A LEGAL BAN ALONE will not be enough to stop Corporal Punishment

by Catherine Franks

“There is no law against it!” a parent could argue with regards to corporal punishment. Looking at the domestic law in South Africa, this would be true. Although corporal punishment has been prohibited in all schools, care institutions and the juvenile justice system, it still may be lawfully carried out within families. South Africa, like all other States on the continent, with the exception of Somalia, has ratified the United Nations Convention on the Rights of the Child (CRC). It has also ratified the African Charter on the Rights and Welfare of the Child (ACRWC). These, along with other international human rights instruments, oblige State Parties to take the appropriate measures to protect children from corporal punishment.

Whilst a national law prohibiting corporal punishment would send parents a clear message that physically punishing their children is unacceptable, such punishment would need to become a less socially acceptable form of discipline for a legal ban to be more effective. There are various ways to move towards changing the general public’s attitude with regards to corporal punishment. This would be a positive undertaking, even while parental corporal punishment is still lawful in a State, because it would serve to discourage adults from physically punishing their children.

INTERNATIONAL INSTRUMENTS AND NATIONAL PROHIBITIONS OF CORPORAL PUNISHMENT

In ratifying the CRC, ACRWC and other international instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), South Africa has obligations to prohibit by law all forms of corporal punishment of children.

Article 19 of the CRC requires State Parties to take all
appropriate measures to protect children from physical and mental “violence, injury or abuse... while in the care of parent(s) (and) legal guardians”. The United Nations Committee on the Rights of the Child has confirmed that this provision should be interpreted as covering the corporal punishment of children in the home. The Committee has called for the elimination of laws allowing for reasonable or moderate correction. In States around the world which have prohibited corporal punishment in the home, the first step has usually been to abolish laws allowing for reasonable chastisement, or other equivalent defences. Under common law in South Africa, parents have the power to “inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition” (R v Janke and Janke 1913 TPD 382). If such a defence were to be abolished, the next step a State could take would be to enact legislation expressly prohibiting parental corporal punishment.

Southern Sudan's new Child Act, which was officially launched in April 2009, prohibits corporal punishment in all settings, including the family home. Section 21 states that, “Every child has the right to be protected from torture, cruel, inhuman or degrading treatment or punishment, and in particular ... (b) 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”. The Interim Constitution of Southern Sudan explicitly prohibits parental corporal punishment. Section 27(1)(f) provides that every child has the right “to be free from corporal punishment and cruel and inhuman treatment by any person including parents...” Other than this, no other national laws have been passed which expressly prohibit parental corporal punishment on the rest of the continent, according to www.EndCorporalPunishment.org.

The United Nations Committee on the Rights of the Child has proposed that legal reforms concerning corporal punishment should be accompanied by awareness-raising and educational campaigns to promote positive forms of discipline. If the law should change with regards to corporal punishment, it would be of little use if parents were not made aware of this. The ban would also be much less effective if adults still believed that the use of corporal punishment was the best way to discipline a child. A public education campaign would be essential to change social and cultural acceptance of corporal punishment. The responsibility of this would fall on the government but civil society organisations and non-governmental organisations could assist in disseminating information and supporting parents in using methods of positive discipline. Even in States where parental corporal punishment is still lawful, such organisations could work to change the attitude of the general public and help educate adults about the negative impact of corporal punishment.

**CHANGING ATTITUDES TOWARDS CORPORAL PUNISHMENT**

Awareness must be raised of the harmful effects of corporal punishment. Such effects include that; corporal punishment could result in serious and permanent physical damage, or even death. Many cases of physical abuse of children have arisen from situations where corporal punishment was used. Parents may be angry when administering corporal punishment, as they are responding to their child’s perceived misbehaviour. Therefore it could be easy to underestimate the force they are using against the child.

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Also, if a child does not stop the offensive behaviour when hit, a parent may feel there is nothing more for them to do but hit harder. The fact that corporal punishment is often carried out repeatedly shows that it is not effective at preventing a child from misbehaving again, even if the child does stop that behaviour temporarily. Corporal punishment does not just harm children physically, it can also cause mental and emotional damage, and can ultimately affect the child's relationship with his or her parents.

