teacher for the interests of the child shall himself not be deemed to violate the provision of this section.” In 2005, the Supreme Court ruled that the portion of this rule that made it permissible to give children “minor beatings” was unconstitutional and accordingly null and void. The portions of the Constitution relied upon were an article that confers an obligation on the state to safeguard the rights and interests of children (Article 26(8)) and an article that ensures that no person shall be subjected to physical or mental torture or be given any cruel, inhuman or degrading treatment (Article 14(4)).<sup>39</sup>

Unlike most countries where the ban on corporal punishment evolved out of a series of legislative amendments, prohibitions on corporal punishment in Israel, Italy and Nepal have resulted from court rulings.

<sup>36</sup> Cambria, Cass, sez VI, 18 Marzo 1996 [Supreme Court of Cassation, 6<sup>th</sup> Penal Section, March 18, 1996].

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> *Mr Devendra Ale et al v Office of the Prime Minister & Cabinet et al*, Supreme Court decision, 6 January 2005, full judgment available at <[www.endcorporalpunishment.org/pages/hrlaw/judgment-nepal.html](http://www.endcorporalpunishment.org/pages/hrlaw/judgment-nepal.html)> (last accessed 15 April 2010). (Note that one of the constitutional provisions referred to is variously cited as Article 25(8) and 26(8) in the judgment.)

## 7.3 Recent developments in Africa

The issue of corporal punishment has been re-examined, or is in the process of being re-examined, in a number of African countries – and particularly in the SADC region. As noted above, Southern Sudan and Tunisia are the only African countries which have so far legislated a full ban on corporal punishment of children in all settings. However, a number of African countries have laws in place to limit corporal punishment, or are in the process of discussing such legislation.

Ghana, Sierra Leone, Tanzania and Botswana have taken somewhat similar approaches – although the Botswana law is the only one of the four to use the term “corporal punishment”. All four place limits on child discipline without banning corporal punishment completely. The Ghanaian provision was the earliest of the four and appears to have served as the template for the others:

- (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child.
- (2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.

The following analysis of the almost identically-worded Tanzanian law applies generally to all four countries.

The section captures the ingredients of corporal punishment as defined by the Committee on the Rights of the Child in General Comment Number 8: punishment, physical force, intention to cause pain or discomfort, and the possibility of belittling, humiliating, denigrating, threatening or ridiculing the child. To that extent, it can be deemed to outlaw corporal punishment...

The section starts with a general provision prohibiting torture which accords with the traditional approach of international instruments dealing with the prohibition of torture, cruel and inhuman treatment. However it goes beyond to cover cultural practices, which would not ordinarily be included in a provision on the prohibition of torture. The proscription of cultural practices that dehumanize or injure children can be deemed to target practices emanating from private sources while the element of a practice that ‘dehumanizes’ covers the practice of corporal punishment.

The use of the words ‘correction of the child’ as in subsection (2) above clearly points to an intention to regulate the manner of administering discipline on children, and by extension to regulate the administration of corporal punishment. In effect, the provision removes the defence of reasonable chastisement to the extent that it defines

the manner and degree of punishment. It further limits reasonableness by means of the age and capacity of the child to understand the purpose of the punishment.

The framing of subsection (2) however gives lee way for the administration of corporal punishment if it can be argued that such punishment is reasonable and of acceptable degree and that the child in question understands the purpose thereof. Determination of capacity to understand the purpose of punishment is in turn a subjective process making it susceptible to multiple interpretations. Seeing that the provision leaves the final interpretation of what acceptable correction is to the court, this is likely to injure the pursuit of a total ban of corporal punishment.<sup>40</sup>

The discussions below are presented in rough chronological order.

## 7.3.1 Legislation

### Ghana

Ghana has stopped short of explicitly outlawing corporal punishment in the home, but its Children's Act 1998 places strong limits on child discipline:

**Section 13. *Protection from torture and degrading treatment.***

- (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental well-being of a child.
- (2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.

### Sierra Leone

Sierra Leone's Child Rights Act 2007 contains a provision that is virtually identical to the Ghanaian one quoted above.<sup>41</sup>

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<sup>40</sup> Nkatha Muringi, "Does the new Tanzanian Law of the Child Act, 2009 prohibit corporal punishment?", unpublished comment.

<sup>41</sup> Section 33:

*33. (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child.*

*(2) No correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose of the correction.*

*(3) The Corporal Punishment Act is repealed.*

## Tanzania

The Tanzanian Law of the Child Act, 2009 contains a section which is similar in approach to the provisions enacted by Ghana and Sierra Leone, but with added detail. Section 13 of the new Tanzanian law provides:

- (1) A person shall not subject a child to torture or other cruel, inhuman punishment or degrading treatment including any cultural practice which dehumanizes or is injurious to the physical and mental well being of a child.
- (2) No correction of the child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child is by reason of tender age or otherwise incapable of understanding the purpose of the correction.
- (3) The term ‘degrading treatment’ as used in the section means an act done on a child with the intention of humiliating or lowering his dignity.

## Botswana

In Botswana, the Children’s Bill 2008 contained a provision circumscribing the use of corporal punishment in the home as in Ghana and Sierra Leone. However, the Botswana draft made it clear that this provision must not be understood as completely prohibiting corporal punishment in any setting. Section 62 (1), entitled “Cruel treatment or punishment”, stated:

- (1) No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment.
- (2) No person shall subject a child to correction which is unreasonable in kind or in degree relative to the age, physical and mental condition of the child and which, if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness thereof.
- (3) The provisions of this section shall not be construed as prohibiting the corporal punishment of children in such circumstances or manner as may be set out in this Act, the Penal Code or any other law.
- (4) The Minister shall cause to be put in place parental guidance programmes aimed at developing the capacity of parents to discipline and guide their children appropriately.<sup>42</sup>

There were objections to subsection (3) of this proposed draft. For example, the Global Initiative to End All Corporal Punishment of Children stated on its website that “This provision should not be enacted, and the common law acceptance of the right to administer punishment should be explicitly repealed.”<sup>43</sup>

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<sup>42</sup> Children’s Bill 2008, available at <[www.gov.bw/Global/MLG/Bills/ChildrensBills2008.pdf](http://www.gov.bw/Global/MLG/Bills/ChildrensBills2008.pdf)> (last accessed 20 May 2010).

<sup>43</sup> Botswana, report updated February 2010, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 20 May 2010).

Despite these objections, the final Children’s Act 2009 includes the provision in question in the section on parental duties:

**(4) ... every parent shall have the duties, in respect of his or her child to –**

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**(h) respect the child’s dignity and refrain from administering discipline which violates such dignity or adversely affects the physical, emotional or psychological well-being of the child or any other child living in the household;**

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**(5) Subsection (4)(h) shall not be construed as prohibiting the corporal punishment of a child in such circumstances or manner as may be set out in this Act, the Penal Code or any other law.<sup>44</sup>**

The same law also allows corporal punishment as a sentence for children in the criminal context, but limits it to not more than six strokes.<sup>45</sup>

The Parliamentary debate on the law evidences some significant differences of opinion. For example, one MP proposed substituting the provisions limiting corporal punishment with a section which would impose a complete prohibition:

**Children shall have the right to a non-violent upbringing and shall be treated with respect as individuals and may not be subjected to corporal punishment or any other degrading treatment.<sup>46</sup>**

This proposed amendment was, however, not successful.

## Malawi

Article 19(4) of the Malawian Constitution unambiguously bans corporal punishment as a component of criminal justice, providing that “no person shall be subject to corporal punishment in connection with any judicial proceedings before any organ of the State”.<sup>47</sup> This is in addition to a more general statement that “No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment”.<sup>48</sup> Furthermore, Article 23 of the Malawi Constitution, entitled “Rights of children”, contains a sub-article which includes a reference to forbidden forms of punishment for children under the age of 16:

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<sup>44</sup> Children’s Act 2009, section 27.

<sup>45</sup> Id, section 90.

<sup>46</sup> Amendment proposed by Mr A Magama, MP for Gaborone South, Botswana National Assembly Order Paper, 2 April 2009, <[www.mlg.gov.bw/docs/Documents/Order\\_Paper\\_02\\_04\\_09.pdf](http://www.mlg.gov.bw/docs/Documents/Order_Paper_02_04_09.pdf)> (last accessed 20 July 2010).

<sup>47</sup> Republic of Malawi (Constitution) Act, 1994.

<sup>48</sup> Article 19(3).

**Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to –**

- (a) be hazardous;**
- (b) interfere with their education; or**
- (c) be harmful to their health or to their physical, mental or spiritual or social development.**<sup>49</sup>

The Committee which monitors the Convention on the Rights of the Child noted that Malawi's Head of State made a statement on the radio against corporal punishment within the family and that corporal punishment is banned at schools, but expressed concern that corporal punishment is nevertheless still widely accepted and practised in schools, within the family and in the justice system.<sup>50</sup>

Malawi passed a new Child Care Protection and Justice Act<sup>51</sup> in June 2010. This law is intended to renew the country's laws on the protection and rights of children. Amongst many other things, it outlines responsibilities and roles of parents on how to raise their children.<sup>52</sup>

Although the law does not address corporal punishment explicitly, there are several provisions which could be interpreted as prohibiting or limiting corporal punishment in the home and in child care institutions. The new law states that parents and guardians, in addition to the duties imposed by Article 23 of the Constitution, have a responsibility to "protect the child from neglect, discrimination, *violence*, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards".<sup>53</sup> Certain child care facilities are required to make rules consistent with the law for the maintenance of discipline; these rules must be approved by the Minister, and discipline of children must be administered in accordance with them.<sup>54</sup> The law also prohibits any person from subjecting a child "to a social or customary practice that is harmful to the health or general development of the child".<sup>55</sup>

The bill inspired some Parliamentary debate on the role of corporal punishment. One MP asked: "Are we serious, if parents are punished for asking their children to feed goats, assist them on tobacco work or for bringing up their children in that way? Are we saying children should not be whipped in our homes?"<sup>56</sup>

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<sup>49</sup> Article 23(4). Article 23(5) says: "For purposes of this section, children shall be persons under sixteen years of age."

<sup>50</sup> Committee on the Rights of the Child, "Concluding Observations of the Committee on the Rights of the Child: Malawi", CRC/C/15/Add.174, 2 April 2002, available at <<http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.1>> (last accessed 20 July 2010). See paragraph 33.

<sup>51</sup> Act 7 of 2010.

<sup>52</sup> "Parliament approves Child Protection Bill amid concerns", *Nyasa Times*, 29 June 2010, <[www.nyasatimes.com/.../parliament-approves-child-protection-bill-amid-concerns.html](http://www.nyasatimes.com/.../parliament-approves-child-protection-bill-amid-concerns.html)> (last accessed 20 July 2010).

<sup>53</sup> Section 94 (emphasis added).

<sup>54</sup> Sections 90 and 93.

<sup>55</sup> Section 171.

<sup>56</sup> Hon Phoya, quoted in "Phoya faults Child Protection Bill", *The Nation*, 28 June 2010, <[www.mwnation.com/index.php?option=com\\_content&view=article&id=1681:phoya-faults-child-protection-bill&catid=1:national-news&Itemid=3](http://www.mwnation.com/index.php?option=com_content&view=article&id=1681:phoya-faults-child-protection-bill&catid=1:national-news&Itemid=3)> (last accessed 20 July 2010).

## 7.3.2 Legal provisions under consideration

### South Africa

South Africa, like Namibia, currently bans corporal punishment in schools and judicial/quasi-judicial corporal punishment.<sup>57</sup> However, reasonable chastisement by a parent (or persons acting *in loco parentis*) is authorised by the common law for purposes of authority and discipline.

The South African Law Reform Commission recommended that the common law defence of reasonable chastisement should no longer be available for parents charged with assault or similar offences. Specifically, the Commission suggested that

**upon any criminal charge of assault or related offences (such as assault with intent to do grievous bodily harm), it shall not be a defence that the accused was a parent or person designated by a parent to guide the child's behaviour, who was exercising a right to impose reasonable chastisement upon his or her child.**<sup>58</sup>

Further, the Commission recommended that an educative and awareness-raising approach be followed, in order to influence public opinion on the issue of corporal punishment, and that the common law should be amended to give effect to the state's obligation to protect children from maltreatment and abuse.

One version of the Children's Amendment Bill (B19 of 2006) included a provision on corporal punishment similar to the one in Namibia's current draft Child Care and Protection Bill.

#### **Corporal punishment**

**139. (1) A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect the child's right to physical integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution.**

**(2) Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.**

**(3) No person may administer corporal punishment to a child at any child and youth care centre, partial care facility or shelter or drop-in centre.**

**(4) The Department must take all reasonable steps to ensure that –**

**(a) education and awareness-raising programmes concerning the effect of subsections (1), (2) and (3) are implemented across the country; and**

**(b) programmes promoting appropriate discipline at home and at school are available across the country.**

<sup>57</sup> See South African Schools Act 84 of 1996, section 10; the National Education Policy Act 27 of 1996, section 3 and the Further Education and Training Colleges Act 16 of 2006, section 16.

<sup>58</sup> South African Law Commission (SALC), *Discussion Paper 103, Project 110: Review of the Child Care Act*, Pretoria: SALC, 2002 at paragraph 10.2.11.

A subsequent version of the bill (B19B of 2006) included a stronger, explicit prohibition of any form of corporal punishment, or cruel, inhuman or degrading punishment, perpetrated against children by a parent or person holding parental rights and responsibilities in respect of a child, and abolished the common-law defence of reasonable chastisement. This draft provision also required government to promote positive discipline programmes. It provided further that parents who were reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service, and that they should be prosecuted only where the punishment constituted “abuse” of the child:

### **Discipline of children**

**139. (1)** A person who has care of a child, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child’s right to physical and psychological integrity as conferred by section 12(1)(c), (d) and (e) of the Constitution.

(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way.

(3) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceeding is hereby abolished.

(4) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.

(5) The Department must take all reasonable steps to ensure that–

(a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented throughout the Republic; and

(b) programmes promoting appropriate discipline are available throughout the Republic.

(6) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(7) Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if the punishment constitutes abuse of the child.

When debate around this draft provision intensified, Parliament’s Portfolio Committee on Social Development divided into three basic camps. Three different drafts were prepared to reflect the different positions of the committee members. Essentially the first option clearly abolished corporal punishment, the second option set out certain limits and directives on the use of corporal punishment (and was referred to by one group as “a text book set of instructions for hitting children”<sup>59</sup>), while the third option limited the use of corporal punishment by means of less detailed principles. In more detail, the three options considered were as follows:

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<sup>59</sup> Carol Bower, *Banning Corporal Punishment: The South African Experience*, Cape Town: Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), 2008, at page 9; available at <[www.rapcan.org.za/wgpd/documents/Lessons\\_learned\\_in\\_advocacy\\_booklet.pdf](http://www.rapcan.org.za/wgpd/documents/Lessons_learned_in_advocacy_booklet.pdf)> (last accessed 20 July 2010).

- (1) *The first option abolished corporal punishment. It required that prosecutors consider diversion as an alternative to prosecution of parents, and this included diversion to early intervention programmes on parenting. It also empowered the National Prosecuting Authority to withdraw charges or decline to prosecute a matter in which diversion was applied depending on the success or failure of the diversion. This option was also more specific in requiring [the relevant government department] to provide programmes on parenting skills and positive discipline.*
  
- (2) *The second option appeared to retain the use of corporal punishment by parents. It required that parents must respect the child's right to physical and psychological integrity and that no child may be subjected to corporal punishment that "in its manner or degree, is cruel, inhuman or degrading". Corporal punishment violating these conditions falls outside of the defence of reasonable chastisement. The clause then set out the circumstances in which corporal punishment may be applied: it must be applied by a parent or person holding parental rights and responsibilities; the parent must act in accordance with the child's right to physical and psychological integrity (which many find to be a perplexing contradiction); it must be applied in a moderate, reasonable and restrained manner, without anger and must take into consideration the child's age, maturity and the circumstances of the offence; the reason for the punishment must be explained to the child beforehand; and it must be administered using an open hand or a light, flat object that causes no physical harm.*
  
- (3) *The third option also retained corporal punishment. While requiring parents to respect the child's right to physical and psychological integrity, it gave parents the "right to subject a child to discipline that is not excessive, deliberate, abuse or involves a degrading use of force". As with the second option, many aspects of this sub-clause were contradictory and confusing, which may be due partially to poor drafting. This option also required the prosecutor to consider diversion as an alternative to prosecution.<sup>60</sup>*

Parliament's Portfolio Committee on Social Development ultimately removed the section dealing with the discipline of children from the Children's Amendment Bill altogether, to allow for more debate without delaying the rest of the Act. According to the Committee, a section on the discipline of children was to be reintroduced when technical amendments are made in 2008.<sup>61</sup> But, as of early 2010, these amendments were not yet forthcoming.

