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The Convention on the  
Rights of the Child  
in relation to  
Corporal Punishment

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# Summary

## Summary in English

Corporal punishment of children is a widespread practice across the world. The implications of such violence consist of both physical and mental injuries and children are very vulnerable to such treatment. The Convention on the Rights of the Child was put into place, by States from all across the world, for the purpose of granting children a better protection in society. Today, all but two States in the world have ratified this wide-ranging convention granting children rights of both a civil and political as well as an economic, social and cultural nature.

The preamble of this convention recognizes the physical and mental immaturity of children and their need of special protection. It also recognises the need for children to be brought up in a caring and loving environment and in an atmosphere of peace, tolerance and equality. The main principles of the Convention provides for non-discrimination, the principle of the best-interest of the child, a right to life, survival and development as well as a right to participation in decision-making. The same convention also provides for specific rights of protection from violence, both when it is conducted by State officials and by private individuals. Such protection should be granted to children in all settings.

In order for these rights to be granted to children within the jurisdiction of the State parties, the Convention contains obligations that need to be fulfilled. Some are of a legislative nature, others are concerned with protection measures or awareness-raising. No mechanism allows for enforcement of the fulfilment of these obligations at the national level. The implementation and realization of these rights is instead monitored at the international level through a State reporting system. The State parties submit reports on their progress to a Committee of experts established under the Convention. The rights and obligations that are in place are very wide-ranging and clearly stated so as to offer children a full protection from violence such as corporal punishment.

Unfortunately, this has only been the reality in 12% of the State parties. Even though the Committee and NGOs repeatedly have urged Governments to take action to stop such acts, little has been done. General Comments and Concluding Observations have been produced to describe the State obligations and the content of the rights in place. Alternative reports have been sent to the Committee by the NGOs to reveal violations in the State parties, since the State reports tend to be non-objective. The problem with the widespread use of corporal punishment can be solved with the use of the CRC, but only if the States chose to implement them and take them seriously.

### Sammanfattning på svenska

Barnaga och andra former av barnmisshandel är ofta förekommande världen över. Denna typ av våld resulterar i både fysiska och psykiska skador hos barnen, vilka är mycket sårbara för sådan behandling. Förenta Nationernas barnkonvention upprättades av Stater från hela världen för att se till att barn tillerkändes bättre skydd och säkerhet i samhället. Idag har alla utom två länder i världen ratificerat denna heltäckande konvention som tillhandahåller både medborgerliga fri- och rättigheter, men också ekonomiska, sociala och kulturella rättigheter.

Inledningen till denna konvention bekräftar barnets fysiska och mentala omognad och deras behov av extra skydd och säkerhet från samhällets sida. Den beskriver också barnens behov av att växa upp i en miljö fylld av omtanke, kärlek, fred, tolerans och jämlikhet. De grundläggande principerna i barnkonventionen föreskriver icke-diskriminering, principen om barnets bästa, rätt till liv och utveckling samt rätten att komma till tals. Barnkonventionen innehåller också särskilda rättigheter till skydd från våld, både då dessa handlingar har utförts av staten och av privata individer. Detta skydd ska tillfalla barnen i samtliga situationer och miljöer.

För att förverkliga dessa rättigheter innehåller konventionen också skyldigheter som staterna ska uppfylla. Vissa innebär att lagar ska överensstamma med konventionens artiklar. Andra kräver att staterna företar speciella skyddsåtgärder eller utbildnings- och kampanjåtgärder. Det finns idag ingen mekanism som kan åberopas för att utkräva att dessa skyldigheter uppfylls på det nationella planet. Implementeringen och realiseringen av dessa rättigheter kontrolleras istället i ett internationellt forum med hjälp av rapporter. Staterna skickar rapporter på sina framgångar med implementeringen till en expertkommitté tillsatt under konventionen för just detta ändamål. Rättigheterna och skyldigheterna som denna konvention tillhandahåller är mycket omfattande och klargörande för att erbjuda barn skydd mot våld, tex. barnaga.

Tyvärr har detta bara blivit verklighet i 12% av alla medlemsstater. Detta trots att expertkommittén och NGOs ett flertal gånger bett regeringar att agera för att stoppa dessa våldshandlingar. General Comments och Concluding Observations har producerats för att förklara staternas skyldigheter och innehållet i artiklarna. Alternativa rapporter har skickats in av NGOs för att klargöra och påvisa kränkningar av konventionen, eftersom staternas egna rapporter ofta förefaller subjektiva. Problemet med den utbredda användningen av barnaga skulle kunna lösas med hjälp av Förenta Nationernas Barnkonvention och de rättigheter och skyldigheter som den erbjuder, men bara om staterna väljer att ta dem på allvar och överför dem till det nationella rättssystemet.

# Abbreviations

CRC	Convention on the Rights of the Child
CCRC	Committee on the Convention on the Rights of the Child
CAT	Convention Against Torture
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
NGO	Non-Governmental Organization
GC	General Comment
CO	Concluding Observation
AfCHPR	African Court of Humans and Peoples Rights
AmCHR	American Court of Human Rights
UNICEF	United Nations Children's Fund
UNESCO	United Nations Economic Social and Cultural
WHO	World Health Organisation

# 1 Introduction

## 1.1 Purpose

The purpose of this Graduate thesis is to examine and discuss the effectiveness of the Convention on the Rights of the Child in relation to corporal punishment of children. At the moment only 24 out of all the State parties to the Convention have fully abolished corporal punishment of children. How is this compatible with the children's rights in the CRC and why is this still the case almost twenty years after the Convention entered into force? The main questions that will need to be answered in order to analyse the effectiveness of the CRC when it comes to the issue of corporal punishment of children are:

1. Do the articles in the CRC effectively cover a right to protection from acts of corporal punishment?
2. Are the State obligations, provided for in the CRC, enough to efficiently prevent and stop such violence?
3. Is the monitoring system of the CRC effective to enforce these rights and obligations?

## 1.2 Outline

The subject of corporal punishment will be introduced in the background of the thesis through a description of such acts, its widespread use across the world along with explanations of its impact and effect on children both mentally and physically. After this introduction, the relevant articles in the Convention on the Rights of the Child will be described. The ones that have been used in this thesis are the four general principles guiding the interpretation of all the other articles, as well as three articles that are in place specifically to protect children from violent acts. In order to examine whether the Convention is an effective mechanism to eradicate the use of corporal punishment it has also been necessary to examine the State obligations that are acquired when ratifying the CRC.

After a presentation of the articles granting States these obligations, the monitoring system of the Convention is described. The work of the Committee that analyses the State reports is presented along with its comments on the issue of corporal punishment in the State reports from the last ten sessions. In the analysis, the use of corporal punishment and its incompatibility with the Convention on the rights of the Child will be discussed, both in relation to the general principles and in relation to the articles that specifically prohibit acts of violence. The State obligations importance to realize these rights will be discussed as well as the efficiency of the current monitoring system in enforcing the rights in the State parties. The conclusion will provide answers to the three questions above.



## **1.3 Method**

The method used to produce this Graduate Thesis was first to determine its purpose and aim. After the purpose was established, the first task was to identify and interpret the articles in the CRC relevant to the issue of violence against children and corporal punishment, as well as those concerned with State obligations and the monitoring mechanisms. In order to interpret the meaning of these articles it was necessary to look at the preparatory work of the CRC as well as the General Comments on their interpretation, produced by the Committee on the Rights of the Child. Other decisions and recommendations of this body were also relevant. The status of the use of corporal punishment in the world has been described with the help of NGO reports on the issue. It has also been important to look at State reports and the Concluding observations to identify the manner in which the States are complying with their obligations under this convention. The subject matter of corporal punishment has also been commented on in various literature and articles. Case law from various Human Rights Courts and Commissions, on the State responsibility for acts of corporal punishment within their jurisdiction, has also been analysed.

## **1.4 Sources**

The Convention on the Rights of the Child has been used as a source, when analysing the rights that are in place to protect children from violence such as corporal punishment. Other articles in this convention have also been used to describe the State obligations and the monitoring mechanisms. The preparatory work of the convention as well as general comments have been used to interpret the meaning of these articles and obligations. For this purpose, it has also been relevant to look at case law from Human Rights Courts with similar articles and rights. In order to examine the progress made by States, their reports have been analysed. Since these tend to be non-objective, the focus has been on the concluding observations made by the Committee. Articles in international journals on Children's rights have been relevant to identify expert opinions on the issue of corporal punishment and the efficiency of the CRC monitoring system. Other human rights conventions have been used to describe positive examples of enforcement mechanisms and monitoring systems other than that in the CRC.

## 2 Background

### 2.1 Corporal punishment today

Today children worldwide are being “spanked, slapped, hit, smacked, pinched, paddled, caned, flogged, belted, beaten and battered by adults – mainly by those whom they trust the most”.<sup>1</sup>

Corporal punishment can be defined as the use of physical force that is intended to cause pain or discomfort for the person it is aimed at, but can also be psychologically damaging, causing depression and low self-esteem of the victim. Such violence is usually committed in situations of discipline, correction, for educational purposes etc. It is difficult to know the extent of this type of violence since it is usually unreported, committed within the family and it is difficult to obtain information from young children that have been victimised. Statistics show that millions of children are being subjected to different forms of corporal punishment in almost every society in the world and usually by someone who is in charge of their care.<sup>2</sup>

There are formal and informal forms of corporal punishment. The formal punishment is regulated by the State and could for example be explained as the punishment administered within the penal system. Informal corporal punishment is the kind of corporal punishment that is occurring without state interference, such as different types of disciplinary punishment within the family, in schools, orphanages and in care institutions. The latter of these two forms is the one least regulated worldwide today and that is why this thesis will focus on punishments of this sort.<sup>3</sup>

Teaching children right from wrong through various forms of discipline is a central part of family life and a child’s upbringing. Punishment is one method commonly used by parents to change a child’s inappropriate behaviour, since there is a belief that pain and fear will result in good conduct. Unfortunately, research has shown that this is not the case. It may stop offending behaviour temporary, but will in the long run result in negative feelings, aggression, mistrust and disrespect.<sup>4</sup> In some States, corporal punishment of children is legal due to the defence of reasonable correction. Case law however, has shown that the punishment is usually perpetrated for other reasons, such as anger, frustration and bad temper.<sup>5</sup>

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<sup>1</sup> Petré, Alfhild, Himes, James “Childrens Rights – Turning Principles into Practice” p.123

<sup>2</sup> Save the Children “Corporal punishment” April 2003 International Save the Children Alliance Position on Corporal Punishment

<sup>3</sup> Van Bueren, Geraldine “Childhood abused...” article by Ennew, Judith “Shame and Physical Pain: Cultural Relativity, Children, Torture and Punishment” p. 21

<sup>4</sup> Turner, Susan M “Justifying corporal punishment loses its appeal” IJCR Volume 11 p. 219-233

<sup>5</sup> McGillivray, Anne “He’ll learn it on his body: Disciplining childhood in Canadian Law “ p. 197, 236, 237

The problem is that these types of actions if perpetrated against an adult would amount to assault or battery. The right to be free from violence is a basic human right for adults. Should this not be the case for children as well?<sup>6</sup>

Corporal punishment of children is still socially accepted and legal in many countries of the world. Only 23 States have legislation in place that fully abolishes this type of violence. These States are: Sweden (1979), Austria (1989), Latvia (1998), Ukraine (2004), Israel (1999), Greece (2006), Finland (1983), Cyprus (1994), Croatia (1999), Germany (2000), Romania (2004), Netherlands (2007), Norway (1987), Denmark (1997), Bulgaria (2000), Iceland (2003), Hungary (2004), New Zealand (2007), Portugal (2007), Uruguay (2007), Spain (2007), Venezuela (2007) and Chile (2007). Italy has a prohibition according to a judgment, but not in law.<sup>7</sup> The situation in the other countries worldwide varies. In some States there is a prohibition of corporal punishment in schools and when conducted by State officials, but not when conducted at home. In these States, corporal punishment is seen as a socially accepted method of discipline within the family.

