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CHILDREN AND CORPORAL PUNISHMENT:

“THE RIGHT NOT TO BE HIT, ALSO A CHILDREN’S RIGHT”

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Introduction

A majority of the Council of Europe member states have now committed themselves to put an end to all corporal punishment of children. Full prohibition in law has so far been adopted by 18 member states and at least seven others have publicly pledged to do the same within the near future.

The Commissioner for Human Rights has welcomed this development and urged other countries as well to consider moving towards prohibition and elimination of all corporal punishment against children. This Issue Paper explains why and gives background information on steps already taken by the European Court of Human Rights and other international and European human rights mechanisms.

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The problem is deep and serious. As part of their daily lives, children all over Europe are spanked, slapped, hit, smacked, shaken, kicked, pinched, punched, caned, flogged, belted, beaten and battered by adults – mainly by those whom they trust the most.

This violence may be a deliberate act of punishment or just the impulsive reaction of an irritated parent or teacher. In every case, it is a breach of fundamental human rights. Respect for human dignity and the right to physical integrity are universal principles. Yet social and legal acceptance of the hitting and other humiliating treatment of children by adults persists in most countries across the world.

Corporal punishment of children often becomes inhuman or degrading, and it always violates their physical integrity, demonstrates disrespect for human dignity and undermines self-esteem. Furthermore, the existence of special exceptions for violence against *children* in otherwise universally applicable laws against assault breaches the principle of equal protection under the law.

The invention of concepts such as ‘reasonable chastisement’ and ‘lawful correction’ in the law arises from the perception of children as the property of their parents. This is the modern equivalent of laws in force a century or two ago allowing masters to beat their slaves or servants, and husbands to beat their wives. Such ‘rights’ are based on the power of the stronger over the weaker and are upheld by means of violence and humiliation.

Children have had to wait until last to be given equal legal protection from deliberate assaults – a protection the rest of us take for granted. It is extraordinary that children, whose developmental state and small size is acknowledged to make them particularly vulnerable to physical and psychological injury, should be singled out for less protection from assaults on their fragile bodies, minds and dignity.

For women, challenging legal and social acceptance of violence, in particular the daily experience of routine violence in their homes, has been a fundamental part of the struggle for equal status. So it is with children: there is no more telling symbol of their downgrading than adults’ assumption that they have a ‘right’, even a duty, to hit children.

Definition of corporal punishment

The United Nations Committee on the Rights of the Child¹ has defined corporal punishment in these words:

“any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – 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 which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

Protection against corporal punishment is a human rights issue

We do nowadays talk about human rights also for children. Children are not any more “half” persons with a limited number of rights. This reflects an important change of attitude which made possible international treaties such as the United Nations Convention on the Rights of the Child.

The United Nations Convention on the Rights of the Child (CRC) is the most ratified human rights treaty. It has been ratified by all Member States of the Council of Europe. It is the first international human rights binding instrument to expressly address the protection of children from violence.

Article 19 of the Convention on the Rights of the Child requires states to 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”

Various other articles reinforce the child’s right to physical integrity and protection of his or her human dignity. The Preamble affirms that precisely because of their “physical and mental immaturity”, children need “special safeguards and care, including appropriate legal protection”. Article 37 requires protection from “torture or other cruel, inhuman or degrading treatment or punishment”.

The Council of Europe’s human rights mechanisms first challenged corporal punishment of children 30 years ago. In 1978, the European Court of Human Rights (ECtHR) found the judicial birching of a 15 year-old boy breached his right to protection from degrading punishment.² Subsequent decisions during the 1980s and early 1990s condemned school corporal punishment, first in state schools and later in private schools in the UK.³

¹ UNCR Committee, General Comment n°8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, 2 June 2006.
<http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.GC.8.pdf>

² European Court of Human Rights, *Tyrer v. UK*, 1978; all judgments of the Court are available at <http://hudoc.echr.coe.int/hudoc/>

³ European Court of Human Rights; see in particular *Campbell and Cosans v. UK*, 1982; *Y v. UK*, 1992; *Costello-Roberts v. UK*, 1993.