As well as leading to physical, mental and emotional damage, corporal punishment can actually have the opposite effect on children than that which the parent desires. For instance, if a parent physically punishes a child for stealing, the child will not understand what is actually wrong with stealing. The child may then still attempt to steal items, but will make sure that this is done in a way that is hidden from the parents, so as to avoid physical punishment. Using corporal punishment to discipline children does not help shape their values or allow them to understand why some forms of behaviour are unacceptable, and therefore cannot be effective in the long-term. Hitting children also teaches them that it is acceptable to use violence when interacting with others. By hitting or caning children, adults send the message that it is acceptable to resort to violence as a solution and that it also fine to hit those who are smaller and weaker. If parents are made more aware of such issues, it may discourage them from using corporal punishment.

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Arguments against justifications for using corporal punishment should be made widely known. One relatively common justification is that it is a parent’s religious right to hit a child. Certain religious texts, from different religions, have been interpreted as allowing, if not even encouraging, parents to physically punish their children. Many also believe that disciplining children in this way is part of their culture. A director of an orphanage in Ghana commented that, “Caning has always been used in Africa. It is even in the Scriptures – spare the rod and spoil the child. It has always been the African style”. Historical studies have shown that using physical punishment as a form of control was introduced into African societies through colonialism and has since then, seemed to have become a part of the African culture.

Some adults may feel it is their right to hit their child. The child may be regarded as the parents’ “property”, so they may feel that the child can be treated however the parents wish. There is also a view of seeing a child as a human “becoming” rather than a human “being”. If a child is seen as someone who is just on their way to becoming an adult, rather than as a human being in their own right, it can make them more vulnerable to physical punishment and abuse. The idea of the child as the property of their parents or as a human “becoming” is in conflict with the image of the child supported by the CRC and ACRWC. The image of a child as someone who is entitled to respect needs to be promoted.

Parents may be concerned that if the law was changed with regards to corporal punishment, it will result in their actions of corporal punishment becoming criminalised for disciplining their children. In States around the world where corporal punishment in the home has been prohibited by law, the reform was used as an educative tool for parents. The aim was not to send parents to prison, but rather to raise awareness of the harm of corporal punishment and promote methods of positive discipline. It has been argued that prosecuting parents would not be in the best interests of the child, unless the level of violence is severe.

Parents who have become accustomed to hitting or beating their children may believe that this is the only possible way to discipline children. Such parents may also have been physically punished themselves, which could serve to legitimate this form of discipline in their minds. Methods of positive discipline must be promoted, as this too will enable corporal punishment to become socially unacceptable.

Childline South Africa, for example, has produced a booklet for parents, explaining other ways to discipline a child:1 It is important to remember the purpose of disciplining children. The aim behind parental discipline would most likely be to teach and guide children, helping them to learn appropriate behaviour and enabling them to become independent and responsible adults. While punishment, and in particular physical punishment, is often the method parents decide to use when disciplining their child, there are many other more effective ways they could do this.

If parents decide to use non-violent forms of punishment, it can help the child to understand the consequences of their actions, if a punishment is linked to what they have done wrong. For instance, if a child has to fix something he or she has broken; the child may be less likely to repeat that behaviour again. Positive discipline encompasses many ways to effectively discipline children, and not all of them involve punishment. For example, talking with a child about their misbehaviour, can give the child the chance to explain their actions, and allow the parents to say why they found his or her behaviour unacceptable. The child can then understand the reasons why he or she should not repeat that behaviour. There are many different methods of positive discipline that are appropriate for children of different ages. To encourage a move away from corporal punishment, information about positive discipline should be widely publicised and support offered to parents who are unsure about how to discipline their children without the use of corporal punishment.

**CONCLUSION**

A reform in the law with regards to corporal punishment must be accompanied by awareness-raising and educational campaigns, to ensure it is effective. However, work can and should begin, even while parental corporal punishment is still lawful in a State, to move towards making this form of punishment socially and culturally unacceptable. For this to happen, the negative effects of corporal punishment should be publicised, along with arguments against common justifications for the use of such punishment, and forms of positive discipline should be promoted. The ideal would be for parental corporal punishment to become legally, socially and culturally unacceptable in Africa and globally. Although that day may be a long way off, it is essential to keep working towards that goal, so that children can be raised without violence, just as they are entitled to be.

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