In case of numbers and life-long impact, such violence against children is much more serious than other large-scale and horrifying forms of violence that dominates the news. The fact is that this violence is seen as a minor problem and that is really serious. The type of violence conducted against children differs depending on their gender. Girls are more likely to be victims of sexual abuse, honour killings and traditional harmful practices, whereas boys due to social values are victims of more brutal forms of discipline in schools and within the home.<sup>8</sup> In States where the use of such violence has been prohibited, such laws and regulations have usually been put in place against the majority view of parents.<sup>9</sup>

Recent research has shown that the social acceptance of the use of corporal punishment is very widespread, but is starting to decrease in some parts of the world. In Australia 69 % of the respondents to a research held that the use of corporal punishment of children was sometimes necessary. In Belgium 77% said it was acceptable for parents to use corporal punishment. In Italy, this figure was 69%. In Peru 80 % of the respondents agreed that such violence was necessary to educate children and in Singapore 7 out of 10 agreed with this. Caning in schools was supported by 60% of the respondents in Jamaica. In some States, it was identified that the support for such violence against children was decreasing. This was the case in countries like Sweden and Spain.<sup>10</sup> On the other hand, recent research in

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<sup>6</sup> Dobbs, Smith, Taylor “No, We Don’t Get a Say, Children Just Suffer the Consequences” p. 138, Bartman, Angela “Spare the Rod and Spoil the Child? Corporal Punishment in schools around the world.” p. 1-4

<sup>7</sup> [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org), see supplement B, [www.stophitting.com](http://www.stophitting.com)

<sup>8</sup> CRC/C/103 General discussion “Violence against children within the family and in school” p. 5

<sup>9</sup> [www.crin.org/docs/resources/treaties/crc.28/SC-UK-ES-S.pdf](http://www.crin.org/docs/resources/treaties/crc.28/SC-UK-ES-S.pdf) “Ending Corporal Punishment of Children: Making it happen” Save the Children 2001 p. 5, 7

<sup>10</sup> [www.endcorporalpunishment.org/pages/research/combined.html](http://www.endcorporalpunishment.org/pages/research/combined.html)

Sweden has shown that the use of corporal punishment is beginning to increase from 12 % of parents using such violence in 2000 to 23% in 2006.<sup>11</sup>

The UN General Assembly conducted a Study on Violence against Children in 2001. It was led by the independent expert Mr Paulo Sergio Pinheiro who presented it to the General Assembly in 2006. The conclusion of this study was that no violence against children is justifiable and that all violence against children is preventable. During the study it became clear that acts such as corporal punishment and child abuse exist in all countries of the world even if this is contrary to the CRC and the most common setting in which it took place was within the family. Children are subjected to violence because it is socially accepted and sometimes legal and State authorized.<sup>12</sup> Impacts of this type of violence were identified as lifelong social, emotional and cognitive impairments, but also anxiety, depressive disorders, aggressive behaviour and suicide attempts.<sup>13</sup>

The study further noted that violence against children tended to be unreported and hidden for a number of reasons. Children are usually scared of telling for the fear of reprisals, but these acts are also unreported and under-recorded because of the social acceptance that it is something normal. Usually there is no safe way for children to report such violence and another problem is that the perpetrators are usually people who have very close relationships with the child or otherwise play a big part in his or her life. The study says that up to 80 to 98% of children suffer physical punishment in their homes. The progress made by States to prevent it was identified as of a predominantly legislative nature.<sup>14</sup>

Defences and justifications of corporal punishment are used worldwide and there are many arguments used in favour of such acts. Some say that there is a need for this type of punishment of children in order to teach them what is right from wrong. Others use it to teach children to be respectful of elders and to be obedient. In most cases, corporal punishment is considered as a private family issue with which the public or the State should not interfere. Other arguments in favour are those of difficult family situations such as poverty, overcrowding and stress.<sup>15</sup>

Teachers worldwide are using corporal punishment for a number of reasons. Sometimes a child will be hit for misbehaving, other times it is used as a punishment for poor performance. One of the countries where such practice has been widespread is Kenya in which the Human Rights Watch has made a report on the matter. The use of corporal punishment was stated to be very common in the Kenyan schools and the perpetrators (the teachers) were very

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<sup>11</sup> <http://hd.se/familjeliv/2007/10/27/allt-fler-ruskar-om-sina-barn/>

<sup>12</sup> United Nations Study on Violence against Children, General Assembly 61/299, p.5,13,14

<sup>13</sup> United Nations Study on Violence against Children, General Assembly 61/299 p. 12

<sup>14</sup> United Nations Study on Violence against Children, General Assembly p.8, 9, 22, WHO World Report on Violence and Health, p.59-62

<sup>15</sup> Save the Children "Corporal Punishment" April 2003 p. 2-6

rarely held accountable for these injuries. Even when children died from such violence, the teachers were acquitted, since the cause of death was said to be an underlying unknown medical condition of the child.<sup>16</sup>

The use of corporal punishment can as a conclusion be said to exist worldwide, in all areas of society and it leads to very serious consequences for the children it is being administered at. The fact that such violence is still in place and legally accepted shows the children's low status and lack of power in society.<sup>17</sup> The rights that children should be offered according to the CRC will now be discussed.

## 2.2 Convention on the Rights of the Child

One of the main objectives of the Convention is to put children's issues high on the political agendas. A Declaration on the Rights of Children was put into place in 1924. It was later replaced by another, longer declaration in 1959. In the 1970s, the United Nations decided it was time for this Declaration to be replaced by a binding Convention. Most States already agreed upon the principles in these earlier declarations, but there were objections to an adoption of a convention, since some argued that children's human rights were already governed by the other human rights covenants. These objections were silenced when it became clear that the existing covenants could not offer the children the special protection that they are in need of. It was also understood that the interest of the child and its carer are not necessarily the same and it was made clear that children in many cases needed to be protected from bad treatment within the family settings.<sup>18</sup> The United Nations Commission on Human Rights worked together with a special working group and different NGOs to produce the text of such a Convention and in 1989 it was ready for adoption. It was said that the philosophy behind it is that children shall be seen as equals to adults and holders of human rights.<sup>19</sup>

The Convention on the Rights of the Child was adopted by the United Nations General Assembly on 20 November 1989 and entered into force one year later. It was created because of the particular care that should be given to children and it recognizes that the child needs special protection "by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". In the preamble of the convention the inherent dignity and equal and inalienable rights of all human beings was recognized as well as the fact that

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<sup>16</sup> <http://www.hrw.org/reports/1999/kenya/Kenya999-05.htm>,  
<http://hrw.org/english/docs/1999/09/kenya1654.htm>, Human Rights Watch Report "Easy Targets – Violence Against Children Worldwide" By Jo Becker, September 2001

<sup>17</sup> Petré, Alfhild; Himes, James "Children's Rights – Turning principles into practice" p.123

<sup>18</sup> Asquith, Hill "Justice for children" p.60, 61, Detrick, Sharon; Doek, Jaap; Cantwell, Nigel "The United Nations Convention on the Rights of the Child – A guide to the Travaux Préparatoires" p. 19-22

<sup>19</sup> Asquith, Hill "Justice for Children" p.62

the family is the fundamental group in society in which children shall be brought up. This is said to be important for their growth and well-being and this family environment should consist of peace, dignity, tolerance, freedom, equality and solidarity.<sup>20</sup>

The rights contained in the Convention on the Rights of the Child are to be granted to all children living in countries that are State parties to the Convention. It contains all categories of human rights such as civil, political, economic, social and cultural rights. According to the Conventions first article, a child is defined as “every human being under the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”.<sup>21</sup> This means that a child is to be identified as an individual person and a holder of human rights. A child should never be seen as a possession of a parent or the State.<sup>22</sup>

## 2.2.1 Main principles

There are four main principles in the CRC that are of great importance to children. These are the right to non-discrimination, the principle of the best interest of the child, the right to life, survival and development and the right to participation. When interpreting any other articles in the CRC these principles shall be used as a guide.<sup>23</sup>

### 2.2.1.1 Non-discrimination

The rights in the CRC are to be respected and ensured to all children within the jurisdiction of the State parties and without discrimination of any kind.<sup>24</sup> In other words, the States that are parties to the CRC must not only respect the articles in the CRC, but must actively protect and provide for the fulfilment of these rights.<sup>25</sup> Concerning the question of discrimination, it does not mean that children have to be treated in an identical matter. It is for example required that States in some cases take special measures to diminish or eliminate conditions that cause the discrimination.<sup>26</sup> This principle also means that a child shall not be discriminated against because of the fact that he or she is a child.<sup>27</sup> Discrimination can be defined as “any distinction that has the purpose or effect of nullifying or impairing the

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<sup>20</sup> Convention on the Rights of the Child Preamble

<sup>21</sup> Convention on the Rights of the Child article 1

<sup>22</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.” p.12

<sup>23</sup> Hollander, Anna; Nygren Rolf; Olsen, Lena ”Barn och Rätt – Barn som aktörer” p. 34, 35

<sup>24</sup> Convention on the Rights of the Child article 2

<sup>25</sup> Petrán, Alföld, Himes, James “Childrens Rights – Turning Principles into Practice” p. 17

<sup>26</sup> CRC/GC/2003/5 General Comment No 5 “General measures of implementation for the Convention on the Rights of the Child.” CRC/GC/2003/5 p.4

<sup>27</sup> Susan Bitensky, “Spare the Rod, Embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children” University of Michigan Journal of Law Reform Winter 1998, p. 15, Petrán, Himes “Children´s Rights” p. 16

recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms”.<sup>28</sup>

### **2.2.1.2 Best interest of the child**

In all situations concerning a child, the best interest of the child “shall be a primary consideration”.<sup>29</sup> This means that in all actions that are being taken on behalf of the child, by “public or private social welfare institutions, courts, administrative authorities or legislative bodies”, it must be determined that the decision that is about to be made will be the best one for the child.<sup>30</sup> The interest of the child and the interest of the parent or the State are not always the same and in these cases the CRC says that their interests are not the all-important consideration, so is the child’s. In the preparatory work, it was decided to use the term “a” primary consideration instead of “the” primary consideration.<sup>31</sup>

The best interest of the child is a principle that should guide the interpretation of all other articles in the CRC and it is applicable both in cases of an individual child or children as a group. A definition of what is in the best interest of a child is found when looking at all the substantive rights in the CRC.<sup>32</sup> The best result is said to be achieved if you look both at the objective and subjective perspective of what is best for the child. A decision-maker should look both at what would be best for the child according to research, but also take account of the subjective feelings of the child in question when making the decision.<sup>33</sup>

### **2.2.1.3 Survival and Development**

The CRC has another basic principle that should be remembered when interpreting the other articles. It says that all children have a right to life, but also that they have rights to survival and development. This should be read as meaning that a child does not only have a right to physical health, but also to mental, emotional, social and cultural development.<sup>34</sup> This article also means that a child should be granted an adequate standard of living that fully respects his or her human dignity.<sup>35</sup>

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<sup>28</sup> Petrán, Alfchild, Himes, James ”Childrens Rights – Turning Principles into Practice” p. 15

<sup>29</sup> Convention on the Rights of the Child article 3

<sup>30</sup> CRC/GC/2003/5 General Comment No 5 “General measures of implementation for the Convention on the Rights of the Child.” p. 4

<sup>31</sup> Detrick, Sharon; Doek, Jaap; Cantwell, Nigel “The United Nations Convention on the Rights of the Child – A guide to the Travaux Préparatoires” p. 133

<sup>32</sup> Petrán, Alfchild, Himes, James ”Childrens Rights – Turning Principle into Practice” p.32-41

<sup>33</sup> Hollander, Anna; Nygren, Rolf; Olsen, Lena “Barn och Rätt – Barn som aktörer” p. 34, 35

<sup>34</sup> Hammarberg, Thomas ”Making Reality of the Rights of the Child: The UN Convention: What it says and how it can change the status of children worldwide.” p.8, 9; “UN Human Rights Fact Sheets 1-25” p. 180

<sup>35</sup> Verhellen, Eugene “Monitoring Children´s Rights” p. 138.

#### 2.2.1.4 Participation rights

In this regard, it is also important to mention article 12 of the CRC, which grants children the right to freely express their views and opinions and to have them respected.<sup>36</sup> This article is said to include the right of children to participate in all matters affecting them and should be seen as a right to a dialogue and peaceful conflict resolution. It also implies the right to tolerance and mutual respect and a growing responsibility of children.<sup>37</sup> As an article that should guarantee children the right to be heard in all cases concerning them, it must also be understood to imply a right to stand before the court and make a claim and to make their voices heard in other administrative procedures.<sup>38</sup> The Committee on the Rights of the Child has held that this right includes a right to a complaints procedure, especially for those children that have been deprived of their family setting or have been placed in institutions such as orphanages or police custody.<sup>39</sup>

#### 2.2.2 Parental rights

The preamble of the CRC emphasizes the importance of the family and the parents for a child's development and well-being. It states that the family is the fundamental group in society and works as the natural environment for all its members. Children are said to be particularly vulnerable and should be afforded necessary protection and assistance. They should be brought up "in the spirit of peace, dignity, tolerance, freedom, equality and solidarity".<sup>40</sup>

The Convention recognizes that the parents have rights to care for their children without interference from the State. It is said that the parents or other carers of children have responsibilities, rights and duties as such and that they should provide the child in question with appropriate direction and guidance.<sup>41</sup> In all cultures across the world, parents are expected to look after their children and their upbringing, because of the dependent status of children. The aims and manners of such childrearing are very varied. In most States, the emphasis has been on parents' rights and parent authority rather than on children's rights in these matters.<sup>42</sup>

According to the CRC, the best interest of the child is a guiding principle and this means that States have an obligation to "ensure the child such protection as is necessary for his or her well-being".<sup>43</sup> Today it should be

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<sup>36</sup> Asquith, Hill "Justice for children" p. 63

<sup>37</sup> Bitensky, Susan H. "The United Nations Convention on the Rights of the Child and Corporal Punishment of children: Recommendations for the US." p. 4, "Spare the Rod, Embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children." p. 15

<sup>38</sup> Hollander, Anna; Nygren, Rolf; Olsen, Lena "Barn och Rätt – Barn som aktörer" p. 29

<sup>39</sup> Petré, Alfhild, Himes, James "Children's Rights – Turning Principle into Practice" p.64

<sup>40</sup> Convention on the Rights of the Child Preamble

<sup>41</sup> Convention on the Rights of the Child article 5

<sup>42</sup> Bennet, John "Supporting family responsibility for the rights of the child..." p.46-49

<sup>43</sup> Convention on the Rights of the Child article 3



clear to all those States that have ratified the CRC that the responsibility of the parents is to secure the welfare of the child, but if they are unable or unwilling to do this, then the State must intervene and provide proper care.<sup>44</sup>

There are restrictions on the parental authority so that it does not in any case result in abuse or exploitation of the child. States have though been reluctant to reform the law in this way, since they wish not to intrude and regulate what could be referred to as private and sensitive family issues.<sup>45</sup> Children's rights are seen as threats to the parental authority in some poorer and developing countries worldwide. In those countries, the family unit is a very important institution and its members all depend on each other. The children are seen as the property of the parents and they have a great value since they are a source for the family income. In other industrialized countries, children are treated differently. Here they are seen as "subjects of desire" and are seen as equals to adults and holders of rights.<sup>46</sup>

After the Swedish law prohibiting corporal punishment was enacted a couple of parents complained to the European Human Rights Commission that their right to respect for family life had been breached by this new law. They were religious Protestants and physical punishment of children was necessary according to their belief. The case was held inadmissible, but the Commission said that the new law was to be respected, since its purpose was to protect the weak and vulnerable in society.<sup>47</sup>

## 2.3 Conclusion

As a conclusion to this background, it can be said that acts of corporal punishment are being perpetrated all over the world and in all areas of society. It is used for disciplinary and educational purposes and results in negative outcomes such as both physical and mental damage to the children. Its use is legal in some countries, not regulated but socially accepted in others. Recent research on the topic show that an alarming number of the public and parents still regard this type of violence against children to be acceptable, even if there have been a positive change of attitude in some areas of the world.