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<sup>60</sup> S Waterhouse, Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), "Status of Corporal Punishment in the South African Children's Amendment Bill Law Reform Process", *Article 19*, Vol 3, No 3: 1-3, Cape Town: Children's Rights Project, Community Law Centre, December 2007, <[www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf](http://www.communitylawcentre.org.za/Childrens-Rights/02Article-19/archive-of-files/article19-dec07.pdf)> (last accessed 18 July 2010).

<sup>61</sup> "Parliamentary Committee on Social Development removes corporal punishment from Bill to allow for more debate", 23 October 2007, <[www.parliament.gov.za/live/content.php?Item\\_ID=431](http://www.parliament.gov.za/live/content.php?Item_ID=431)> (last accessed 18 July 2010).

There has also been litigation on the issue of corporal punishment, although not specifically corporal punishment in the home. In *Christian Education South Africa v Minister of Education*, the question before the Constitutional Court was “whether Parliament, by prohibiting corporal punishment in schools, had unconstitutionally limited the religious rights of parents of children in independent schools who, in line with their religious convictions, have consented to what they termed the ‘corporal correction’ of their children by teachers.”<sup>62</sup> The Court held that the prohibition on corporal punishment in schools, on balance, was not constitutionally impermissible. Although this case involved the issue of corporal punishment in schools, the same issue is also relevant when balancing corporal punishment in the family against religious rights.

## Lesotho

The Lesotho Children’s Protection and Welfare Bill 2004 includes a provision similar to that in the Ghanaian law, which would if enacted limit corporal punishment. It reads as follows:

### **Right to protection from torture and degrading treatment**

- (1) A child shall have the right to be protected from torture or other cruel, inhumane or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical, psychological, emotional and mental well-being of a child.
- (2) A child shall be chastised in accordance with his/her age, physical, psychological, emotional and mental condition and no discipline is justifiable if by reason of tender age or otherwise the child is incapable of understanding the purpose of the discipline.<sup>63</sup>

As of July 2010, this Bill had not been passed by Parliament and was still open for consideration.

## Mozambique

The National Action Plan for Children (2005) identified “establishing mechanisms for the implementation of legislation against corporal punishment in schools, the penal system, and the family” as one of seven actions to prevent violence against children. Although the Law for Protection of Children and Adolescents requires that school officials report mistreatment of learners, corporal punishment is not currently prohibited.<sup>64</sup>

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<sup>62</sup> *Christian Education South Africa v Minister of Education*, 2000 (4) SA 757 (CC).

<sup>63</sup> Section 15, Children’s Protection and Welfare Bill 2004, available at <[www.law.yale.edu/RCW/rcw/jurisdictions/afs/lesotho/les\\_ch\\_welfare\\_bill.htm](http://www.law.yale.edu/RCW/rcw/jurisdictions/afs/lesotho/les_ch_welfare_bill.htm)> (last accessed 16 March 2009).

<sup>64</sup> Mozambique, report updated February 2009, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 17 June 2010).

## Mauritius

The Ombudsperson for Children has proposed prohibition of all corporal punishment, and, in 2006, the government stated that it planned to introduce legislation explicitly prohibiting corporal punishment as a disciplinary measure in the penal system.<sup>65</sup>

## Zanzibar

Zanzibar forms part of the United Republic of Tanzania, but is autonomous as far as legislation is concerned. Draft One of the Zanzibar Children's Act 2010 included corporal punishment in its definition of child abuse:

**“child abuse” means contravention of the rights of the child which causes physical, moral or emotional harm or suffering, including corporal punishment or other cruel or degrading punishment, insults, discrimination, neglect, sexual abuse, exploitative labour or any traditional practice prejudicial to health.**<sup>66</sup>

This version of the draft law also included a specific prohibition on corporal punishment, which reads as follows:

### **Protection from torture and degrading treatment**

**13. (1) No child may be subjected to torture, or other cruel, inhuman or degrading punishment or treatment or any cultural or traditional practice which dehumanizes or is injurious to his or her physical and mental well-being.**

**(2) For the avoidance of doubt, a child may not be subjected to corporal punishment by any person.**

**(3) Any authorisation or justification for corporal punishment in any other statute or regulation is hereby repealed.**

**(4) It shall be the duty of all competent authorities and persons to take effective and appropriate measures with a view to abolishing cultural and traditional practices which authorizes the use of corporal punishment.**<sup>67</sup>

However, this draft provision elicited fierce debate, especially in view of the fact that the *Qur'an* appears to allow such punishment by parents or teachers.

The final draft of the law backed off from these provisions somewhat, still taking a stand against corporal punishment of children in schools and as a punishment for crime, but articulating parental responsibilities in more general terms without mentioning corporal punishment specifically.

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<sup>65</sup> Mauritius, report updated May 2009, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 17 June 2010).

<sup>66</sup> Ministry of Labour, Youth, Women and Children Development, Zanzibar Children's Act 2010, Draft One, March 2010, section 2.

<sup>67</sup> Id, section 13.

The revised definition of child abuse no longer mentions corporal punishment explicitly, but would probably still apply to it:

**“child abuse” means contravention of the rights of the child which causes physical, moral or emotional harm or suffering, or other cruel or degrading punishment, insults, discrimination, deliberate neglect, sexual abuse, exploitative labour or any traditional practice prejudicial to health.**<sup>68</sup>

The same is true of the revised provision on torture and degrading treatment:

#### **Protection from torture and degrading treatment**

**14. No child shall be subjected to violence, torture, or other cruel, inhuman or degrading punishment or treatment or any cultural or traditional practice which dehumanizes or is injurious to his or her physical and mental well-being.**<sup>69</sup>

At the time of writing, the Children’s Bill had not yet been tabled in Parliament.

Corporal punishment is already explicitly forbidden as a punishment for children convicted of criminal offences,<sup>70</sup> and the Minister responsible for social welfare is specifically authorised to make rules providing for “the prohibition of all forms of corporal punishment and other cruel or degrading punishments” in the school context.<sup>71</sup>

## **Angola**

Angola is reportedly in the process of amending some of its laws to conform with the Convention on the Rights of the Child, after the Committee on the Rights of the Child in 2004, upon examining Angola’s initial report under the Convention, recommended legal changes, including a prohibition on corporal punishment by parents and other caregivers.<sup>72</sup>

## **Swaziland**

As of February 2010, a draft Child Bill under consideration would prohibit “torture and degrading treatment” of children. Section 165(2) of the Bill would prohibit corporal punishment as a sentence for crime and possibly as a disciplinary measure in the penal system.<sup>73</sup>

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<sup>68</sup> Ministry of Labour, Youth, Women and Children Development, Zanzibar Children’s Act 2010, Final Draft, June 2010, section 2.

<sup>69</sup> Id, section 14.

<sup>70</sup> Id, section 47(2).

<sup>71</sup> Id, section 122 (1)(d).

<sup>72</sup> CRC/C/15/Add.246, paragraph 33. See *Ending Legalised Violence Against Children* (n2) at page 12.

<sup>73</sup> Swaziland, report updated March 2010, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 17 June 2010).

## Zambia

In Zambia's most recent periodic report to the Human Rights Committee which monitors the International Covenant on Civil and Political Rights, the Zambian delegation outlined measures taken to prevent corporal punishment in schools and other institutions of care. They reported that corporal punishment has been outlawed in Zambia in certain contexts by various pieces of legislation,<sup>74</sup> and that any person found to be using corporal punishment in violation of the law will be charged under the Zambian Penal Code. It was also reported that the Zambian government has instituted related education and sensitisation campaigns for school authorities, teachers and other care-givers.<sup>75</sup>

The Global Initiative to End all Corporal Punishment of Children provided more details on the legal situation in Zambia in a 2007 briefing for the Human Rights Committee. It reported that corporal punishment in the penal context was outlawed by a 1999 Supreme Court ruling,<sup>76</sup> but noted that legislation allowing its use as a judicial sentence for juveniles and as a disciplinary measure in penal institutions (Juveniles Act and Rules) had not yet been repealed. Section 46 of the Juveniles Act 1956 (as amended in 1994) provides punishment for cruelty to juveniles, but states that: "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a juvenile to administer lawful punishment to him." However, section 12 of the Education Act, which previously allowed the Minister to make regulations regulating the administration of corporal punishment, was repealed by the 2003 Education Amendment Act (2003) – although there is no explicit prohibition of corporal punishment.<sup>77</sup>

The Global Initiative to End all Corporal Punishment of Children also reports that, as of May 2008, Zambia was in the process of reviewing its laws to conform with the UN Convention on the Rights of the Child.<sup>78</sup>

Zambia is currently considering the draft of a new Constitution. An early draft included a statement that every child has a right "to be free from corporal punishment or any other forms of violence or cruel and inhumane treatment in schools and other institutions

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<sup>74</sup> The laws cited were the Penal Code Amendment Act, Educational Amendment Act and Prisons Amendment Act (numbers and years not reported in the source).