Other significant European Commission on Human Rights and European Court decisions have emphasised that rights to private or family life or to freedom of religious belief cannot be used as relevant arguments to reject banning all corporal punishment.⁴

The European Court issued its landmark *A v UK* judgment in 1998, its first ruling concerned with parental corporal punishment, and one of the relatively few cases brought before the Court by a child applicant.⁵ “A”, a young English boy, had been beaten by his stepfather with a cane, causing bruising. The stepfather was prosecuted but was acquitted, using the common law defence of “reasonable chastisement”.

The European Court found that the boy’s right to protection from degrading punishment had been breached, and that the UK was responsible because its law, allowing “reasonable chastisement”, failed to provide adequate protection including effective deterrence. It ordered the UK to pay the boy £10,000.

The execution of this judgment by the United Kingdom authorities is still being supervised, nearly 10 years later, by the Committee of Ministers.⁶ The UK’s response to date has been to revise the “reasonable chastisement” defence, but not to remove it completely. As asserted by the UK’s Children’s Commissioners and a very large alliance of NGOs⁷, this approach leaves children with less protection than adults under the criminal law on assault.

The European Committee of Social Rights (ECSR) has stated that corporal punishment was not in accordance with human rights standards as defined by the Social Charter. It considers that “*Article 17 [of the Social Charter] requires a prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere. It furthermore considers that any other form of degrading punishment or treatment of children must be prohibited in legislation and combined with adequate sanctions in penal or civil law.*”⁸ This prohibition includes forms of punishing which do not necessarily involve the use of physical force, such as isolating or humiliating children.

In examining Member States reports under Article 17, the Committee asks questions about the legality of corporal punishment, in the home, schools and other institutions and day-care. In its Conclusions concerning many countries, the ECSR has found, since 2003, a breach of the Social Charter because corporal punishment of children is not prohibited⁹.

In 2005, the Committee issued its decisions on a series of collective complaints, brought under the Additional Protocol to the Social Charter by the World Organisation against Torture; in three cases, States were found to be not in compliance because of the lack of effective legislation prohibiting corporal punishment. In two other decisions, on complaints against Italy and Portugal, the Committee found that Supreme Court decisions in those countries which had declared corporal punishment to be unlawful were sufficient to comply with article 17.¹⁰

⁴ European Commission on Human Rights, admissibility decision, *Seven Individuals v. Sweden*, 1982; application no. 8811/79; European Court of Human Rights, decision on admissibility, *Philip Williamson and Others v. UK*, 2000; application no. 55211/00

⁵ European Court of Human Rights, *A v. UK*, 1998

⁶ Committee of Ministers, supervision of execution of judgments of the European Court of Human Rights; annotated agendas are available at http://www.coe.int/t/cm/humanRights_en.asp

⁷ Submissions from Children’s Commissioners for England, Northern Ireland, Scotland and Wales (May 2007); also from Dame Mary Marsh, Director and Chief Executive, National Society for the Prevention of Cruelty to Children and “Children are unbeatable!” Alliance, May, October and November 2007

⁸ Conclusions XV-2, Vol. 1, General Introduction.

⁹ For details of the reporting process under the European Social Charter and Revised Social Charter, see http://www.coe.int/t/e/human_rights/esc/3_Reporting_procedure/default.asp#TopOfPage

¹⁰ European Committee of Social Rights, decision on collective complaints No. 17/2003 OMCT vs. Greece, No. 18/2003 OMCT vs. Ireland and No. 21/2003 OMCT vs. Belgium. In two other decisions, the Committee found that Supreme Court decisions in Italy and Portugal were adequate to comply; No. 19/2003, OMCT vs. Italy and No. 20/2003, OMCT vs. Portugal; a further complaint was made against Portugal in 2006 – see note 13. For details see http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/List_of_collective_complaints/default.asp#TopOfPage

But in 2006, Portugal's Supreme Court issued a decision which condoned corporal punishment, thus effectively reversing previous decisions of the Court. A further collective complaint was submitted and in a unanimous and detailed decision issued in December 2006, the ECSR concluded: "To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children.