The CRC has been in place since 1990 and was created to offer children as vulnerable members of society, a special protection. All children under the age of 18 should as a general rule be covered by this special protection and there are four main principles in this convention that have been identified to be of particular importance. These are the right to non-discrimination, the principle of the best interest of the child, the right to survival and development and the right to participation. In the analysis, the use of corporal punishment will be analysed with regards to these rights. The CRC

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<sup>44</sup> Asquith, Hill "Justice for children" p. 148, 149

<sup>45</sup> Goonesekere, Saritri "Human Rights as a foundation for family law" p.89

<sup>46</sup> John Bennet "Supporting family responsibility for the rights of the child: an educational viewpoint." p. 46-48

<sup>47</sup> Newell, Peter "Ending physical punishment of children" p.131

further recognizes that the family is the natural environment for a child to be brought up in. In this regard, the parents and other carers have the primary responsibility for the upbringing and the States must respect this.<sup>48</sup> The carers have rights, duties and responsibilities to provide the children with appropriate direction and guidance. The CRC says that both parents have common responsibilities in the upbringing of the child and that in order to guarantee that the child benefits from all the rights in the CRC, the States are responsible for giving appropriate assistance to families in questions of child rearing. In cases of abuse or neglect of a child, a separation from the family may be necessary in the best interest of the child.<sup>49</sup>

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<sup>48</sup> Convention on the Rights of the Child article 18(1), Cretney Stephen “Principles of Family Law” p. 496, Convention on the Rights of the Child Preamble

<sup>49</sup> Convention on the Rights of the Child article 5, 9, 18

# 3 Childrens Rights to protection from Violence

## 3.1 Right to protection from torture and other cruel, inhuman and degrading treatment or punishment

The Convention on the Rights of the Child contains many articles that are in place to protect children from violence. It is important to remember that children's rights are not only violated when the violence is committed by agents of the State, but also when the State fails to protect children against violence from others.<sup>50</sup> In other words, some rights in the CRC are said to have a horizontal effect. This means that they have an effect on the relations between individuals and that the State is responsible for regulating and taking measures to ensure that these relations conform with the CRC. This is the case with the obligations of States to protect the family and its members, but at the same time not to arbitrarily or unlawfully interfere with the family or private life.<sup>51</sup>

In the CRC, there is an explicit prohibition of torture, or other cruel, inhuman or degrading treatment or punishment. State parties to the convention must ensure that this type of violence is not inflicted on any children within their jurisdiction.<sup>52</sup> The Convention does not contain any definitions of these acts. To establish their meaning it is necessary to look at the International Convention against Torture since this is the only human rights convention with such a definition.<sup>53</sup>

The definition of torture in this convention says:

“torture means 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 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

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<sup>50</sup> Committee of the Convention on the Rights of the Child - General Discussion “Violence against children within the family and in school.” CRC/C/103 2001 p.1, 4

<sup>51</sup> Detrick, Sharon “A Commentary on the United Nations Convention on the Rights of the Child” p. 31, Delgado Paez v Colombia, Velasquez Rodriguez case para 164-168

<sup>52</sup> Convention on the Rights of the Child article 37 (a)

<sup>53</sup> McCourt, Kersty; Lambert, Manuel “ Interpretation of the definition of Torture or cruel inhuman or degrading treatment or punishment in the light of European and International Case Law” p.4

acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>54</sup>

This definition is a minimum rule of the acts that the State parties to CAT are required to prohibit. Some argue that this definition is not enough to ensure the prohibition of corporal punishment, since it mentions only acts of a special severity, leaving a margin of appreciation to the States. The degree of pain that can be imposed on an adult is different from that of the child and a specific definition may therefore be necessary in relation to children. Another problem with the definition is that of the person carrying out the treatment or punishment. Parents and other people caring for a child do not act as officials of the States. The Human Rights Committee has though chosen to interpret the definition as covering also those persons that abuse an authority granted by the State, which could include parents and care takers.<sup>55</sup> The definition of “public official” has been broadened since the CAT was put in place and today it also grants the States a responsibility to prevent such acts from private individuals. The States that have signed up to these human rights conventions, have both an obligation to abstain from violating the rights, but also a duty to protect individuals from others who might breach them.<sup>56</sup>

Torture is seen as the most severe form of the acts defined in article 37 of the CRC and is an aggravated form of inhuman treatment, which causes serious and cruel suffering. There is no international legal definition of what constitutes inhuman or degrading treatment or punishment. Such acts are those that do not reach the severity enough to constitute torture.<sup>57</sup> Inhuman treatment and punishment is performed with less intensity and causing less suffering. An act can be said to be inhuman if it causes severe mental or physical suffering. Degrading is an act, which grossly humiliates a person in front of others or in some way, makes him or her act against his or her will or conscience.<sup>58</sup> Article 37 of the CRC means that the Committee on the Rights of the Child may examine any forms of excessive or disproportionate punishments under this article and corporal punishment can fall under this definition.<sup>59</sup>

Torture should not be identified as only referring to cases of extremely serious and massive cases of abuse, but also to different kinds of

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<sup>54</sup> Convention against Torture article 1

<sup>55</sup> Van Bueren, Geraldine “Childhood Abused / Protecting Children against Torture, Cruel, Inhuman and Degrading Treatment and Punishment”, article by Sottas, Eric “A Non-Governmental Organization Perspective of the UNs Approach to Children and Torture” p. 143-146

<sup>56</sup> McCourt, Kersty; Lambert, Manuel p. 9, 11, 46.

<sup>57</sup> McCourt, Kersty; Lambert, Manuel p. 5.

<sup>58</sup> Van Bueren, Geraldine “Childhood Abused...” article “Opening Pandoras Box – Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment” p. 66, Long Debra, Guide to Jurisprudence on Torture and Illtreatment” p. 13, 14

<sup>59</sup> Schabas, Sax “A Commentary on the United Nations Convention on the Rights of the Child – Article 37” p. 22

disciplinary measures that are inhuman or degrading.<sup>60</sup> The former rapporteur for the CCRC agrees with this and said that torture may cover many different situations such as those that cause “unperceivable mental suffering or those involving a disciplinary measure which may be degrading or inhuman”.<sup>61</sup> When determining whether there has been a violation of this right it is necessary to look at the duration of the violence, its physical effects, mental effects, the age, sex and state of health of the victim.<sup>62</sup> The Committee on the Convention against Torture has also held that the State parties are under obligations in relation to this convention to take measures to prohibit all forms of corporal punishment of children.<sup>63</sup>

The human rights on the prohibition of torture, inhuman and degrading treatment and punishment in the various international conventions are said to be part of international customary law. This means that they are binding on all States, even those that have not agreed to be bound by them. Some even argue that these rights have attained the status of jus cogens. However, the prohibition of cruel treatment and punishment may not have this status.<sup>64</sup>

In the preparatory work of the CRC, it was considered essential that the prohibition of torture was included even if it is spelled out in other human rights instruments, and even if the CRC was said to be created to cover issues specific to children. Otherwise, its effect with regard to children could be questioned.<sup>65</sup>

The Committee on the Rights of the Child has held that corporal punishment constitutes cruel and degrading forms of punishment that the State parties are under obligations to ensure protection from.<sup>66</sup> The European Court of Human Rights has had the opportunity to produce jurisprudence on the issue of corporal punishment in relation to articles in force to protect individuals from torture and inhuman or degrading treatment and punishment. In one case, the punishment (birching) had been administered by a police officer against a fifteen-year old boy for a minor offence. In this case, the UK was held responsible for a breach of a human rights obligation, since this punishment constituted degrading treatment. The three strokes of the birch were administered in accordance with UK law. It was nevertheless held to violate article 3 of the ECHR, since for an act to be degrading it was sufficient that the boy in this case felt humiliated in his own eyes, or in the

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<sup>60</sup> Bitensky, Susan H. “The United Nations Convention on the Rights of the Child and Corporal Punishment of children: Ramifications for the US.” p. 3

<sup>61</sup> Bitensky, Susan H. “Spare the Rod, Embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children.” p. 13

<sup>62</sup> Long, Debra “Guide to Jurisprudence on Torture and Ill-treatment” p. 13-14

<sup>63</sup> CAT/C/55/Add.12 – Mexico, CAT/C/67/Add.6 - Portugal

<sup>64</sup> UN Doc E/CN.4/1999/17 para 278, Van Bueren, Geraldine “Opening Pandoras Box – Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment” p. 64

<sup>65</sup> Detrick, Sharon Doek, Jaap, Cantwell, Nigel “The United Nations Convention on the Rights of the Child – A guide to the Travaux Préparatoires” p. 27, 474

<sup>66</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” p.6

eyes of others. The punishment was also an assault on his dignity and integrity.<sup>67</sup>

The Court has also held the UK responsible for the fact that local authorities had failed to protect four siblings against ill-treatment of their parents. It was said that article 3 is of an absolute nature, which means that States must provide effective protection against such violence and especially to vulnerable children. The abuse and neglect suffered by the children in this case reached the threshold for article 3, since they over a long period of time had suffered physical and psychological injury.<sup>68</sup>

In another case, a stepfather had beaten a boy with a garden cane as a form of corporal punishment. UK law allowed for “reasonable chastisement” of children. The ECtHR held that the UK was responsible for not protecting this child and this constituted a violation of article 3 of the ECHR. In its judgment, the Court referred to article 19 and 37 of the CRC.<sup>69</sup> The State was said to be under an obligation to ensure all the rights of the ECHR to everyone within its jurisdiction and without discrimination because the individual or complainant was a child. The force used was sufficiently severe to fall under article 3 and the State had not fulfilled its obligation to give special protection to vulnerable children.<sup>70</sup> The punishment in this case was held to be inhuman and degrading and the judgment in this case is now binding on all Member-States to the ECHR.<sup>71</sup> In other words, the Court decided that a child should be protected under the law in the same way as an adult and that there should be no difference in the defence for occasioning bodily harm.<sup>72</sup> The UK Government has decided to review the current law, which allows parents to use reasonable chastisement.<sup>73</sup>

The use of corporal punishment has also been challenged by the African Court for Peoples and Human Rights, The Inter-American Court of Human Rights as well as the Human Rights Committee. In these instances, such violence has also been said to be a violation of human rights articles in the various conventions.<sup>74</sup> This jurisprudence clearly states that acts of corporal punishment are contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The special rapporteur on the Commission on Human Rights on Torture has therefore said that States are under an obligation to abolish such violence immediately.<sup>75</sup>

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<sup>67</sup> Tyrer v United Kingdom (1978) ECtHR

<sup>68</sup> Z and Others v UK (2001) ECtHR

<sup>69</sup> A v UK (1998) ECtHR, Newell, Peter “Ending physical punishment of children” p. 129

<sup>70</sup> Detrick, Sharon “European Court of Human Rights: Judgment in the case of A v. UK” p.335-336, IJCR Volume 6 1998

<sup>71</sup> A v UK ECtHR 1998

<sup>72</sup> Breen, Claire “The Standard of the Best Interests of the Child ...” p. 276

<sup>73</sup> [www.childrenareunbeatable.org.uk](http://www.childrenareunbeatable.org.uk), News posted July 2007, s.58 Children Act from 2004

<sup>74</sup> Curtis Francis Doebbler v Sudan , Winston Caesar v Trinidad and Tobago, Higginson v Jamaica, Osbourne v Jamaica, Patterson Matthews v Trinidad and Tobago, Pryce v Jamaica, Nowak, Manfred “UN Covenant on Civil and Political Rights p. 167, Advisory Opinion of the Inter-American Court OC-17/2002 28 August 2002