<sup>75</sup> International Service for Human Rights, Treaty Body Monitor, Human Rights Committee, 90<sup>th</sup> Session, Zambia, 3<sup>rd</sup> Report, 9-10 July 2007, at page 10, available at <[http://olddoc.ishr.ch/hrm/tmb/treaty/hrc/reports/hrc\\_90/hrc\\_90\\_zambia.pdf](http://olddoc.ishr.ch/hrm/tmb/treaty/hrc/reports/hrc_90/hrc_90_zambia.pdf)> (last accessed 20 July 2010).

<sup>76</sup> *John Banda v The People* HPA/6/1998.

<sup>77</sup> Peter Newell, "Briefing from Global Initiative to End all Corporal Punishment of Children for the Human Rights Committee Pre-sessional Working Group", March 2007, <[http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Global\\_Initiative\\_Report.doc](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Global_Initiative_Report.doc)> (last accessed 20 July 2010).

<sup>78</sup> Zambia, report updated February 2010, <[www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html)> (last accessed 17 June 2010).

responsible for the care of children not to be subjected to corporal punishment”.<sup>79</sup> In a section on freedom and security, this early draft Constitution also articulated the more general rights of every person “to be free from all forms of violence from either public or private sources”, “not to be tortured in any manner, whether physical or psychological” and “not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner”.<sup>80</sup>

The National Constitutional Conference removed the provision pertaining to children and corporal punishment (and several other provisions on children) from the draft, on the grounds that the issues addressed would be more appropriately addressed in subordinate legislation.<sup>81</sup> It also removed the cited provisions on freedom and security when it substituted that entire article with one focussed on the right to personal liberty.<sup>82</sup> However, a revised provision on “protection from inhuman treatment” provides as follows:

- 41. (1) Every person has an inherent dignity and the right to have that dignity respected and protected.**
- (2) A person shall not be subjected to torture or inhuman or degrading punishment or other like treatment.**
- (3) Notwithstanding any other provisions in this Constitution, the protection from inhuman or degrading punishment or other like treatment shall not be derogated from.**<sup>83</sup>

The report of the deliberations did not discuss the Conference’s views on corporal punishment, but cited only more general motivations for the changes. The revised draft was presented to the public in June 2010 for comment.<sup>84</sup>

## Kenya

Kenya’s Children’s Act 8 of 2001 does not speak directly to corporal punishment, but it does state that “No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty”.<sup>85</sup>

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<sup>79</sup> Draft Constitution of the Republic of Zambia. Article 42(5)(g), as appended to the draft Constitution of Zambia Bill 200-, <[www.zambia.co.zm/downloads/draft\\_constitution.pdf](http://www.zambia.co.zm/downloads/draft_constitution.pdf)> (last accessed 21 July 2010). This Article was numbered as Article 44 in the draft considered by the National Constitutional Conference.

<sup>80</sup> Id, Article 48(c)-(e). This Article was numbered as Article 51 in the draft considered by the National Constitutional Conference.

<sup>81</sup> Republic of Zambia, National Constitutional Conference Initial Report of the National Constitutional Conference, 24 June 2010, available at <[www.ncczambia.org/initial.pdf](http://www.ncczambia.org/initial.pdf)> (last accessed 21 June 2010); see paragraph 10.20.3.2 at page 214 and paragraph 10.20.3.11 at page 216.

<sup>82</sup> Id, paragraph 10.27.3-10.27.4 at page 230-35.

<sup>83</sup> Draft Constitution of the Republic of Zambia. Article 41, as appended to the draft Constitution of Zambia Bill 2010, available at <[www.parliament.gov.zm/index.php?option=com\\_docman&task=cat\\_view&gid=137&Itemid=113](http://www.parliament.gov.zm/index.php?option=com_docman&task=cat_view&gid=137&Itemid=113)> (last accessed 21 June 2010).

<sup>84</sup> “NCC launches Draft Constitution”, *Zambia 24*, 22 June 2010, <<http://zambia24.com/?p=4844>> (last accessed 21 July 2010). The public was given 40 days to submit comments.

<sup>85</sup> Children’s Act 8 of 2001, section 18(1).

A landmark 2004 judgment of the Kenyan High Court concerned a man convicted under this provision of subjecting his 3-year-old daughter to torture, in the form of severe and sustained beating and pinching. Responding to his appeal against the sentence imposed, the Court rejected his argument that his status as a parent disciplining his child constituted a mitigating factor. According to the Court, “The society expects the appellant to give protection and love to his children, especially when they are of young and tender age...”. Although the judgment addresses a level of punishment that falls outside what many people would consider “reasonable”, it affirms the view that parental behaviour under the guise of discipline may still constitute prohibited torture or cruelty.<sup>86</sup>

Non-governmental organisations in Kenya are calling for repeal of the “reasonable punishment” defence. The Minister for Gender, Children and Social Development made the following statement in February 2009:

**Corporal punishment de-humanizes the child, is brutal and instils fear in the child which inhibits the child’s normal growth, productivity and creativity. It is therefore evident that corporal punishment has been overtaken by time. Focus should be placed on alternative forms of instilling discipline and replicating best practices evident elsewhere. It is also incumbent on all of us to identify urgently all the sections in our laws that allow for some caning or corporal punishment so that the necessary action can be taken.**<sup>87</sup>

In 2010, the Attorney-General published a draft Constitution which includes the right of every person “not to be subjected to corporal punishment” (Article 29). This draft was approved by 67% of Kenyan voters in a national referendum which took place in August 2010.<sup>88</sup>

### **7.3.4 Southern African Network to End Corporal and Humiliating Punishment of Children**

In Southern Africa, a dozen civil society groups in Botswana, Lesotho, South Africa, Swaziland and Zambia have signed the “Position Statement of the Southern African Network to End Corporal and Humiliating Punishment of Children”. This statement calls for the prohibition of corporal punishment of children in all settings, but emphasises that a legal prohibition is primarily a preventative measure and that the focus should be

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<sup>86</sup> *Isaac Mwangi Wachira v Republic High Court of Kenya (Nakuru)* Criminal Application No. 185 of 2004 (Unreported), as discussed in *Ending Legalised Violence Against Children: All Africa Special Report – a contribution to the UN Secretary General’s Study on Violence against Children*, London: Global Initiative to End All Corporal Punishment of Children / Save the Children Sweden, 2006, updated April 2007 [hereinafter “*Ending Legalised Violence Against Children: All Africa Special Report*”) at page 21.

<sup>87</sup> *Ending Legalised Violence Against Children* (n2) at page 11.

<sup>88</sup> “Kenya gets new constitution”, *Daily Nation*, 5 August 2010, available at <[www.nation.co.ke](http://www.nation.co.ke)> (last accessed 23 August 2010); Global Initiative Newsletter 13 (August 2010).

on supportive and corrective interventions and not on the prosecution of parents (see box below).<sup>89</sup>

**EXCERPT FROM THE POSITION STATEMENT OF THE  
SOUTHERN AFRICAN NETWORK TO END CORPORAL  
AND HUMILIATING PUNISHMENT OF CHILDREN**

## **Promoting Positive Discipline**

February 2006, amended May 2007

Our position:

We believe that children have a right to a life free from all forms of violence, including corporal and humiliating punishment. We take seriously children's evidence on how corporal and humiliating punishment hurts them and wish to underscore the commitments made by governments in all nine regional consultations of the UN Study on Violence Against Children to prohibit corporal punishment of children in all settings.

The right of adults to be free from violence is protected by criminal laws, yet children do not have equal protection under the law as they can be subjected to physical violence for the purposes of correction. We therefore insist that children must enjoy the same human rights protection that is afforded to adults. Further, children's greater physiological, psychological and social vulnerability makes it critical that we ensure greater protection of children against all forms of violence.

We believe that countries in Southern Africa and all other regions of the world can no longer continue to hide behind religion, culture and tradition in order to perpetrate legalized violence against children.

There is an urgent need for all countries in the region to acknowledge their obligations under the Convention on the Rights of the Child as all these countries have ratified the Convention.

We thus call on all states in the region to prohibit all forms of corporal and humiliating punishment of children by 2009 through implementing a legal prohibition on these practices in all spheres of children's lives from penal systems to the education sector, places of care of children as well as in the home.