"The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.¹¹

Thus, the ECSR has emphasised the inadequacy of achieving prohibition simply through high-level court decisions; explicit legislation is needed, together with other necessary educational measures. During 2007, Portugal adopted legislation confirming explicit prohibition.

Progress towards ending corporal punishment of children at global level

There is a global context for making quick progress: the key message of the United Nations Secretary General's Study on Violence against Children, reported to the General Assembly in October 2006, is that no violence against children is justifiable; all violence against children is preventable. The Study urges all States to move quickly to prohibit all forms of violence against children – including all corporal punishment – setting a target of 2009.

"The Study should mark a turning point - an end to adult justification of violence against children, whether accepted as 'tradition' or disguised as 'discipline'. There can be no compromise in challenging violence against children. Children's uniqueness - their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence."

At present, globally, some 23 states have prohibited all corporal punishment, including in the family.

The UN Committee on the Rights of the Child has consistently recommended the prohibition of all corporal punishment, including in the family, and suggested that campaigns be carried out to raise awareness of its negative effects and to encourage the development of positive, non-violent child-rearing and educational practices.¹² Human rights are universal, and UN Committees monitoring the implementation of other international instruments, including the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights, have also condemned corporal punishment of children.

Vocal opposition to banning all corporal punishment comes in some countries from minority religious groups, quoting texts which, they believe, give them a right or even a duty to discipline their children with violence. While freedom of religious belief should be respected, such beliefs cannot justify practices which breach the rights of others, including children's rights to respect for their physical integrity and human dignity.

Mainstream faith communities and respected leaders are now supporting moves to prohibit and eliminate all violence against children. For example, the World Conference of Religions for Peace, comprising over 800 faith leaders, adopted "A Multi-Religious Commitment to Confront Violence against Children" in 2006. It called on governments "to adopt legislation to prohibit all forms of violence against children, including corporal punishment, and to ensure

¹¹ Collective complaint No. 34/2006, OMCT vs. Portugal, decision on the merits, December 2006, paras. 19 – 22)

¹² All of the CRC Committee documents are at <http://www.ohchr.org/english/bodies/crc/index.htm>. For an analysis of the Committee's comments related to corporal punishment, see www.endcorporalpunishment.org

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”.¹³

Progress towards ending corporal punishment of children in Europe

Though some progress has been made in efforts against corporal punishment, it is clear that this form of abuse has an alarming frequency and prevalence all over the world. Statistics show that it is a world-wide phenomenon which affects children irrespective of their country or social origin. The prevalence of corporal punishment has been substantiated by interview surveys conducted in a number of countries with parents, other carers and increasingly with children to determine more about why and how often corporal punishment occurs.

In its Recommendation 1666 (2004) calling for a Europe-wide ban on corporal punishment of children, the Parliamentary Assembly of the Council of Europe considered that

“any corporal punishment of children is in breach of their fundamental right to human dignity and physical integrity. The fact that such corporal punishment is still lawful in certain member states violates their equally fundamental right to the same legal protection as adults. The social and legal acceptance of corporal punishment of children must be ended.”

Therefore the Recommendation called for a coordinated and concerted campaign for the total abolition of corporal punishment of children. Noticing the success of the Council of Europe in abolishing the death penalty, it called for Europe to become, as soon as possible, “a corporal punishment-free zone for children.”

The Committee of Ministers of the Council of Europe has for more than 20 years encouraged Member States to prohibit corporal punishment. It started in 1985 with a Recommendation of which the preamble notes that “the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them”. The explanatory memorandum describes corporal punishment as “an evil which must at least be discouraged as a first step towards outright prohibition. It is the very assumption that corporal punishment of children is legitimate that opens the way to all kinds of excesses and makes the traces and symptoms of such punishment acceptable to third parties”. This condemnation was echoed in further recommendations in 1990 and 1993.¹⁴

The Committee of Ministers has insisted on the need to begin, in all Member States, a coordinated and concerted campaign for the abolition of all violence against children. Therefore, in order to pursue that objective, it announced a comprehensive three-year programme of action on “Children and Violence” with the following objectives:

- assist member states in implementing international standards at national and local levels, in particular the United Nations Convention on the Rights of the Child, the European Social Charter and the European Convention on the Exercise of Children's Rights;
- by 2008, to propose a coherent and comprehensive set of instruments and methodological guidelines covering all aspects of the question;
- improve the visibility and the impact of Council of Europe's work in the field¹⁵.