<sup>75</sup> [www.pwtn.org](http://www.pwtn.org) – “Statement by the Special Rapporteur of the Commission on Human Rights on Torture” Wednesday 26<sup>th</sup> Oct 2005

## 3.2 Right to protection from abuse and neglect

Corporal punishment of children can and does take place in different settings. According to the Committee on the Rights of the Child, it is usually administered at home within the family, but also in schools, in institutions for alternative care as well as within the justice system. Usually such violence is used as a disciplinary method, but an act that is a deliberate and punitive use of force causing pain, discomfort or humiliation, is inconsistent with the Convention on the Rights of the Child.<sup>76</sup>

According to article 19 of the CRC the “States parties shall 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”<sup>77</sup> The terms neglect and abuse in article 19 have been left undefined in order to make their ambit very broad. No type of violence against children should be accepted. Neglect and abuse have been explained as all acts or omissions in which the motivation is to harm the child.<sup>78</sup>

This article of the CRC suggests that situations where a child gets abused or neglected is most likely to happen within the family situation, but it must also be kept in mind that these acts of violence can and do occur in private and public institutions like schools and orphanages.<sup>79</sup> The preparatory work of the CRC indicates that the State parties wanted to put the emphasis on measures to prevent acts such as corporal punishment instead of acting after they have occurred, but the measures to be taken to prevent it have been left for the States to decide for themselves. Some States were against the inclusion of an obligation of such preventive action, since they thought that would be to go too far. In the end, such preventive action was included as an obligation in the second paragraph of the 19<sup>th</sup> article.<sup>80</sup>

The Committee on the Rights of the Child has issued a general comment on the rights in the CRC in connection to corporal punishment. These General Comments are not formally binding on the State parties, but are produced to give the States a better understanding of the articles in the CRC and on how to improve the situation for children in that regard. They are usually

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<sup>76</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.”p.5

<sup>77</sup> Convention on the Rights of the Child article 19(1)

<sup>78</sup> Van Bueren, Geraldine “The International Law on the Rights of the Child.” p.88

<sup>79</sup> Detrick, Sharon “A Commentary on the United Nations Convention on the Rights of the Child.” p. 321

<sup>80</sup> Detrick, Sharon, p. 323, Detrick, Sharon; Doek, Jaap; Cantwell, Nigel “The United Nations Convention on the Rights of the Child – A guide to the Travaux Préparatoires” p. 271-274

produced as a response to problems identified by the Committee when examining State reports.<sup>81</sup>

In the comment on corporal punishment, the Committee said that this type of violence is still widely accepted and practised worldwide and this is of great concern. According to the Committee, States have obligations to quickly prohibit and eliminate all forms of corporal punishment, even if this is not expressly mentioned in the Convention.<sup>82</sup> The Convention is to be seen as a living instrument, which means that its interpretation develops over time in order for the rights to be effective. Social attitudes change and this is to be reflected in the rights concerned.<sup>83</sup>

The Committee has identified a definition of corporal punishment that should be used to help State parties understand their obligations under the convention and help them take action against this type of violence. The definition of corporal punishment reads as follows:

“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 impediment (a whip, stick, belt, shoe, wooden spoon etc). But it can also involve for example, kicking, shaking, pinching, biting, pulling hair, burning, scalding or forced ingestion”.<sup>84</sup> In addition, acts that are non-physical are also said to fall under the definition, such as all kinds of punishment that “belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child”.<sup>85</sup>

The Committee on the Rights of the Child has repeatedly urged over 130 State parties to “enact or repeal, as a matter of urgency, their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention”.<sup>86</sup> This has not seemed to help since there still today remains “an almost universal high prevalence of corporal punishment within the family”.<sup>87</sup>

Some States have tried to present justifications to the Committee in order to argue for the use of corporal punishment of children within their jurisdiction. They have argued that this violence can be administered in the best interest of the child according to article 3 of the CRC. That kind of

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<sup>81</sup> United Nations “Manual on State Reporting” p. 24, Verheyde, Mieke; Goedertier, Geert “A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45” p. 39, 40

<sup>82</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” p.3

<sup>83</sup> CRC/C/GC/8 General Comment No 8 p.5, 6

<sup>84</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.” para 11

<sup>85</sup> CRC/C/GC/8 General Comment Number 8 para 11

<sup>86</sup> CRC/C/GC/8 General Comment Number 8 p.4, 3

<sup>87</sup> Ibid



interpretation has not been approved of by the Committee, which has said that the interpretation of article 3 must be consistent with all the rights in the Convention, and an act of corporal punishment will in all cases be contrary to the child's right to human dignity and physical integrity. This does not mean that the Committee does not see the need for positive discipline in the upbringing of a child in order to give them guidance and direction. Instead, the Committee is trying to emphasize the difference between acts of punitive assault and those acts that may be necessary to protect a child from getting hurt. The principle of minimum necessary use of force must always apply. Other defences of corporal punishment such as religion and belief have also been said to conflict with the CRC. No practice of such religion or belief may interfere with the child's right to human dignity or physical integrity.<sup>88</sup>

Another article in the CRC that could be used to prohibit corporal punishment of children is that of traditional practices that are prejudicial to the health of the child. Article 24 (3) says that: "State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."<sup>89</sup> Health is in this case to be referred to as the "condition of being sound in body, mind and spirit".<sup>90</sup>

The Independent Expert for the UN Study on Violence against children has set a target that by 2009, all forms of violence against children should be prohibited, including acts of corporal punishment. He said that "nobody should suggest that a little bit of violence is acceptable" and that this applies both to children and adults.<sup>91</sup>

### **3.3 Right to humane school discipline**

Article 19 indicates that the primary purpose is for the State parties to prevent and stop child abuse within the family. However, the article is also in place to protect children from harm while in public or private institutions, in a school for example.<sup>92</sup> There is a specific right in the CRC, which deals with methods of discipline in schools. It says that:

"State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."<sup>93</sup>

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<sup>88</sup> CRC/C/GC/8 General Comment Number 8 p.8, 5

<sup>89</sup> Convention on the Rights of the Child article 24 (3)

<sup>90</sup> Bitensky, Susan H. "Spare the Rod, Embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children." p. 15

<sup>91</sup> Doek, Jaap E, UNCRC Chairperson 2006 – [www.nospank.net/doek.htm](http://www.nospank.net/doek.htm)

<sup>92</sup> Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child." p.321

<sup>93</sup> Convention on the Rights of the Child article 28(2)

The Committee on the rights of the Child has issued a general comment on the interpretation of the articles concerning the right to education and in particular the aim of the education. One of the articles in the CRC says that the education shall be directed to the development of the child's personality and his or her mental and physical abilities. It should also aim at teaching them respect for human rights and fundamental freedoms as well as respect for their parents, national values etc. In the general comment, the Committee further emphasizes that education should be used as a tool for preparing the child for a life "in the spirit of understanding, peace, tolerance..."

The core values of the CRC; the right to human dignity and the principle of equal and inalienable rights must be respected in the education system. When in school, a child shall develop his or her skills and learning capacities, but also develop self-esteem and self-confidence. There must be strict limits on the use of discipline in schools and the education should promote non-violence.<sup>94</sup> When corporal punishment is administered in schools, it sends out a very dangerous message to children who come to believe that this type of violence is accepted by society and that it is a good method of solving disputes. The basic right to education is also in danger of being violated when corporal punishment is being allowed in schools. Those children that have been beaten may be too scared to go back and others might avoid it because of fear of it happening to them.<sup>95</sup>

In 2006, the Committee was able to report that over 100 of the State parties to the CRC had prohibited all forms of corporal punishment in their schools and within the penal system.<sup>96</sup> All of the European States, all but three industrialized States (USA, Canada and Australia) and some other States worldwide have laws in place that prohibit such violence in schools. The problem is that simply ratifying the CRC does not mean that children benefit from the right in article 28. For it to be of any use it has to be incorporated or implemented into national law in that specific country.<sup>97</sup> In some States, the ban on corporal punishment has been very successful, like in the case of Sweden. In Japan, on the other hand, research has shown that the number of incidents of this type of violence has increased since the adoption of the ban. One explanation to this is the belief that some cultures may find it difficult to change a behaviour that has been so common for so long. In reality, very few State Parties to the CRC have an explicit ban on this type of violence in schools. Most of them have only enacted regulations on its use.<sup>98</sup>

Cases concerning corporal punishment in the schools have also been presented before the European Court. In one of them, two mothers had

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<sup>94</sup> CRC/GC/2001/1 General Comment No 1 "The aims of education"

<sup>95</sup> Bartman, Angela "Spare the Rod and Spoil the Child? Corporal punishment in schools around the world." *Indiana International and Comparative Law Review* 2002, p. 4, 5

<sup>96</sup> CRC/C/GC/8 General Comment No 8 "The right of the child to protection from corporal punishment and other cruel or degrading punishment." p.3

<sup>97</sup> Bartman, Angela "Spare the Rod and Spoil the Child? Corporal punishment in schools around the world." p. 7

<sup>98</sup> Bartman, Angela p. 8-14

complained of the systematic use of corporal punishment in Scottish schools. One of them argued that the school had refused to guarantee that her son would not be subjected to such punishment and the other had her son expelled from school when he refused to accept his punishment. The ECtHR held that none of the boys in this case had actually been subjected to the punishment and therefore there was no violation of article 3 of the ECHR. On the other hand, the Court said that a violation could have occurred if there had been a real and immediate threat of violence contrary to this article.<sup>99</sup>

In another case before the ECtHR, the corporal punishment was held not to reach the severity necessary for a breach of State obligations. A pupil had been hit on his clothed buttocks with a gym shoe for bad behaviour, but the injury suffered was held to be insufficiently severe and there were no visible signs of any injury.<sup>100</sup> As a response to these complaints before the European Court of Human Rights, the UK decided to pass a new law prohibiting the use of corporal punishment in schools.<sup>101</sup>

### 3.4 Conclusion

In this chapter, the three main articles in the CRC that are in place to protect children from violence have been described. Those are the right to protection from torture and other cruel, inhuman and degrading treatment and punishment; the right to protection from abuse and neglect and the right to humane school discipline. Generally, these three rights can be used to prohibit the use of violence against children in three different settings. Article 37 can be used to prohibit violence against children when they are at the hands of the State, for example when they are serving a sentence as child offenders or when they have been placed at detention centres. On the other hand, the same article has also been said to have horizontal effects between individuals. Article 19 is explicitly intended to cover cases of violence within the family and alternative care settings such as orphanages or foster homes. The third right that has been discussed, article 28, offers protection against violent forms of discipline in the school.

Torture should not only cover extremely serious abuses, its interpretation depends on the circumstances of the case, like the age of the victim and the duration of the violence. Violent disciplinary methods have been identified as violations of inhuman and degrading treatment and punishment in various jurisprudence. The wide-ranging right to protection from abuse and neglect is in place to protect children against all kinds of violence that causes mental or physical injuries and has been interpreted to grant a very broad protection. When children are in school the use of disciplinary methods should be non-violent in order to comply with the other articles in the Convention and in order not to breach the human dignity of the child.

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<sup>99</sup> Campbell and Cosans v United Kingdom (1993) ECtHR

<sup>100</sup> Costello-Roberts v United Kingdom (1993) ECtHR

<sup>101</sup> Ovey, Clare; White, Robin C.A. "European Convention on Human Rights" p.86-87

# 4 State responsibilities in relation to childrens rights

## 4.1 Implementation

### 4.1.1 General implementation measures

A Convention like the CRC works as a treaty between the member states that are parties to it. In terms of the articles it contains, it also serves as a document granting individuals rights and therefore also regulates the relationship between the individual and the State. The States that have ratified the CRC are obligated to respect, protect and fulfil all the rights therein.<sup>102</sup> Implementation of a Convention means that the States parties take action to realize all the rights, in this case to the children within their jurisdiction.<sup>103</sup> The State parties to the CRC are required to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights in the present Convention.”<sup>104</sup> Measures that have been suggested by the Committee are: legislation, establishment of coordinating and monitoring bodies, data collection, awareness raising, training etc.<sup>105</sup> Other obligations are to make the content of the CRC widely known and to make the State reports on the progress of the implementation available to the public.<sup>106</sup>

Some of the obligations that a State has according to a Convention are of an immediate nature that needs to be addressed right away. When it comes to rights that are of an economic, social and cultural nature, the States are requested to take measures to the maximum extent of their available resources to fulfil their obligations.<sup>107</sup> The Committee on the Rights of the Child has said that there is no authoritative division between human rights and considers them all justiciable and expects the States to do so too. If a State is lacking resources this may be used as a justification for a progressive realization of certain rights.<sup>108</sup>

When ratifying the CRC more States than ever where interested in participating and politicians were eager to be thought of as child friendly. In the end many of the children in their countries have been let down because of the lack of implementation measures. These measures will only take place if the government in question has the political will to do so. The State

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<sup>102</sup> Hedlund-Thulin, Kristina “Lika i värde och rättigheter” p. 13, 82, 83

<sup>103</sup> CRC/GC/2003/5 General Comment No 5 ”General measures of implementation for the Convention on the Rights of the Child.” p.1,2

<sup>104</sup> Convention on the Rights of the Child article 4

<sup>105</sup> CRC/GC/2003/5 General Comment No 5 p.3

<sup>106</sup> Convention on the Rights of the Child article 42, 44(6)