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<sup>89</sup> The full statement is available in *Article 19*, Vol 3, No 2: 6-7, Cape Town: Children's Rights Project, Community Law Centre, July 2007, <[www.communitylawcentre.org.za/clc-projects/childrens-rights/article-19/archives/Volume 3 2013 Number 2.pdf](http://www.communitylawcentre.org.za/clc-projects/childrens-rights/article-19/archives/Volume%203%2013%20Number%202.pdf)> (last accessed 25 July 2010). This publication also includes information on the consultative meeting which developed the position paper.

Instituting a legal prohibition is primarily a preventative measure. In addition to the ban, our governments must allocate resources for the implementation of educational programmes that aim to change attitudes towards children as rights bearers and develop the implementation of positive discipline methods by parents, caregivers and teachers. Further, resources must be allocated towards strengthening state support systems for children, parents and teachers.

We do not believe that the prosecution of parents is always in the best interests of the child and recognize that children do best in supportive and loving families. We thus call on states to put measures in place to ensure that parents have access to other supportive and corrective interventions as a diversion option and as a possible sentence where cases are prosecuted.

We support the aims of the Global Initiative to End All Corporal Punishment of Children, which calls on all governments to declare their opposition to corporal punishment of children in all contexts and to set a timetable for eliminating corporal punishment.

This statement has been endorsed by the following groups:

**Childline South Africa**

**Children's Rights Project, Community Law Centre, South Africa**

**DITSHWANELO, The Botswana Centre for Human Rights, Botswana**

**Education Policy Unit, University of Witwatersrand, South Africa**

**Global Initiative to End All Corporal Punishment of Children**

**NGO Coalition on the Rights of a Child, Lesotho**

**Resources Aimed at the Prevention of Child Abuse and Neglect, South Africa**

**Save the Children Swaziland**

**Save the Children Sweden, Regional Office for Southern Africa**

**South African Council of Churches**

**Zambia Civic Education Association**

**Zambia Human Rights Commission**

A similar stance has been taken by a wider grouping of 31 African civil society organisations in Botswana, Burkina Faso, Ethiopia, Kenya, Lesotho, Mauritius, Mozambique, Senegal, South Africa, Swaziland, The Gambia, Togo and Zambia. These groups endorsed a submission urging the African Committee of Experts on the Rights and Welfare of the Child to adopt a formal statement urging member countries to prohibit corporal and other forms of humiliating punishment of children in all settings.<sup>90</sup>

<sup>90</sup> Southern African Network To End Corporal And Humiliating Punishment Of Children and The African Child Policy Forum, "Submission to the African Committee of Experts on the Rights and Welfare of the Child: Ending Corporal and Other Forms of Humiliating Punishment of Children", 2 November 2008, <[www.zamcivic.com.zm/media/submission\\_acerwc\\_final\\_29\\_october.htm](http://www.zamcivic.com.zm/media/submission_acerwc_final_29_october.htm)> (last accessed 25 July 2010).

***“Children learn that you can simultaneously love someone and be violent, even be violent because you love someone. It’s high time we recognize hitting a child, no matter what the situation, is an unacceptable form of abuse.”***

**Michael Kaufman,**

*Cracking the Armour: Power, Pain and the Lives of Men, 1993*



The Legal Assistance Centre has received many positive comments about the comics from both adults and children. Here is just one example: *“The comic makes me feel i also have a right i am 12 yrs old.”*

# 8. Promotion of alternatives to corporal punishment

Corporal punishment is a long-standing component of the parenting culture in Namibia. Most parents believe that corporal punishment is in the child's best interests. Zimba and Otaala suggest that in promoting children's rights, local understandings of the child's best interests as well as customs and beliefs should be taken into consideration, or what is being promoted will be considered alien and counter to local perceptions of children's best interests.<sup>1</sup> When a practice is found to be harmful (such as corporal punishment), they recommend that, in addition to discouraging the practice, a culturally acceptable alternative should be provided.<sup>2</sup>

Zimba and Otaala also suggest that the beliefs and customs of various ethnic groups should be considered when designing interventions. For example, although corporal punishment of children is now common, traditionally San parents totally ignored bad behaviour ("extinction") and promoted good behaviour through role playing, story telling, music and dance.<sup>3</sup> In trying to reduce the incidence of corporal punishment in San families, these types of discipline techniques can be emphasised. Other approaches might be more effective in other communities.

This chapter reports some Namibian interventions to promote alternatives to corporal punishment.

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<sup>1</sup> RF Zimba and B Otaala. *A family in transition: A study of childrearing practices and beliefs among the Nama of the Karas and Hardap Regions of Namibia*, Windhoek: UNICEF & UNAM, 1995 at page xii.

<sup>2</sup> Id at 6.

<sup>3</sup> Willemien le Roux, "The art of survival: Can childrearing practices of the San provide lessons for child sexual abuse interventions in Southern Africa?," presented at the Ford Foundation's Roundtable on Sexual Abuse of Young Children, Johannesburg, 22-23 August 2002.

## (a) Ministry of Education

Following the ban on corporal punishment in schools in 1991, the Ministry of Education and Culture published a manual for trainers on alternatives to corporal punishment and two booklets for teachers containing alternatives to corporal punishment.<sup>4</sup> Many of the suggestions can also be used by parents.

The Ministry of Education emphasises that the aim of discipline is to improve the behaviour of children, not to punish children as retribution. The booklets provide a number of techniques for changing a child's behaviour. The Ministry notes that teachers and parents must be positive role models. Just as children learn to hit others through modelling, they can also learn positive behaviour. If teachers or parents speak politely, and treat their children and others with respect, the children will also likely do the same. One technique suggested is “**changing the antecedent**”. This involves doing something ahead of time so that negative behaviour does not occur. This can involve taking away the temptation. For example if the child has a habit of jumping out of his bedroom window, it's probably best just to close and lock the window. It can also involve using something more interesting to distract the child away from the negative behaviour.

The Ministry also suggests using “**positive reinforcement**” – that is, praising the child for positive behaviour. Although some parents may wonder why they should reward children for doing what they are supposed to do, this is an effective tool because any behaviour that is immediately recognised, rewarded or reinforced is more likely to happen again.

The opposite of positive reinforcement is called “**extinction**”, or ignoring negative behaviour. Unless the behaviour is hurting someone else or destroying property, it is often better to ignore negative behaviour because often any attention is rewarding to a child. The use of extinction at the same time as reinforcing the good behaviour of other children can be especially effective.

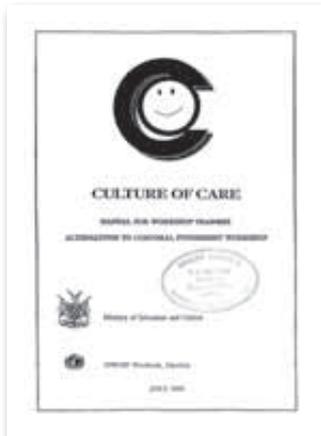
Another technique is “**negative reinforcement**”. This means that the parent will take away an “aversive”, or something the child does not like, once the child starts behaving properly. This approach usually starts with a phrase like “As soon as you...” or “After you ...” or “When you ...” – thus essentially leaving responsibility for the choice with the child. For example, the parent might say: “As soon as you can sit quietly we will eat dinner”, or “After you have finished your chores, you will be allowed to play with your friend”.

The Ministry suggests that children be can also taught to **take responsibility for the natural consequences of their actions**. For example, if a child knocks a pile of papers off his parent's desk, he should be the one to pick them up.

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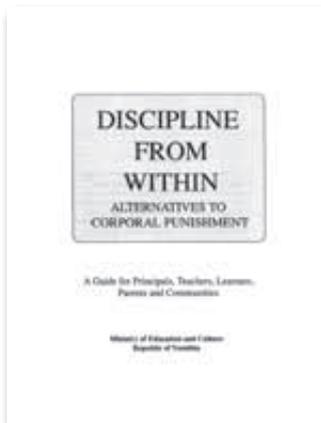
<sup>4</sup> Ministry of Education and Culture, *Discipline from Within: Alternatives to Corporal Punishment Part 1*, 1992 and *Discipline with Care: Alternatives to Corporal Punishment Part 2*, 1993.

The Ministry suggests that rules and the consequences of breaking rules should be clearly explained and applied consistently. Parents should be firm about these rules while still being sympathetic. Parents should treat children with respect and encourage discussion. Parents should find out if there is something else wrong with the child that is causing the bad behaviour (such as a bad day at school or feeling sick). Parents should take an interest in the child’s activities and school-work. They should also make sure their children are as well-fed and well-rested as possible.