¹³ Declaration on Violence against Children, endorsed at the 8th World Assembly of the World Conference of Religions for Peace, Kyoto, August 2006

¹⁴ Council of Europe Committee of Ministers, Recommendations on: “Violence in the family” (R (85) 4), “Social measures concerning violence within the family” (R (90) 2) and “The medico-social aspects of child abuse” (R (93) 2). All recommendations are available at http://www.coe.int/t/E/Committee_of_Ministers/Home/Documents/

¹⁵ Reply adopted by the Committee of Ministers to Parliamentary Assembly Recommendation 1666 (2004), 20 April 2005, CM/AS(2005)Rec1666 final

Banning corporal punishment at national level

There is encouraging and accelerating progress across the Council of Europe's 47 Member States towards achieving the goal of eliminating all corporal punishment of children. By January 2008, 18 Member States had adopted full prohibition and at least another seven had publicly committed themselves to achieving this goal in the near future. In addition, the Supreme Court of Italy has outlawed it, but this judgment is not yet reflected in specific law. If these States fulfil their commitment, Europe will be more than halfway to universal prohibition.

European countries which have banned corporal punishment in legislation are:

Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1983), Germany (2000), Greece (2006), Hungary (2004), Iceland (2003), Latvia (1998), Netherlands (2007), Norway (1987), Portugal (2007), Romania (2004), Spain (2007), Sweden (1979) and Ukraine (2001)

European countries that have committed themselves to banning it in the near future

Czech Republic, Estonia, Ireland, Lithuania, Luxembourg, Slovakia and Slovenia

During 2007, the Commissioner wrote to the Heads of Government in those Member States which have yet to reform their laws adequately. In their responses, no state defended the use of corporal punishment. Seven indicated that reforms to prohibit all corporal punishment were in progress. Some of the others replied that their existing law was sufficient, but demonstrated an open attitude towards further progress and considering explicit reform.

The purpose of criminalizing all corporal punishment is not, of course, to prosecute and punish more parents. It satisfies human rights by giving children equal protection of their physical integrity and human dignity. It gives a clear message that hitting children is wrong – at least as wrong as hitting anyone else. Thus it provides a consistent basis for child protection and for public education promoting positive forms of discipline. As attitudes change, so the need for prosecution and for formal interventions into families to protect children will diminish.

The goals of the ban in Sweden were to alter public attitudes towards corporal punishment, establish a clear framework for parent education and support, and facilitate earlier and less intrusive intervention in child-protection cases. Public support for corporal punishment has declined markedly. Whereas in 1965 a majority of Swedes were supportive of corporal punishment, a recent survey found only six per cent of under-35-year-olds supporting the use of even the mildest forms. Practice has also changed; of those whose childhood occurred shortly after the ban, only three per cent report harsh slaps from their parents, and only one per cent report being hit with an implement. Child abuse mortality rates are extremely low in Sweden.

Increased sensitivity to violence against children in Sweden has led to an increase in reporting of assaults, but there has been a declining trend in prosecutions of parents, and a substantial reduction in compulsory social work interventions and in numbers of children taken into care. Public attitudes towards hitting children have changed, which has facilitated early supportive intervention in individual cases.

Of course, eliminating corporal punishment requires more than legislation prohibiting it. Sustained public education and awareness-raising of the law and of children's right to protection is required, together with promotion of positive, non-violent relationships with

children. A Committee of Ministers' recommendation adopted in 2006 defines positive parenting as "parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child".¹⁶

In 2008, the programme "Building a Europe for and with children" will launch a Europe-wide initiative, promoting law reform, positive parenting and public education through the production of user-friendly information and communication material developed to be used as campaign resources within its 47 Member States.