<sup>107</sup> Convention on the Rights of the Child article 4

<sup>108</sup> CRC/GC/2003/5 General Comment No 5 p.3

obligations of implementation can also be said to be obligations of conduct rather than that of result.<sup>109</sup>

## 4.1.2 Legislative measures

### 4.1.2.1 Incorporation or transformation

Legislative measures that the States shall take are to ensure the compatibility of their law with the CRC, but also to review this compatibility continuously. The CRC can be made part of the domestic law in two ways; either by incorporation or through transformation. If a State chooses the transformation approach then it has to create national provisions similar to the CRC to be invoked before national courts. With the incorporation approach, the CRC will instead become a part of national law immediately.<sup>110</sup> By doing this the rights will be enforceable and their legal effect are ensured.<sup>111</sup> With this mechanism, the States will also avoid problems with a translation into their own national law.<sup>112</sup> The Committee on the Rights of the Child has recommended States to make sure that the prohibition of corporal punishment is not only reflected in the criminal law of the States, but also in other areas of law concerning children such as family law and educational law.<sup>113</sup>

It is only the State itself that is legally bound by the CRC, parents are not. A parent can only be held responsible for acts such as corporal punishment if the State has adopted a law forbidding this practice and has effective enforcement mechanisms in place to stop such behaviour.<sup>114</sup> A problem that has been identified is that Governments hesitate to deal with the issues of corporal punishment, since it is so widely practiced. They find it a lot easier to deal with more violent and extreme issues affecting children because they know that there will be a wider consensus for this among the population. The issue of corporal punishment, like that of the right to play, are frequently ridiculed and put aside for what the Governments see as more important issues.<sup>115</sup> The Committee has several times explained that the prohibition of corporal punishment is an immediate and unqualified obligation of the State parties.<sup>116</sup>

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<sup>109</sup> Hammarberg, Thomas "Making Reality of the Rights of the Child: The UN Convention: What it says and how it can change the status of children worldwide." p.4

<sup>110</sup> Van Bueren, Geraldine p.380 "The International Law on the Rights of the Child", Grimheden, Jonas; Ring, Rolf "Human Rights Law: From Dissemination to Application" p.377

<sup>111</sup> CRC/GC/2003/5 General Comment No 5 "General measures of implementation for the Convention on the Rights of the Child" p.6

<sup>112</sup> Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child" p. 25-29

<sup>113</sup> CRC/C/GC/8 General Comment No 8 "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment" p.9

<sup>114</sup> Ibid p.6, 8

<sup>115</sup> Petré, Alfhild; Himes, James "Children's Rights – Turning Principles into Practice" p.135, 13

<sup>116</sup> CRC/GC/2003/5 General Comment No 5 p.6

#### **4.1.2.2 Justifications/Defences**

During the Committees work with the State parties it has been established that all States have some kind of law in force to protect its citizens from assault and acts reflected in article 37 of the CRC. Some of them even have specific laws protecting children from ill-treatment and abuse. The problem that has been identified by the Committee is that those provisions do not generally protect the children from corporal punishment. In many States, there are explicit legal provisions that make this kind of behaviour lawful by granting the parents/carers a defence or justification for their disciplinary actions.<sup>117</sup> In some laws, it is said that reasonable, moderate chastisement or correction is lawful and in others, corporal punishment in schools is authorized. Another problem is that in other States without an explicit defence in the law, corporal punishment is still “permitted” due to the traditional attitudes in the country.<sup>118</sup>

#### **4.1.2.3 De minimis-rule**

As a first measure, States must of course make it explicitly clear that the criminal law on assault also relates to all forms of corporal punishment of children (including acts committed within the family). After the prohibition of corporal punishment, it is though important to remember that this does not mean that all such future acts will lead to prosecution. The de minimis principle of the criminal law will still act as a bar to prosecution of trivial matters. The most prominent purpose of such a prohibition is not to prosecute offenders in all cases, but to make sure that all cases of child abuse are investigated thoroughly and that protection from significant harm is assured. It should also be remembered that when dealing with cases of children a prosecution of a parent should be used as a last resort and only if it can be said to be in the best interest of the child. States should instead seek to help the parents in a positive way through advice and discussions.<sup>119</sup>

#### **4.1.2.4 Law or judicial decision**

In a few countries, corporal punishment of children has been made illegal through the enactment of a new legal rule or statute. In others, such a prohibition has come into force through a judicial decision. That is the case in Israel and Italy. In Israel, the Convention influenced a judge to make a decision in which the child was granted full protection from any type of corporal punishment (*Plonit v The State of Israel*). The severe beatings of a mother on her children were held to be cruel and disgraceful. The mother had treated her children as her property, with which she could do whatever she wanted, and the judge felt bound by the CRC to regard this type of behaviour as unlawful. Such continuous and severe violence could not go

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<sup>117</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.” p.8

<sup>118</sup> CRC/C/GC/8 General Comment No 8 p.9, 10

<sup>119</sup> CRC/C/GC/8 General Comment No 8 p.10, 11, “Ending legalised Violence against children – Global Report 2007 – Following up the UN Secretary General’s Study on Violence Against Children” p. 17

unpunished.<sup>120</sup> In Italy, the full prohibition of corporal punishment was also established through a court decision in 1996.<sup>121</sup> Sweden is the country that has had a prohibition of all types of corporal punishment the longest. In the family law statute, such acts are said to be prohibited, but the same statute does not contain any legal sanctions for offenders. This is because the primary aim of the law was to change the attitudes of society. In the Swedish law, it is though possible to prosecute corporal punishment as assault under the criminal law. The policy in relation to corporal punishment of parents has been that of prosecutorial restraint.<sup>122</sup>

### 4.1.3 Justiciability

The States parties must also ensure that the rights are justiciable. This means that there are effective remedies for those who have been subjected to violations of their rights. When it comes to rights of children this is particularly important due to their special and dependent status. Therefore, the States are required to establish child-sensitive procedures where they can make independent complaints with legal and other assistance.<sup>123</sup><sup>124</sup>

One example of such procedures is the one in use in Sweden where the parliament decided to establish a children's ombudsman to be a representative for all children as a group. His/her task is to support parents and other carers of children and to deal with concerns of children, however not in individual cases. The role is instead to take initiatives for law reform, use the media to create awareness of problems facing children and to oversee the implementation of the CRC.<sup>125</sup>

### 4.1.4 Administrative measures

Merely legislative measures are not enough to realize the rights in the CRC. A law reform is necessary to comply with the CRC, but the most important measures are for the States to take action and prevent the violence before it has taken place.<sup>126</sup> Administrative measures constitute such an obligation that State parties need to address. For the implementation to be successful, it is necessary that there is a good coordination between the different levels of government, but also between the government and civil society. This cooperation and work towards realizing the Rights of the Child should be guided by a national strategy of action for all the rights in the CRC.

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<sup>120</sup> Kaplan, Yehiel S. "Corporal Punishment of Children in Israel: A New Trend in Secular and Religious Law" p. 364-366

<sup>121</sup> <http://www.endcorporalpunishment.org/pages/progress/reports/italy.html>

<sup>122</sup> Bitensky, Susan H. "Spare the Rod, Embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children." p.4

<sup>123</sup> CRC/GC/2003/5 General Comment No 5 "General measures of implementation for the Convention on the Rights of the Child." p.7

<sup>124</sup> CRC General Discussion CRC/C/103 p. 11, 12

<sup>125</sup> Koren, Marian "A children's ombudsman in Sweden." p. 101, 111

<sup>126</sup> CRC/C/GC/8 General Comment No 8 "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment." para 38

Such a national strategy also needs to be closely linked to the national development planning and included in the national budget allocating resources to children issues. The strategy should not consist of a list of intentions, but instead of a description on how to realize the rights through real and achievable targets. Other administrative measures that the States should take are to collect data on the situation of children within their jurisdiction, to analyse and develop indicators for this purpose and to offer training to all those professionals and other people working and dealing with children. All efforts should in other words be taken to make sure that the rights are respected in all actions taken by the State.<sup>127</sup> In order to eradicate this type of violence against children it is necessary to change the attitudes and the practices of corporal punishment in all parts of the country and at all levels.<sup>128</sup>

Other important obligations on the States are that they have to make sure, not only that their authorities and administrative bodies work in accordance with the rights of the CRC, but also that private service providers follow these provisions. The States must therefore, through rigorous inspection, ensure the compliance with the CRC in all institutions all over the country in order to fulfil their obligations. Collecting data and statistical indicators of the well-being of children within their jurisdiction with the help of research institutes is a good way to identify discrimination and disparities.<sup>129</sup>

In the study on violence against children, conducted on request by the General Assembly, the expert made recommendations on ways to prevent and respond to this type of violence. Apart from restating measures already mentioned by the Committee he further expressed the need for States to focus on preventing acts of violence by addressing its underlying causes. States were also recommended to create “safe, well-publicized, confidential and accessible” mechanisms that children should be able to use to report such acts. The establishment of ombudspersons or commissioners for children’s rights within the member States was recommended. The expert also stressed the need for holding perpetrators accountable in order to make such measures effective. In the end of the report, States were called upon to provide information on progress made with regards to these recommendations in their future reports to the CRC.<sup>130</sup>

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<sup>127</sup> CRC/GC/2003/5 General Comment No 5 “General measures of implementation for the Convention on the Rights of the Child.” p.8

<sup>128</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” p.10, 11

<sup>129</sup> CRC/GC/2003/5 General Comment No 5 p.11

<sup>130</sup> UN Study on Violence Against Children, p. 25, 26, 27, 32, 33



## 4.2 Protective measures

### 4.2.1 Social programmes

Under the CRC, there is an obligation on the State parties to establish social programmes to prevent corporal punishment from occurring. In the preparatory work of the CRC, it is emphasized that the States should put most efforts on preventive measures, instead of acting after a child has been subjected to the corporal punishment. It has though been left to the States themselves to decide which measures to use in order to prevent such acts from occurring. Recommendations on actions to take are to identify such violence, report it, investigate it and to provide treatment to those affected by it. In some cases, it may also be necessary with a judicial involvement. States are also under a duty to establish programmes to follow-up cases of child abuse to see how the child is doing afterwards. The second paragraph of the 19<sup>th</sup> article indicates that it would be best for the child if there were a well-organized cooperation between the health and law enforcement and the judiciary in these cases.<sup>131 132</sup>

### 4.2.2 Intervention

In order to protect children from acts of corporal punishment the States have the opportunity to intervene with family life if this is for the best interest of the child. Since the tradition in many States has been to respect the integrity of the family unit, the law has not traditionally prohibited violent acts going on within the family group.<sup>133</sup> According to article 9, States have the possibility to remove children from their families and home if this is in the best interest of the child. This could be the case if there have been repeated and serious instances of corporal punishment, but it should as a general rule be used as a last resort. This measure is acknowledged to be in a child's best interest in the CRC, since some of the worst abuses that are perpetrated against children usually take place in their homes. Intervention should only happen if the situation in the family is a threat to the child, otherwise the State is only expected to support families as the best institution to care for a child.<sup>134</sup> To take the step of legal interventions in cases of child abuse is usually very complicated. There is usually a lack of physical evidence and children find it difficult to testify against parents, but are also very likely to give inconsistent and unreliable testimonies.<sup>135</sup>

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<sup>131</sup> Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child" p.323, Convention on the Rights of the Child article 19(2)

<sup>132</sup> Convention on the Rights of the Child article 19(2), Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child" p. 322

<sup>133</sup> Van Bueren, Geraldine, "The International Law on the Rights of the Child" p. 86-87

<sup>134</sup> Asquith, Hill "Justice for children" p. 66-67

<sup>135</sup> Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child" p. 328

### 4.2.3 Awareness-raising and training

In order to make the CRC and its rights effective it is important to make it widely known, understood and applied.<sup>136</sup> It is necessary to make a legal reform to comply with the rights in the CRC and it should be used to change cultural attitudes and values.<sup>137</sup> States that are parties to the CRC are under an obligation to make all the rights of the convention widely known to both children and adults. If individuals do not know their rights then those will not be realized.<sup>138</sup> Child-friendly versions should be produced so that the children themselves can become active defenders of their rights. An education on the content of the CRC should be included in the school curricula all over the State.<sup>139</sup>

It is also very important to educate parents, carers, teachers and all other persons working with children about the rights that they should be offered. The purpose of this training should be to emphasize that the children have rights that need to be respected and increase the understanding of those. Such education is especially important in the preparation for parenthood.<sup>140</sup> In other words, it is stressed that States should put an emphasis on educating and supporting parents, rather than punishing them for violations.<sup>141</sup> Technical assistance is available and offered by UNICEF and UNESCO in order to help those States that have difficulties with their awareness-raising, public education and training in order to promote non-violent approaches to discipline throughout society.<sup>142</sup>

### 4.2.4 Methods in use today

In the countries worldwide there are today many different ways and methods used in order to prevent violence such as corporal punishment of children. One way that is used is to offer prenatal and early childhood home visitation by a nurse in order to teach parents and carers about childcare and health. This method has been successful and showed a reduction in cases of child abuse. Other programs of parenting education and support are also helpful. The cases of child maltreatment are usually connected to poor living conditions and help to get a better economical situation will often create a better situation for the children affected. In some countries, the law provides a procedure of mandatory reporting of certain professionals when they suspect cases of child abuse. This mechanism is intended to make it possible