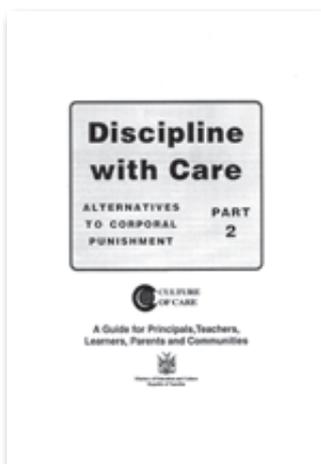


The positive work started by the Ministry of Education has been internationally noted. In 2000 book published by Save the Children Sweden, Newell and Hammarberg wrote:

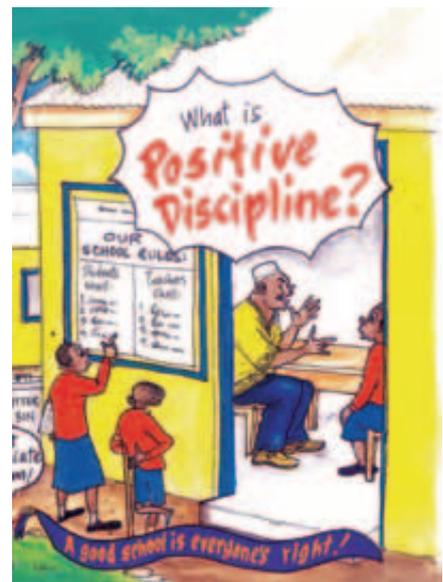
**In Namibia’s initial report to the Committee on the Rights of the Child, it stated that the Ministry of Education ‘has been advocating a new approach to discipline embodied in the concept “Discipline from Within”. In contrast to the emphasis on physical punishment in schools in the colonial era, this new approach emphasizes self-discipline based on the cooperative effort of students, teacher and parents.’ A booklet, *Discipline with Care*, was produced in response to grassroots requests for suggestions on alternatives for maintaining discipline in schools. A nationwide in-service training programme was organized to help principles and teachers adapt to the new policy.<sup>5</sup>**



It appears that there is a need to continue and to intensify this excellent approach to outreach on positive discipline.



**A good regional resource on positive discipline in the school context is this booklet published by Raising Voices, a regional network based in Uganda which focuses on preventative approaches to combat violence. The booklet is available at [www.raisingvoices.org/files/goodschool\\_imagine\\_booklet\\_positivediscipline.pdf](http://www.raisingvoices.org/files/goodschool_imagine_booklet_positivediscipline.pdf).**



<sup>5</sup> Newell and Hammarberg (ch6, n21) at page 130.

## (b) Legal Assistance Centre

The Legal Assistance Centre has worked to address the issue of corporal punishment for many years. In the early years following Independence, the Legal Assistance Centre focused on educating the public on the existing law pertaining to parental discipline (as the illustration below shows), by explaining that excessive violence was illegal but that reasonable chastisement was permitted in Namibia.

However, over time reports have shown how damaging the use of corporal punishment is in practice, calling into question whether there can be such a thing as “reasonable chastisement” in the form of violence. Therefore the Legal Assistance Centre now focuses on advocacy for a total ban on the use of corporal punishment and on public awareness-raising on alternatives to corporal punishment.

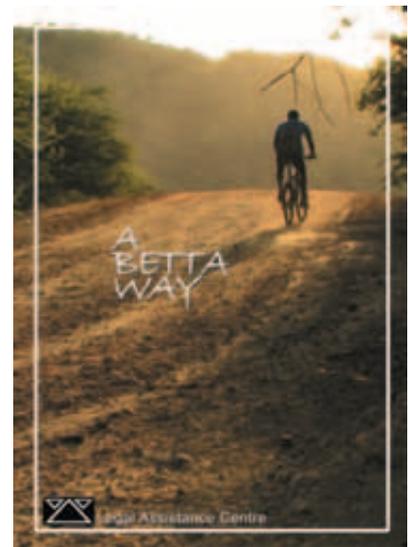
In line with this message, in recent years the Legal Assistance Centre has produced materials that can be used to help educate the public about alternatives to corporal punishment. These materials include a 45-minute film, two comics, a poster and two short training guides. The Legal Assistance Centre also educates community members about alternatives to corporal punishment in workshops.



An illustration from the 1991 Legal Assistance Centre publication, “Children – know your rights!”, which attempts to illustrate the difference between “reasonable” and “unreasonable” chastisement. However, encouraging parents to make this distinction appears to be an unworkable approach which is inconsistent with the international commitments of a post-Independence Namibia.

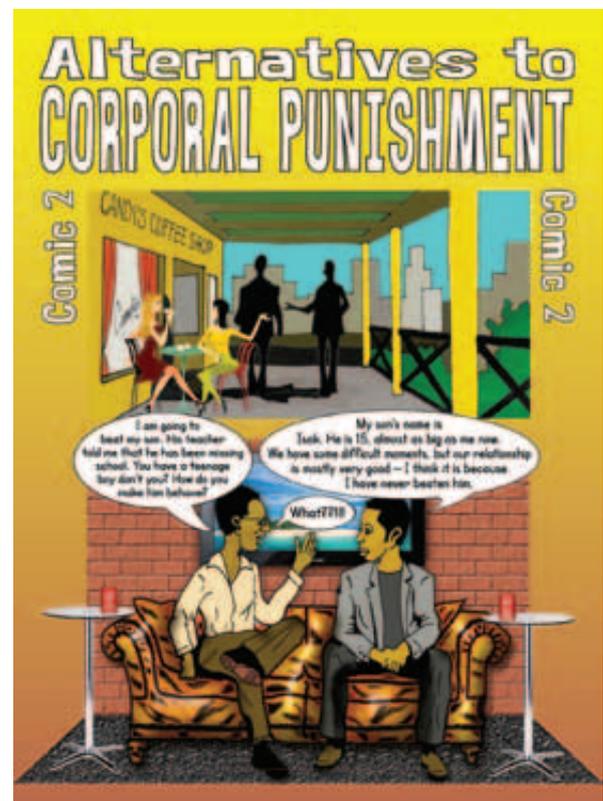
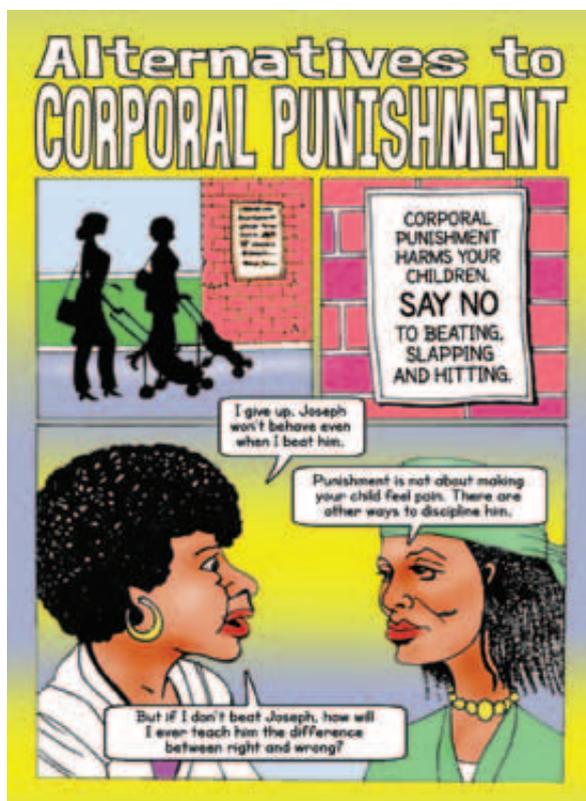
## Film

In 2010, the Legal Assistance Centre produced a film entitled *A Betta Way*, aimed at popularising alternatives to corporal punishment. The story centres around Paulus, a likable rebel. Paulus and his friends are subjected to almost daily beatings at school and beatings at home. Following a particularly excessive beating, Paulus comes across a comic about alternatives to corporal punishment and learns that there are other methods to discipline children. He decides that it is time for change in his community and sets out to alter the attitudes of his teachers and his family. He challenges the norms of his community in a daring attempt to change their opinions and in the humorous events that follow, the audience learns that there are better methods for disciplining children. The film has been screened at numerous schools, and it was aired by the National Broadcasting Corporation on national television in July 2010.