In states which have not yet achieved full prohibition, the public needs to be reassured that the first purpose of prohibition of corporal punishment in the family is educational, not punitive. The existence of the law emphasises that it is no more acceptable or lawful to hit a child than to hit anyone else and the law is there when necessary to protect children from significant harm. Prosecution of parents and other formal, as opposed to supportive, interventions should be reserved for serious cases. As the UN Committee on the Rights of the Child advises:

"The first purpose of law reform to prohibit corporal punishment of children within the family is prevention: to prevent violence against children by changing attitudes and practice, underlining children's right to equal protection and providing an unambiguous foundation for child protection and for the promotion of positive, non-violent and participatory forms of child-rearing [...]"

The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The de minimis principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions."¹⁷

Implementation of prohibition requires guidance to all those working with children and families and sustained, long-term public education to challenge the deeply ingrained tradition of violent and humiliating discipline.

Conclusions

The imperative for removing adults' assumed rights to hit children is that of human rights principles. It should therefore not be necessary to prove that alternative and positive means of socializing children are more effective. However, research into the harmful physical and psychological effects of corporal punishment in childhood and later life and into the links with other forms of violence do indeed add further compelling arguments for banning the practice and thereby breaking the cycle of violence.

The Commissioner hopes that those Council of Europe Member States – a minority now – which have not reformed their legislation or committed themselves to doing so will recognise this as a priority. Among this minority, a very small number have explicit defences in their criminal or civil law, or common law, confirming parents' freedom to use some degree of violent discipline. These must of course be removed completely. In the other states, the law is silent, but nevertheless parents' "right" to use corporal punishment is assumed. Advice from

¹⁶ Committee of Ministers Recommendation (2006) 19, on policy to support positive parenting, 13 December 2006

¹⁷ CRC Committee, General Comment n°8, paras. 38 and 40

the Committee on the Rights of the Child, echoed by the European Committee of Social Rights suggests that explicit prohibition is required to put beyond doubt that the criminal law on assault does apply equally to assaults on children, whether or not disguised as discipline.

A Europe without corporal punishment does not only require amendment to national laws, banning such practices. Any national strategy for the elimination of corporal punishment has to include a combination of short-term measures including legal reform to prohibit clearly all forms of corporal punishment and longer-term measures to influence social attitudes and promote positive alternative methods of relating and communicating. Any strategy should include the following steps:

- review of existing legislation to ensure effective prohibition of all corporal punishment;
- awareness-raising among parents and professionals working with children about the rationale for abandoning corporal punishment as a form of discipline in the home and in institutions - this could include information on legal reform against corporal punishment in other countries and its positive effects;
- information to children about their rights, including the right to be treated with respect. This should be part of the school curriculum but also be disseminated through the mass media;
- clear guidance to teachers and pre-school staff, health personnel, social workers and other key professionals on their role in preventing such violations and how to respond in concrete situations when there are indications that a child may suffer violence and need help;
- research in order to develop a better understanding of the magnitude and nature of the practice and to identify groups of children at particular risk, and
- parenting education courses and discussions – involving children – on child-rearing practices and positive, non-violent forms of discipline in homes, schools and institutions.

All these steps will require awareness-raising among politicians and other decision-makers, and for this NGOs, professional groups and media are of strategic importance.

Sadly, the issue of corporal punishment has tended to fall off political and other adult agendas, even the agendas of strong human rights advocates. Its low priority is probably because of the very personal nature of the problem – most adults, all over the world, were hit as children and may have hit their own children. Politicians find it an unpopular issue; it is easier to focus only on extreme forms of violence to children and on violence by children, against which there is already a popular consensus. Also, many politicians are particularly wary of interference in the traditionally 'private' arena of the family.

All of this may be understandable but does not provide good excuses. Non-violent conflict resolution, tolerance and respect for others should be taught through setting good examples. 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.