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<sup>136</sup> Petré, Alfhild; Himes, James “Childrens Rights – Turning Principles into Practice” P. 137

<sup>137</sup> Committee of the Convention on the Rights of the Child - General discussion CRC/C/103 p. 6

<sup>138</sup> Convention on the Rights of the Child article 42, General Comment No 5 CRC/GC/2003/5 p. 15, 16

<sup>139</sup> United Nations “Manual on State Reporting” p. 407-413

<sup>140</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading punishment” p.11, 12, 13, WHO World Report on Violence and Health, p.70-76

<sup>141</sup> CRC General Discussion CRC/C/103 p.6

<sup>142</sup> CRC/C/GC/ General Comment No 8 p.12

to stop such acts at an early stage. There are though problems with this method in terms of over- and underreporting.<sup>143</sup>

### **4.3 Periodic review of treatment**

If a child is placed in a care institution, or in any other institution for treatment or protection for his or her physical or mental health, then the State parties have an obligation to ensure that this treatment is satisfactory and in accordance with the CRC.<sup>144</sup> An example of a care institution is an orphanage. In such institutions, cases of child maltreatment are unfortunately widely reported and it is therefore very important that the States fulfil their obligations in this regard.<sup>145</sup>

### **4.4 Measures for recovery and reintegration for victims**

Another obligation on the State parties of the CRC is to take measures to help victims of child abuse back to a better situation. This includes measures such as physical and psychological recovery, but also social reintegration. In the CRC, it says that this type of recovery shall be administered in an environment that improves the health, self-respect and dignity of the child.<sup>146</sup> The reference to the environment means that not any kind of medical treatment or mechanism for the social adjustment of the child will be satisfactory.<sup>147</sup> The use of corporal punishment very often results in serious damage to children and their physical and psychological development will be affected by such violence. It is therefore important that the State parties ensure them with a right to appropriate care and health treatment.<sup>148</sup> Specialized professionals must administer the treatment and the children's views and opinions on the treatment must be taken into account.<sup>149</sup> The purpose of the reintegration is to help the children that have been victims of corporal punishment or other violence to overcome these memories and to gain self-confidence and to feel respected and valued. The programmes should be aimed at stress and conflict management and to

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<sup>143</sup> Bottoms, Bette L; Bull Kovera, Margaret; McAuliff, Bradley D. "Children, social science and the law" article by McFarlane, Mia; Doueck, Howard J; Levine, Murray "Children, Social science and the Law" p. 322-324, 333-336

<sup>144</sup> Convention on the Rights of the Child article 25

<sup>145</sup> UN Study on Violence Against Children, p. 16, In a case from the ECtHR Italy was held responsible for a violation of the ECHR when it had placed children in a residential institution whose leaders had been convicted of child abuse – Scozzari and Giunta v Italy 13/07/2000

<sup>146</sup> Convention on the Rights of the Child article 39

<sup>147</sup> Detrick, Sharon "A Commentary on the United Nations on the Convention on the Rights of the Child" p. 666-670, UN Doc E/CN.4/1988/28 para 69

<sup>148</sup> CRC/C/GC/8 General Comment No 8 p. 10

<sup>149</sup> CRC/C/GC/8 General Comment No 8 p. 10

change and rehabilitate the emotional, psychological and behavioural development of the child.<sup>150</sup>

## 4.5 Reports on the progress made

All the rights in the CRC are to be implemented by the State parties and their progress in this matter is to be identified in State reports sent to the Committee on the Rights of the Child.<sup>151</sup> This Committee has been established in order to examine the progress made by the State parties, when fulfilling their obligations under the Convention. The Committee's functions are explained in part two of the Convention. It consists of 18 experts who examine the reports sent by the States.<sup>152</sup> According to article 44 of the Convention the State parties have undertaken to submit "reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights" to the Committee. These reports are to be submitted every five years. They shall describe the difficulties that the States might be facing in fulfilling their obligations and give the Committee a good description of what the States have done to ensure the rights of the children within their country.<sup>153</sup> In relation to corporal punishment, the States should report on their legislation, complaints procedures, procedures for intervention, educational measures, awareness-raising efforts made, measures for monitoring, special training for those working with children etc.<sup>154</sup>

## 4.6 Reservations

Reservations to rights in the CRC are possible according to article 51. The Committee aims at ensuring respect for all human rights and constantly urges States parties to withdraw these reservations.<sup>155</sup> A country that has made reservations to any of the rights in the CRC is not under any obligation to implement the right in question in its domestic system. This is the case with the right to protection from corporal punishment in some States. Such a reservation is said to be valid only if it does not conflict with the object and purpose of the CRC.<sup>156</sup>

The CRC is the most important instrument on children's rights, but the fact that it can be reserved against means that States can choose to exclude or modify how they should be bound by its provisions. The legal status of the CRC is thereby reduced. In 1996, there were 193 State parties and of those,

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<sup>150</sup> Van Bueren, Geraldine "Childhood abused..." article by Perren-Klingler, Gisela "Children and Reintegration" p. 185

<sup>151</sup> Convention on the Rights of the Child article 44

<sup>152</sup> Convention on the Rights of the Child article 43

<sup>153</sup> Convention on the Rights of the Child article 44

<sup>154</sup> Detrick, Sharon "A Commentary on the United Nations Convention on the Rights of the Child" p. 324-325

<sup>155</sup> CRC/GC/2003/5 General Comment No 5 "General measures of implementation for the Convention on the Rights of the Child" p.5

<sup>156</sup> Convention on the Rights of the Child article 51(2)

56 States had made some kind of reservation to it. Most of them have been made to make sure that the Islamic law or national constitutions have primacy. Some of them are very far-reaching and it is difficult to identify such reservations impact on the rights. These could be seen to be contrary to the purpose of the CRC, but there is no dispute resolution to such situations. Some argue that the CRC has been compromised by all the reservations, but if it were not for them, then there would not be an almost universal ratification.<sup>157</sup>

Iran and Iraq have for example reserved themselves the “right not to apply any provisions or articles that are incompatible with Islamic Laws (Sharia). This type of reservation has also been made by countries such as Mauritania, Qatar and Saudi Arabia. Another example of a State that has made a more explicit reservation to the case of corporal punishment is Singapore who in its reservation says that it does not consider articles 19 and 37 of the CRC to prohibit the judicious application of corporal punishment in the best interest of the child.<sup>158</sup> Other States that do not accept such wide-ranging reservations do not have the possibility to object to them other than by declaring that they do not consider themselves to be in “treaty relations” with the States that made them. As a conclusion it could be said that almost a third of all the States that are parties to the CRC have made some sort of reservation to the rights therein.<sup>159</sup>

## 4.7 Conclusion

When States ratify the CRC, they sign up to ensure the rights therein to the children within their jurisdiction and the obligations in this regard have been described above. These obligations consist of taking legislative measures to prohibit acts that are incompatible with the rights in the CRC and to make sure that the legislation that is already in place conforms with the Convention. It is necessary for the States parties, which have not made reservations, to prohibit the use of violence against children and defences against this are not allowed. The rights that are reflected in the domestic law must also be justiciable, which means that procedures to claim them must be put in place at the national level. Other obligations on the States are to create national strategies of action to realize all the rights in the CRC and to allocate resources in the national budget to children’s issues. The States shall also offer training to professionals and others working with children.

The rights to protection against violence are accompanied with special obligations on the States, such as the need to take preventive action against violence against children. The States are obligated to investigate, report, follow-up and provide treatment in cases of suspected violence. In some cases, it will also be necessary for the States to take action against violence

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<sup>157</sup> Le Blanc Lawrence J. “Reservations to the Convention on the Rights of the Child: A Macroscopic view of state practice” p. 357-379

<sup>158</sup> [www.ohchr.org/english/countries/ratification/11.htm#reservations](http://www.ohchr.org/english/countries/ratification/11.htm#reservations)

<sup>159</sup> Le Blanc, Lawrence J “Reservations to the Convention on the Rights of the Child: A Macroscopic view of state practice” p. 372, 379

against children by intervening in families where violence is threatening the well-being of the child. Other State obligations are to raise awareness of the unlawfulness of violence against children to teachers and parents, as well as the public in general. States must also ensure periodic review of the treatment of children in care institutions and ensure recovery and reintegration of those children that have been victims of violence. All the efforts to fulfil these obligations should be identified in State reports submitted to the Committee on the Rights of the Child.

# 5 Committee on the Rights of the Child – monitoring mechanisms

## 5.1 Monitoring

Today the Convention on the Rights of the Child has 193 State parties. No other Human Rights instrument has been that successful. The CRC should be seen as a legal instrument binding its signatories, but the effectiveness of it depends on a proper system of monitoring, in other words procedures to follow up on the States compliance with the rules.<sup>160</sup>

In the field of Human rights, five different methods have been established to promote and protect these rights. These methods are put into place so that the State parties will be checked upon and so that they guarantee the rights to the individuals within their jurisdiction. The five different methods are:

- Complaints procedures for individuals or groups
- Inter-State complaints procedures
- State reporting to treaty bodies
- Reports by impartial experts
- Technical advice and assistance to States<sup>161</sup>

The method of inter-state complaints is very rarely used because of diplomatic reasons, but the other methods will be discussed further.<sup>162</sup>

Today there is no international court that has the power to correct States violating children's rights. Instead, an elected committee was established in 1991 to monitor the implementation of the CRC.<sup>163</sup>

In order to make sure that the States parties are fulfilling their obligations under the CRC, a treaty body consisting of independent experts has been established. The work of this Committee is described in the second part of the Convention. Its task is to monitor the implementation of the CRC in the States through a State reporting procedure. It does not have the capacity to accept individual complaints, but children who have had their rights violated by one of the State parties may be able to raise such complaints before other

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<sup>160</sup> Jaffe, Philip D. "Challenging Mentalities Implementing the United Nations Convention on the Rights of the Child" article by Saporiti, Angelo "Some remarks on implementing, monitoring and evaluating the United Nations Convention on the Rights of the Child: A methodological point of view" p.31, 32

<sup>161</sup> Van Bueren, Geraldine "The International Law on the Rights of the Child" p.378

<sup>162</sup> Van Bueren, Geraldine "The International Law in the Rights of the Child p.379

<sup>163</sup> Asquith, Hill "Justice for children" p. 68

treaty bodies.<sup>164</sup> The Committee is not only an organ established to control the States, it is also there to assist the State parties in their efforts to realize the rights.<sup>165</sup> The reason why State reporting was chosen as a monitoring mechanism was that it would help to create a constructive and continuous dialogue with the States and their governments instead of a procedure that would just blame and shame States for their misbehaviour. The functions of the Committee are outlined in articles 44 and 45 of the Convention and its main tasks are to examine the progress made and to give advice when States face difficulties.<sup>166</sup> States are in other words supposed to respond appropriately to realize the rights within their jurisdiction while the Committee examines their efforts.<sup>167</sup>

## 5.2 State reporting

### 5.2.1 Procedure before the Committee

#### Aim of reporting procedure

The State reporting procedure is a mechanism used to strengthen the international accountability of the States that are parties to the CRC. It has many functions such as being advisory, give assistance, be corrective, offer relief, be preventive etc. This system is used as a continuing process that will promote and enhance the respect for human rights in the State parties.<sup>168</sup> The aim of the reporting procedure is to have a constructive dialogue with all the State parties about their progresses when it comes to ensuring the rights to children. This should be done through a discussion to identify problems and then to discuss measures to be taken to combat these difficulties. The Committee may request the States to provide information additional to the State report in case of indicators of serious problems.<sup>169</sup>

#### Content of the reports

All State parties to the CRC are obliged to submit reports on their efforts to implement the rights in the Convention into their domestic legal system, in order to ensure that the rights are enjoyed by all children within their jurisdiction. The Committee has issued guidelines on what the States are supposed to focus on so that the procedure can be as efficient as possible. It has requested that the States report on relevant legislative, judicial, administrative and other information and statistical data to give the Committee a good basis for its analysis of the situation in the country.