## Comics

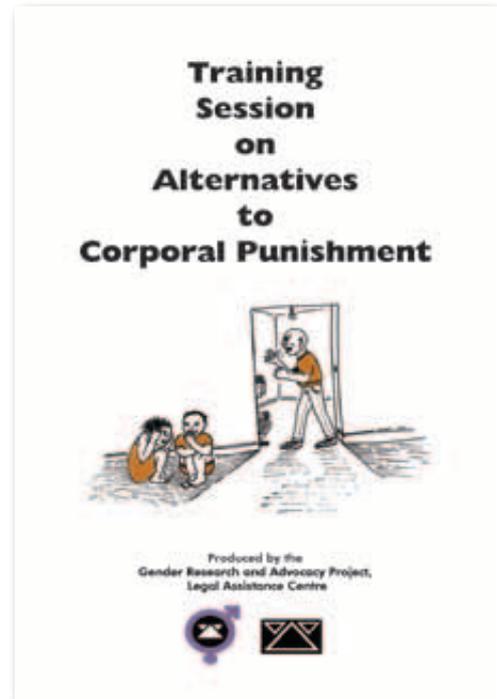
A unique aspect of the film is the fact that the comic featured in the film has actually been produced by the Legal Assistance Centre. The comic discusses the problems a mother experiences in disciplining her young son and the alternatives to corporal punishment



that her friend teaches her. A second comic which focuses on alternatives to corporal punishment that can be used with teenagers has also been produced.

## Training guide for children

The Legal Assistance Centre has produced a training guide on alternatives to corporal punishment specifically designed for training children between the ages of 7 and 10. The aim is to teach children that there are alternatives to corporal punishment. Child participation and child empowerment are important international human rights principles and the intention of developing a training session for children is to help educate people from an early age about the problems that can be associated with using corporal punishment. This can help empower children who are suffering from abuse or violence to speak out about their situation. The guide includes a number of games and fun activities to help the children learn. Five alternative methods to corporal punishment are explained: (1) verbal reprimand; (2) time out; (3) removal of rewards/pleasures; (4) solve the problem; (5) take responsibility for the action. These are the same methods that are discussed in the other awareness-raising materials. This is to ensure a consistency of message across all audiences. As the Legal Assistance Centre develops more materials, further alternative methods will be introduced.



## Workshops and training guide for adults

The Legal Assistance Centre uses a manual produced by RAPCAN when conducting workshops with adults on alternatives to corporal punishment. (RAPCAN, which stands for Resources Aimed at the Prevention of Child Abuse and Neglect, is a South African organisation that works to promote the rights and protection of children in South Africa and the region. RAPCAN delivers direct services aimed at promoting the rights and protection of children to children and families. One of their focus areas is on corporal punishment and education about alternatives to corporal punishment.) The Legal Assistance Centre has adapted the RAPCAN manual into a shorter guide for a one-day training session for adults.

## Poster

The Legal Assistance Centre has produced a poster that gives the basic facts about why corporal punishment is a problem and describes some alternatives. The poster has been widely distributed.

## (c) ChildLine/LifeLine

ChildLine/LifeLine works with families where children, especially teens, have behaviour problems. Such cases are sometimes referred to ChildLine/LifeLine by the Woman and Child Protection Units. ChildLine/LifeLine provides family therapy, which involves counselling for both parents and children. Their current counselling programme includes counselling on alternative disciplinary measures and parenting skills.

## (d) PEACE (People's Education, Assistance and Counselling for Empowerment)

A few cases referred to the PEACE Centre have involved corporal punishment. The organisation works with children who have behavioural problems or learning difficulties, who are referred by educational psychologists. Sometimes children report being disturbed by being beaten or shouted at in school, and the children's psychologist at the PEACE Centre will sometimes work with individual teachers on alternative disciplinary measures. PEACE also provides counselling in cases of violence in the home, although this often involves the exposure of children to domestic violence between other family members. Such family counselling sometimes includes education on parenting and coping mechanisms for the whole family.



Poster produced by Raising Voices, available at [www.raisingvoices.org/images/comm\\_mat/children/Violence\\_free\\_home\\_large.jpg](http://www.raisingvoices.org/images/comm_mat/children/Violence_free_home_large.jpg)

# TWENTY ALTERNATIVES TO CORPORAL PUNISHMENT

**1. LOOK FOR UNDERLYING NEEDS.**

**Example:** Give your child something to play with while waiting in line.

**2. GIVE INFORMATION AND REASONS.**

**Example:** If your child colours on the wall, explain why we colour on paper only.

**3. LOOK FOR UNDERLYING FEELINGS.**

Acknowledge, accept & listen to feelings.

**Example:** If your child hits his baby sister, encourage him to express his anger and jealousy in harmless ways. He may need to cry or rage.

**4. CHANGE THE ENVIRONMENT.**

This is sometimes easier than trying to change the child.

**Example:** If your child repeatedly takes things out of the kitchen cupboards, put a childproof lock on them.

**5. FIND ACCEPTABLE ALTERNATIVES.**

Redirect your child's behaviour.

**Example:** If you do not want your child to play inside the house, don't just say no. Tell her where she *can* play.

**6. DEMONSTRATE HOW YOU WANT YOUR CHILD TO BEHAVE.**

**Example:** If your child pulls a cat's tail, *show* him how to pet a cat. Do not rely on words alone.

**7. GIVE CHOICES RATHER THAN COMMANDS.**

Decision-making empowers children; commands invite a power struggle.

**Example:** "Would you like to brush your teeth before or after putting your pajamas on?"

**8. MAKE SMALL CONCESSIONS.**

**Example:** "I'll let you skip brushing your teeth tonight because you are so tired."

**9. PROVIDE FOR A PERIOD OF PREPARATION.**

**Example:** If you are counting on company for dinner, tell your child how you expect him to behave. Be specific. Role-playing can help prepare children for potentially difficult situations.

**10. LET NATURAL CONSEQUENCES OCCUR (when appropriate).**

Don't rescue too much.

**Example:** A child who does not hang up her towel may find it still wet the next day. (But don't create artificial consequences.)

**11. COMMUNICATE YOUR OWN FEELINGS.**

Let children know how their behaviour affects you.

Example: "I get so tired of cleaning up after you."

**12. USE ACTIONS WHEN NECESSARY.**

Example: If your child insists on running across streets, hold his hand tightly (while explaining the dangers).

**13. HOLD YOUR CHILD.**

Children who are acting aggressively or obnoxiously can benefit from being held in a loving and supportive way that allows them to channel their pent-up feelings into healing tears.

**14. REMOVE YOUR CHILD FROM THE SITUATION AND STAY WITH HER.**

Use the time for listening, sharing feelings, holding, and conflict-resolution.

**15. DO IT TOGETHER, BE PLAYFUL.**

Many conflict situations can be turned into games.

Examples: "Let's pretend we're a soccer team and clean up your bedroom together."  
"Every time you put your dirty clothes in the laundry basket you score a goal."

**16. DEFUSE THE SITUATION WITH LAUGHTER.**

Example: If your child is mad at you, invite him to express his anger in a playful pillow fight with you. Play your part by surrendering dramatically. Laughter helps resolve anger and feelings of powerlessness.

**17. MAKE A DEAL, NEGOTIATE.**

Example: If you're ready to leave the playground and your child is having fun, reach an agreement on the number of times she may go down the slide before leaving.

**18. DO MUTUAL CONFLICT-RESOLUTION.**

Discuss ongoing conflicts with your children, state your own needs, and ask for their help in finding solutions. Determine rules together. Hold family meetings.

**19. REVISE YOUR EXPECTATIONS.**

Young children have intense feelings and needs and are naturally loud, curious, messy, wilful, impatient, demanding, creative, forgetful, fearful, self-centred, and full of energy. Try to accept them as they are.

**20. TAKE A PARENTAL TIME-OUT.**

Leave the room and do whatever is needed to regain your sense of composure and good judgment.

Examples: call a friend, cry, meditate, or take a shower.

**Aletha Solter, PhD**, 1996 (with slight edits for Namibian context);  
a previous version of this list was published in *Mothering* magazine, Vol 65, 1992

***“Violence begets violence and we shall reap a whirlwind. Children can be disciplined without violence that instils fear and misery.”***

**Archbishop Emeritus Desmond Tutu**

***“There can be no keener revelation of a society’s soul than the way in which it treats its children.”***

**Nelson Mandela**



The Legal Assistance Centre’s film on alternatives to corporal punishment, *A Betta Way*, was viewed by 1 135 people in the Kavango and Caprivi regions in just one week in July 2010.

# 9. Conclusion and recommendations

The late Honourable Buddy Wentworth, former Deputy Minister of Education and Culture, aptly summarised the reasons why corporal punishment was banned in schools:

**As a matter of human dignity and individual human rights, the Constitution, as a consequence of a decision of the High Court, expressly forbids the use of corporal punishment. It is also clear that corporal punishment cannot be regarded as acceptable in a democratic society. It is humiliating, it increases, not decreases, resentment and aggressiveness, and it has no long-term value.<sup>1</sup>**

The Legal Assistance Centre believes that corporal punishment in the family can be even more damaging to the dignity and development of the child, given that it takes place in the context of what is supposed to be one of the closest and most loving relationships in a child's life.