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<sup>164</sup> [www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm),

[www.ohchr.org/english/bodies/petitions/index.htm](http://www.ohchr.org/english/bodies/petitions/index.htm)

<sup>165</sup> Verheyde, Mieke and Goedertier, Geert „A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45“ p. 2

<sup>166</sup> Verheyde and Goedertier p. 8, 15

<sup>167</sup> Jaffe, Philip D article by Saporiti, Angelo “Some remarks on implementing, monitoring and evaluating the United Nations Convention on the Rights of the Child: A methodological point of view” p.36

<sup>168</sup> United Nations “Manual on Human Rights Reporting” p. 3, 12, 20

<sup>169</sup> Hammarberg, Thomas “Making Reality of the Rights of the Child: The UN Convention: What it says and how it can change the status of children worldwide” p.18, 19 (article 44:4)



The reports are also expected to be of good quality and contain adequate information on the situation in their countries. These guidelines are not binding, only expressions of the expectations of the Committee.<sup>170</sup> In a general comment, the Committee expressed the need for States to develop appropriate indicators and collect sufficient and reliable data to measure their compliance with the CRC. This should be done through interviews with children, parents and other carers in order to get information on the improvement of the situation in a country.<sup>171</sup>

### Constructive dialogue

After such a report has been sent to the Committee, a discussion on the report will be held between the Committee members and the representatives from the States. This will usually take place three to four months after the submission. The discussion is taking place in public so that any media, NGO or individual may attend. After the discussion has taken place, the Committee will hold a closed meeting where the independent experts will come up with their concluding observations, which consists of suggestions and recommendations to the State in question. Such recommendations are to be commented on in the next report sent to the Committee.<sup>172</sup> The problem with this meeting is the limitation of time and the usually very lengthy reports. It is very difficult and almost impossible to cover all the necessary information. The Committee can only spend 6 hours on each report and the States are asked to focus their efforts on the concluding observations made by the Committee and report on these issues next time.<sup>173</sup>

### Concluding Observations

The concluding observations are very important documents and the States are expected to implement them and make them widely available and known to the public.<sup>174</sup> They are produced by the Committee at the end of the state reporting procedure, but are not binding on the States. They are merely suggestions and recommendations on how to enhance the rights of the child in that specific country. The legal effects of these observations are very limited. They should not be seen as a condemnation of the State for not fulfilling its treaty obligations. It is only a way to identify the main issues that have not been dealt with properly and to give the State advice on how to improve the situation. These statements by the Committee may though be used as an incentive for action by other States or UN organs as recognition of the fact that serious human rights violations are occurring in a specific State. The Committee itself has no power to enforce them.<sup>175</sup>

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<sup>170</sup> Verheyde and Goedertier p.17, 18, CRC/C/5, CRC/C/58 Guidelines for State Reporting

<sup>171</sup> CRC/C/GC/8 General Comment No 8 “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” p.12, 13

<sup>172</sup> [www.ohchr.org/english/bodies/crc/workingmethods.htm](http://www.ohchr.org/english/bodies/crc/workingmethods.htm)

<sup>173</sup> Verheyde and Goedertier „A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45” p. 23-28

<sup>174</sup> “UN Human Rights Factsheets 1-25” p. 184-185

<sup>175</sup> Alfredson, Gudmundur; Grimheden, Jonas; Ramcharan, Bertram G; de Zayas, Alfred “International Human Rights Monitoring Mechanisms” p.198

### Late submissions

States that fail to report in a regular, thorough and timely manner are said to violate their international obligations. These reports should be reliable as a source for the analysis of the situation in the current State and must therefore be objective, accurate and not politicized.<sup>176</sup> The initial report is to be sent to the Committee within two years after the CRC has entered into force for the State at question. Thereafter the State is obliged to submit periodic reports on the situation in the country every five years.<sup>177</sup>

Many States have problems in delivering their reports on time. When they are overdue, the Committee will remind the State in question of its obligations. If they are dealing with a persistent non-reporting State, then the Committee can decide to consider and discuss the situation in the State without the presence of such a report.<sup>178</sup>

## **5.2.2 Views on the reporting procedure**

### Self-evaluation

The State reporting procedure is by some authors seen as a very formal and procedural process that lacks in content and in which it is difficult to make real statements on the implementation of children's rights. It is difficult for the Committee to make reasonable and correct opinions and suggestions, when the governments that are producing the reports are in fact reporting on their own progress and efforts and in that way evaluating themselves. NGOs may help this problem by sending extra information to the Committee, but the Committee will, according to the wording of the CRC, rely mainly on the State reports in its work.<sup>179</sup> It is quite uncommon that you will find critical information in the State reports, so this enforcement mechanism is usually seen as the weakest. The reason for having such a mechanism is though that there is a belief that the establishment of facts and having those criticised will help reduce future violations.<sup>180</sup>

### Lack of sanctions

The Convention on the Rights of the Child is sometimes referred to as "soft law", since it is not capable of effectively sanction States that violate their obligations. It is seen as a set of moral standards, which should be complied with, but those who do not are only subjected to sanctions such as unfavourable publicity and pressure.<sup>181</sup> In its concluding observations the Committee must even be careful not to turn their recommendations into convictions because it does not have the authority to do so. These concluding observations are not to be seen as a verdict; they have no legal

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<sup>176</sup> United Nations "Manual on State Reporting" p. 394, 395

<sup>177</sup> Convention on the Rights of the Child article 44(1)

<sup>178</sup> Hammarberg, Thomas "Making reality of the Rights of the Child..." p.29

<sup>179</sup> Jaffe, Philip D article by Saporiti, Angelo „Some remarks on implementing, monitoring and evaluating the United Nations Convention on the Rights of the Child: A methodological point of view" p.38-39

<sup>180</sup> Van Bueren, Geraldine "The International Law on the Rights of the Child" p.379

<sup>181</sup> Asquith, Hill "Justice for children" p. 70

effect and are not binding on the State parties. Just like the General Comments, they are only expressions of the views of the Committee.<sup>182</sup> Others say that there are no adequate measures to take with regard to violating States and no rights for the citizens to claim unless the State has incorporated them into national law. Children as minors also face specific discrimination in this regard due to their lack of right to redress, appeal and compensation at the international level. A trend within States has been to establish Children's rights officers or commissioners, alternatively ombudsmen for the children.<sup>183</sup>

#### Lack of self-monitoring

Another problem is that government agencies do not see the advancement of the CRC as their mandate. There is usually a disparity between national policy and local level implementation. In some countries, local governments are very weak and poor and therefore have difficulties in implementing the rights. Monitoring of the implementation has been difficult in all countries due to the lack of a system of indicators to reveal the CRC compliance. In other words, there is a widespread inability of States to collect basic information on the situation of children. Recommendations to these problems has been offered by various authors such as making use of the media to get a better coverage of the compliance and awareness of the CRC when it is made public in this way. In order to enhance the rights it is also important to allow for more meaningful participation of children and young adults in the NGO reports. States should also try to engage the civil society in reporting and make the GC and CO public.<sup>184</sup> It has also been suggested that the Committee should develop essential statistical indicators for the States to use in their reports.<sup>185</sup>

#### Work overload in Committee

The State reporting system can be criticized for the volume of work that the Committee needs to deal with in comparison with the limited time for each report. The fact that many reports are late and some States do not report at all, also help to cause a backlog in the system. In January 2005, there were 129 CRC reports that were overdue. If a State neglects to send a report the only option for the Committee is to send reminders and as a measure of last resort report this to the General Assembly in its annual report, but this is seen as ineffective. State reports present a very positive picture of the situation. NGOs do not have the chance to participate in the dialogue. The election of committee members is sometimes politicized and another problem is that the members usually have another full time job occupying their time.

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<sup>182</sup> Verheyde and Goedertier "A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45" p. 30

<sup>183</sup> Asquith, Hill "Justice for Children" p. 145

<sup>184</sup> Woll, Lisa "Reporting to the United Nations Committee on the Rights of the Child: A catalyst for domestic debate and policy change?" p.71-81

<sup>185</sup> Abramson, Bruce "CRC Article 4: Improving implementation, monitoring and evaluation" p. 2

The conclusion is that the monitoring system of the CRC today does not give the victims any possibilities of redress. None of their rights can be enforced if a State lacks the will.<sup>186</sup> It is a major problem that children are not able to seek protection by themselves. First of all, they do not know of their rights and secondly they do not have the ability to file a complaint. This is why the States and the NGOs are so important in order to achieve justice for children.<sup>187</sup>

### **5.2.3 State reports in relation to corporal punishment**

In the State reports and the concluding observations, the Committee on the Rights of the Child repeatedly urges State parties to take measures to eradicate the use of corporal punishment. The measures that it recommends are usually to; explicitly prohibit the use of corporal punishment in all settings in their domestic law, to undertake public and professional awareness raising on this new prohibition, to promote non-violent disciplinary methods in childrearing and education and for the States to seek assistance in this work through the OHCHR, UNICEF or the WHO.

The success in regards to the compliance with these recommendations has been varied. The result of the last ten sessions at the Committee will now be discussed further. Almost all of the reports sent to the Committee between 2004 and 2007 are second or third reports in which States are supposed to describe their efforts to take action with regard to the previous concluding observations. In many State reports, the Committee has identified the fact that the use of corporal punishment is still authorized and accepted by the law in many States. This is the case with the reports from the Maldives, Nepal, Benin, Ethiopia, Jordan, Lebanon, Belize, Iran, Botswana and several other countries.<sup>188</sup>

In other countries, the Committee recognizes that the law does not allow for this type of violence, but a problem is that it does not prohibit it either. Therefore, such acts can be administered without sanctions and is seen as traditionally and socially acceptable. This is the case in the State reports from countries such as; Kazakhstan, Slovak Republic, Marshall Islands, Bosnia and Herzegovina, Ecuador, Mongolia, Philippines, Ireland, Senegal, Uzbekistan, Thailand etc. In these countries, the Committee is concerned that there is no explicit prohibition of the use of corporal punishment within the home or alternative settings.<sup>189</sup>

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<sup>186</sup> Verheyde and Goedertier "A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45" p. 43-47

<sup>187</sup> Kumar, Arvind "Fundamentals of Child Rights" p. 323

<sup>188</sup> CRC/CDV/CO/3, CRC/C/URY/CO/2, CRC/C/CHL//CO/3, CRC/C/15/Add.260, CRC/C/BEN/CO/2, CRC/C/ETH/CO/3, CRC/C/JOR/CO/3, CRC/C/LEB/CO/3, CRC/C/15/Add.252, CRC/C/15/Add.254, CRC/C/15/Add.242

<sup>189</sup> CRC/C/KAZ/CO/3, CRC/C/SVK/CO/2, CRC/C/MHL/CO/2, CRC/C/15/Add.259, CRC/C/15/Add.261, CRC/C/15/Add.263, CRC/C/15/Add.258, CRC/C/IRL/CO/2, CRC/C/SEN/CO/2, CRC/C/UZB/CO/2, CRC/C/THA/CO/2

In some State reports the Committee clearly identifies that the State party in question has not sufficiently addressed the issues from the previous report that were in need of a follow-up. This is usually the case of corporal punishment in the home, which many States seem to forget or ignore. They have taken measures to prohibit the use of corporal punishment within the penal system and usually within the school system, but not in the home or alternative institutions. States with insufficient follow-up can be identified as Kenya, Suriname, Costa Rica, Nicaragua, Malaysia, Mexico, Ghana, Luxembourg, Korea etc.<sup>190</sup>

During the last ten sessions at the Committee, there have been very few positive remarks on State measures to prohibit corporal punishment. In Hungary, the Committee welcomed the new law prohibiting the use of all such violence, but stressed the fact that it was still occurring and that further action would be needed to stop this. In Austria, the law was also said to be satisfactory, but the State now had to take measures to educate the public about its content. This was also the case in Bolivia and Croatia. In Latvia the law prohibiting this type of punishment was said to be satisfactory, but the sanctions were inadequate.<sup>191</sup>

### 5.3 Alternative reports

The monitoring of the CRC is different from that of other Human Rights Conventions, since the Committee on the Rights of the Child works closely with NGOs to get information about the situation of children in the State parties. These organisations play an important role when they collect information, do research, organize public campaigns and lobby for human rights. Another important part of their work is to create reports on the situation of children's rights.<sup>192</sup>

In 1983, a group of 30 NGOs met in Geneva to form the Informal Ad Hoc NGO Group on the Drafting of the CRC. It was very influential in the drafting of the CRC and the working group welcomed their efforts. In the CRC, it is therefore mentioned that the Committee may seek help from other competent bodies such as NGOs in its work.<sup>193</sup>

The NGOs officially submit reports on the progress made by States in their alternative/complementary reports. They can even make oral statements at the pre-sessional working groups at the Committee. In order to increase the cooperation and coordination between all the NGOs the reports are being

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<sup>190</sup> CRC/C/KEN/CO/2, CRC/C/SUR/CO/2, CRC/C/15/Add.265, CRC/C/15/Add.264, CRC/C/MYS/CO/1, CRC/C/MEX/CO/3, CRC/C/GHA/CO/2, CRC/C/15/Add.250, CRC/C/15/Add.239

<sup>191</sup> CRC/C/HUN/CO/2, CRC/C/15/Add.251, CRC/C/15/Add.256, CRC/C/15/Add.243, CRC/C/LVA/CO/2

<sup>192</sup> Woll, Lisa "The Convention on the Rights of the Child Impact Study" p. 110

<sup>193</sup> Price Cohen, Cynthia, Kilbourne, Susan "Jurisprudence of the Committee on the Rights of the Child: A Guide for research and analysis" p. 3, Convention on the Rights of the Child article 45(b)

sent to the Liaison Unit of the NGO Group.<sup>194</sup> State reports are usually focusing on their progress in relation to their legal efforts and forget to report on the practical implementation of these laws. This is something that the NGO reports try to evaluate and highlight.<sup>195</sup>

## 5.4 Urgent Actions

One of the problems with the State reporting system is that the Committee only has insight in the situation and the possibility to help a State with difficult situations if they have received a report on the matter. The Committee members therefore decided to adopt a method of urgent actions in serious cases of children's rights violations. (UN Doc. CRC/C/10 1992). These actions mean that the Committee will send letters to the governments asking them to stop and prevent further violations, but also by creating an awareness of the existing violations in the media. In some cases it may even be necessary to visit the State in question.