Corporal punishment violates a number of the child's rights, including the following:

- right to dignity
- right to bodily integrity
- right not to be subject to torture or cruel, inhuman or degrading treatment or punishment
- right to be protected from violence and abuse
- right to equality
- right to privacy
- right to develop and have the highest attainable standard of physical and mental health.

Each of these rights is enshrined in more than one human rights instrument to which Namibia is bound.

Further, corporal punishment can escalate to serious physical abuse, and has also been shown to lead to increased aggression in children and adults, eventual abuse of spouses and children, failure to internalise family and societal morals and values, antisocial

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<sup>1</sup> Ministry of Education and Culture, *Discipline from Within: Alternatives to Corporal Punishment Part 1*, 1992 and *Discipline with Care: Alternatives to Corporal Punishment Part 2*, 1993, note 122.

behaviour, depressed and even suicidal children and adults, poor relationships with parents, and poor school results. Clearly, the use of corporal punishment in the family is not just an abstract human rights concern. It is a real issue for all those concerned about the development of Namibian children and hoping for a less violent society in Namibia.

The draft Child Care and Protection Bill in its current form does not clearly outlaw corporal punishment, although it might limit its application. In this regard, it is instructive to consider the remarks of the late Chief Justice Berker, the first Chief Justice of the Namibian Supreme Court:

*It seems to me that once one has arrived at the conclusion that corporal punishment *per se* is impairing the dignity of the recipient or subjects him to degrading treatment or even to, cruel or inhuman treatment or punishment, it does not on principle matter to what extent such corporal punishment is made subject to restrictions and limiting parameters, even of a substantial kind – even if very moderately applied and subject to very strict controls, the fact remains that any type of corporal punishment results in some impairment of dignity and degrading treatment.<sup>2</sup>*

As Namibia moves ever forward in its development as a democratic nation that is free from its colonial and apartheid past, issues such as the use of corporal punishment must be addressed. The Legal Assistance Centre makes the following recommendations in this regard:

## **Legislation**

The Child Care and Protection Bill, which addresses the use of corporal punishment in the home, should be enacted as soon as possible.

## **Complaints procedure for the use of corporal punishment in schools**

The Ministry of Education should ensure that all children, parents and guardians are aware of the complaints procedure to deal with incidents of corporal punishment in schools. Reports of corporal punishment should be investigated and dealt with according to the Ministry of Education's disciplinary procedures, in a timely manner.

## **Promoting alternatives**

The Ministry of Gender Equality and Child Welfare and the Ministry of Education should take joint responsibility for educating parents, teachers and community members about alternatives to corporal punishment. Children should be informed about their right

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<sup>2</sup> *Ex Parte Attorney-General, Namibia: Re: Corporal Punishment by Organs of the State*, 1991 (3) SA 76 (concurring judgment).

not to be subjected to corporal punishment and about reporting mechanisms should situations of corporal punishment occur. The outreach should include parent-teacher meetings and the dissemination of information such as comics and booklets to parents and community members through school channels.

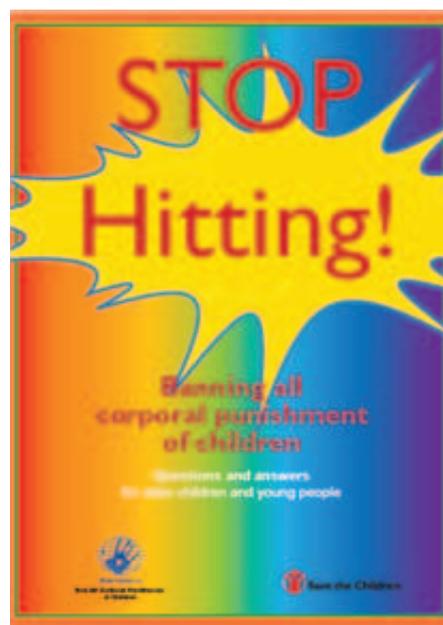
Both the Ministry of Education and the Legal Assistance Centre have produced materials that can be distributed through these channels. There are also many excellent resources from international organisations such as the Global Initiative to End All Corporal Punishment of Children and Save the Children Sweden that can be used. The Ministry of Education should source appropriate materials from these organisations for distribution. Sufficient budgets should be allocated for these initiatives.

As has been demonstrated in this monograph, the voices of children are extremely powerful in discussing the problems associated with the use of corporal punishment. Government departments and NGOs which conduct education and outreach initiatives about alternatives to corporal punishment should involve children.

Education about alternatives to corporal punishment should provoke not preach; the use of corporal punishment is so entrenched in peoples' attitudes that "preaching" against corporal punishment is unlikely to be effective. Instead, community members should be encouraged to engage with the issue. Here are some examples of approaches that can be used to engage people:

**One of the best ways of jolting people out of their complacency is to ask questions rather than present answers... 'Don't you think children have a right to make mistakes just like the rest of us?' Humour is useful. 'Beat a drum, not a child' can make a person smile, chuckle and rethink an old habit. Provoking people may at times make them uncomfortable or angry, but that can be effective too. The idea is to engage people, not appease them.<sup>3</sup>**

<sup>3</sup> R Rajani and A Petrén, "Raising awareness for children's rights" in *Children's rights: Turning principles into practice*, Stockholm: Save the Children Sweden, 2000.



**One example of a useful resource is the child-friendly pamphlet, "Stop hitting", which has been produced by the Global Initiative to End All Corporal Punishment of Children and Save the Children Sweden.**



**The organisation, Parents and Teachers against violence in education ([www.nospank.net/main.htm](http://www.nospank.net/main.htm)), has produced stickers that can be used by children to advertise the need to abolish corporal punishment.**

Non-governmental organisations should work in collaboration with the Ministry of Education and the Ministry of Gender Equality and Child Welfare to produce and disseminate materials about alternatives to corporal punishment.

## Co-ordination

A task force to address alternatives to corporal punishment should be set up to facilitate the best use of resources between Ministries and civil society. This task force could be a subcommittee of the existing High-level Strategic Inter-ministerial Committee on Domestic Violence and Violence in General, or a subcommittee of the proposed National Advisory Council on Children provided for in the draft Child Care and Protection Bill.



Actor Fellemon Ngango from the Legal Assistance Centre film on alternatives to corporal punishment (*A Betta Way*) meets some of the learners who saw the film in 2010.

***“A person’s a person,  
no matter how small.”***

**Dr Seuss**

# CORPORAL PUNISHMENT – FREQUENTLY ASKED QUESTIONS

## **If many people in Namibia support the use of corporal punishment, shouldn't the government follow public opinion?**

No, in this situation the government must provide a positive lead that the public can follow. Corporal punishment is a form of violence that should not be allowed to continue. From an international perspective, in countries where legislation has been changed to prohibit the use of corporal punishment, this has usually taken place *before* overall public opinion has supported the change. Furthermore, discussions in Namibia have shown that although many people consulted do not *want* the use of corporal punishment in the home to be abolished, they understand the *need* to prohibit the use of corporal punishment.

## **Even children support the use of corporal punishment. Why can't we follow their opinion?**

Children may support the use of corporal punishment because they do not know that there are other, better methods of discipline. Although some children may support the use of corporal punishment, many children in Namibia do not.

## **Isn't the discipline of a child in the home a private matter?**

The impact of corporal punishment can have wide-reaching effects, as discussed in chapter 2. Domestic violence is not a private affair, nor is the use of corporal punishment.

## **But what if you need to smack a child to stop the child from hurting him or herself?**

Using pain to prevent pain does not make sense. There are other methods of discipline that will be effective in these situations. Also, there is a distinction between corporal punishment and restraining a child briefly in an emergency situation – such as holding back a child who is about to run in front of a moving car.

## **Aren't corporal punishment and child abuse different?**

A light smack and a violent beating are different and many people can differentiate between the two. However there are some people who do not see the difference, particularly when they act in the heat of the moment. There have been some children in Namibia who have been seriously injured by “punishment”, or even beaten to death.

## **Why can't the law define the level of force that can be used?**

Words cannot be used to define the level of force. What one person thinks is moderate may be severe to another person.

## **Why not leave the law unchanged and educate people about alternatives to corporal punishment?**

It will create confusion if the law permits corporal punishment but people are told not to use it. In such an instance, many people will not believe or accept training about alternatives. Changing the law will support the education people need to receive about alternatives to corporal punishment.

Some of these questions and answers were modelled on the  
**Global Initiative to End All Corporal Punishment of Children** and  
**Save the Children Sweden** publication *Prohibiting all corporal punishment of children*.

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