The Committee has set up a few preconditions that need to be met before it can take such urgent action. It must be established that there are violations of rights in the CRC, that the action is based on reliable information and that there is a real danger that more violations will occur. These urgent actions could be seen as an alternative to an individual complaints procedure, since it can be started once a UN organ or an NGO has sent information on such violations to the CCRC.<sup>196</sup>

## 5.5 Absence of complaints procedure

### 5.5.1 Current situation with regards to complaints

At the moment, there is no complaints procedure available to those individuals who have suffered violations of their rights in the CRC. Such a procedure is available in other treaty bodies and is seen as a more direct, effective and speedier remedy compared to that of State reporting. An Optional Protocol to the CRC granting such a right would strengthen the legal protection of children worldwide. The fact is that the CRC contains no petition system at all, not for individuals and not for inter-state complaints. Geraldine Van Bueren says that to extend the CRC with a right of petition would be both egalitarian and evolutionary.<sup>197</sup>

The reason for not having included the right to complain in the CRC has been suggested as being the fear of overburdening the Committees work. It

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<sup>194</sup> Save the Children "Advocating Children's Rights in the Human Rights System of the United Nations" Sommarin, Clara p.25

<sup>195</sup> Theytaz-Bergman, Laura "NGO Group for the CRC" p.453

<sup>196</sup> Verheyde and Goedertier "A Commentary on the United Nations Convention on the Rights of the Child – Article 43-45" p. 34, 35

<sup>197</sup> Van Bueren, Geraldine "The International Law on the Rights of the Child" p. 410, 411

was thought that too many complaints would be the result of the far-reaching text of the CRC. This is not to say that the Committee today does not go through all the letters it gets and can use these in order to take measures outside the reporting procedure. This type of complaints procedure is not official and an individual cannot claim to have their issues addressed in this way. One example where the Committee took such an initiative was in the case of a boy that had been sentenced to capital punishment for an act of blasphemy in Pakistan.<sup>198</sup>

The State parties to the CRC have not yet reached an agreement on the adoption of such a procedure to the rights in the CRC. Some objectors argue that it would be difficult due to the fact that the CRC contains rights of a civil and political nature as well as those of economic, social and cultural. They mean that only the civil and political ones will be enforceable.<sup>199</sup> They further argue that such a complaints procedure may help the victims to get compensation after a violation, but is usually not a help to prevent such violations in the future. Another problem with complaints procedures is that they are usually only available after the individual has exhausted all domestic remedies and the procedures therefore become very lengthy and costly.

On the other hand, the adoption of an optional protocol with a complaints procedure to the CRC would give victims of violations of this convention a legal remedy at the international level. Such a protocol has been discussed in the Committee and the member States in September 2007. There was an enthusiastic response and it was decided that a more detailed report on the matter would be provided.<sup>200</sup>

The State reporting system which has been seen to be overlapping, repetitious, unwieldy and produced in a routinely manner could be replaced or accompanied by an individual complaints procedure that would draw attention to special problems and make those visible before the Committee and the State parties. Such a procedure would not be binding on the States, but “they are expected to keep their commitments.”<sup>201</sup> It could be argued that children should be entitled to take part in such proceedings in order to be treated equally to adults. It would also give the Committee a better insight in the situation and eradicate misunderstandings. On the other hand, in the case of corporal punishment children may be scared and feel bad about testifying. They may also feel embarrassed or for one reason or the other no be willing to tell the whole truth.<sup>202</sup>

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<sup>198</sup> Dunér, Bertil ”FN och de mänskliga rättigheterna” p. 73

<sup>199</sup> Van Bueren, Geraldine, ”The International Law on the Rights of the Child” p. 410, 411, 379

<sup>200</sup> [www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)

<sup>201</sup> Alfredsson, Gudmundur; Grimheden, Jonas; Ramcharan, Bertram G; de Zayas, Alfred “International Human Rights Monitoring Mechanisms” p. 73, 117

<sup>202</sup> Hollander, Anna; Nygren, Rolf; Olsen, Lena “Barn och Rätt” p. 40, 41

Class actions are not used as a procedure in international law at the moment, but this could be an alternative for those individuals, like children, who because of economic, social or psychological barriers are unable to make individual claims.<sup>203</sup>

The different treaty bodies held a meeting in 2006, discussing the possibility of creating one single treaty body in order to strengthen the level of protection provided to the human rights holders. The importance of complaints procedures was highlighted, as a mechanism to identify steps that States have failed to take. Such a system also offers relief for victims and usually causes a change in policy and law. It also helps create a body of jurisprudence. The problems with state reports were further discussed and it was said that in February 2006 only 8 out of 194 States were up to date with all their human rights reports. At the same time, it was stressed that the goal is universal ratification, not full compliance.<sup>204</sup>

## **5.5.2 Efficient complaints procedures elsewhere**

As discussed above Human Rights treaties create legal obligations on States to prevent and remedy violations. Today about 1.5 billion people have been permitted to complain of such violations against their States. Such a procedure can be very successful if it is widely known and the States take the judgments seriously. The purpose of such a complaint is to address an individual case.<sup>205</sup> The Convention on the Rights of the Child is one of the major human rights instruments in force at the moment. There are five other major instruments dealing with human rights today and all of them but one has the right to complain about violations. These are the Convention on Racial Discrimination, The Covenant on Civil and Political Rights, The Convention on the Elimination on Discrimination against Women and the Convention against Torture. The Covenant on Economic, Social and Cultural Rights does not have the complaints procedure in force yet, but a draft is under discussion.<sup>206</sup> In 2006 the Committee for the ICCPR had decided 1453 cases, the Committee for CAT 288 cases and the Committee for CERD 35 cases.<sup>207</sup>

Different regional human rights systems worldwide also offer individuals the possibility to submit individual complaints. One example of the effectiveness of such a complaints procedure is the one under the European Convention on Human Rights. It is the most successful regional human rights system and the Court enables individuals to seek redress for violations by States. The responses to its decisions have been very positive and the

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<sup>203</sup> Van Bueren, Geraldine "The International Law on the Rights of the Child" p. 412

<sup>204</sup> HRI/MC/2006/2 Fifth Inter-Committee Meeting of the Human Rights Bodies, Geneva.

<sup>205</sup> Bayefsky, Anne F. "How to Complain to the UN Human Rights Treaty System" p. 1-5, 18, 33, 63, 91

<sup>206</sup> CERD art 14, ICCPR OP art 1, 2, CEDAW OP art 1, 2, CAT art 22, Draft ICESCR OP E/CN.4/2004/44 p.17

<sup>207</sup> HRI/MC/2006/2 Fifth Inter-Committee Meeting of the Human Rights Bodies, Geneva.



record of compliance is remarkable. When delivering judgments the Court has been able to define the scope of articles, which have resulted in States amending their national laws.<sup>208</sup> The cases brought before the European Court of Human Rights have as noted in previous chapters dealt with different types of corporal punishment. The success of the European system has raised the number of complaints from 2225 in 1980 to 30 828 in 2002.<sup>209</sup>

The African Charter on the Rights and Welfare of the Child also contains articles to protect children from violence, as well as the African Charter of Human and Peoples Rights. These two charters offer the possibility for individual complaints.<sup>210</sup> The Arab Charter of Human Rights has articles in place to protect children from violence according to article 9, 13 and 38. The Inter-American Human Rights system also offers protection and redress for children.<sup>211</sup> In Europe, the Social Charter is used as another channel for challenging the use of corporal punishment. This opportunity has recently been used by the World Organisation against Torture, which filed complaints against countries such as Greece, Portugal and Ireland for failing to protect children against the use of corporal punishment.<sup>212</sup> More than a third of the European States have enacted laws protecting children from all forms of corporal punishment today and many of them were created as a result of the rulings made by the Council of Europe on these issues.<sup>213</sup>

## 5.6 Conclusion

The monitoring mechanism of the CRC is that of State reporting. The State parties submit reports on their implementation to a Committee of experts on a regular basis. At the meetings for the discussion of these reports, the purpose is to have a constructive dialogue to identify the progress made and the difficulties encountered. The experts give their recommendations on how to solve the problems that the States have encountered. The current State reporting system faces many problems such as delays in submission, lack of objective information, lack of sanctions and work-overload at the Committee. In the chapters above, different State reports have also been seen to be inefficient when State parties repeatedly choose to ignore previous concluding observations. Fortunately, the Committee receives

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<sup>208</sup> Alfredsson, Gudmundur; Grimheden, Jonas; Ramcharan, Bertram G; de Zayas, Alfred "International Human Rights Monitoring Mechanisms" p. 68-71

<sup>209</sup> Hedlund-Thulin, Kristina "Lika i värde och rättigheter" p. 148

<sup>210</sup> African Charter on the Rights and the Welfare of the Child article 11, 16, 17, 20, 44 and African Charter of Human and Peoples Rights article 3, 4, 5, 18 (3) and 55.

<sup>211</sup> American Convention on Human Rights article 5, 15d, 16, 19 and 44, Advisory Opinion OC-17/02, August 28, 2002, Inter-Am Ct HR (Ser. A) No. 17 (2002) "Judicial status and human rights of the child" para 87 and 91., Arab Charter on Human Rights, 1994

<sup>212</sup> International Human Rights Reports, Volume 13 2006 p. 274-283, 288-297, 299-307, World Organisation against Torture v Greece Complaint No 17/2003, 7 Dec 2004, World Organisation against Torture v Ireland Complaint No 18/2003, 7 Dec 2004, World Organisation against Torture v Portugal Complaint No 20/2003, 7 Dec 2004

<sup>213</sup> [www.childrenareunbeatable.org.uk/index.html#Reform-Europe](http://www.childrenareunbeatable.org.uk/index.html#Reform-Europe) – News posted 2005 "Landmark human rights ruling on equal protection"

additional information on the situation of children within the State parties from NGOs and their alternative reports. The absence of a complaints procedure with regards to the rights in the CRC is a disadvantage. An optional protocol providing for such a procedure is currently being discussed at the Committee and among the State parties. Other UN Human Rights Conventions contain such a mechanism and this has proved to be an efficient procedure to address issues such as corporal punishment in the European, African and Inter-American Human Rights systems.

# 6 Analysis

## 6.1 Status of corporal punishment worldwide

In the background of this thesis, the widespread use of corporal punishment as a form of violence was explained. The exact extent to which it is still allowed worldwide will now be analyzed with the help of the global chart on the legal status of corporal punishment from January 2008 (produced by the NGO “Global Initiative to End All Corporal Punishment of Children”), that can be found in Supplement A.

As mentioned earlier the use of corporal punishment has only been fully abolished in 24 countries in the world. Some of these States are Sweden, Norway, Finland, Austria, Cyprus, Denmark, Latvia, Croatia, Germany, Israel, Bulgaria, Iceland, Ukraine, Romania, Hungary and Greece. Last year 7 more countries were added to this list; Chile, Venezuela, Portugal, Holland, Spain, Uruguay and New Zealand. Most of the countries with a full prohibition are European and up until last year there was no country outside Europe with a full prohibition of corporal punishment against children. It is positive to note that such prohibitions now have started to take effect elsewhere, but there is still a lot of work to do on this issue.

Full prohibition of the use of corporal punishment means that such a practice has been outlawed in the home, school and in alternative care settings as well as within the penal system where such punishment could be used as a sentence or a disciplinary measure. The use of corporal punishment has been prohibited in these settings in Italy as well, but there the prohibition was made by the Supreme Court and not through an enactment of law.

There are another 15 States that, according to the chart produced by the NGO, have expressed a commitment to the full prohibition of corporal punishment. The problem is that such a commitment may be difficult to realize for states such as Afghanistan, Bangladesh and Pakistan that to this day have done very little to enforce this right to children.

Legal reform with regards to the issue of corporal punishment is underway in seven States at the moment. In a few of those, South Africa, Canada and the Philippines, the remaining task is to prohibit the use of such violence within the home.

Even to this day, there are 31 States that have no prohibition of corporal punishment against children at all. Some of these States are Antigua and Barbuda, Bahamas, Bangladesh, Bhutan, Botswana, Brunei, Eritrea, Guyana, Malaysia, Mauritania, Qatar, Saudi Arabia, Sudan, Singapore,

Tanzania and Zimbabwe. It is sad to see that there are more States that have no prohibition of this type of violence at all, than those States that have fully abolished this violence and complied with their obligations under the CRC.

In the remaining 150 States examined in the chart, the prohibition of corporal punishment is incomplete and the States in question have made no commitment to reform. Many of these States have found it important to prohibit the use of corporal punishment as a sentence within the penal system. All but 50 of the 197 States that are being investigated in the chart have such a prohibition in place. On the contrary, as many as 91 States have no prohibition of its use as a disciplinary measure within the penal system. It is interesting to note that the use of corporal punishment is accepted as a method within the penal system in some cases, but not in others. One may ask why a child would not be as hurt by the punishment when it is administered as a sentence as when it is administered as a disciplinary measure.

According to the chart, almost half of all the States have prohibited the use of corporal punishment in schools (103 out of 197). In others, there is said to be some kind of prohibition of its use in schools. These states are Australia, Cambodia, Guernsey (UK), India, Isle of Man (UK), Jamaica, Pakistan and the USA. In other words, the use of corporal punishment in schools in these States, is allowed in some provinces of the State, but not others or is prohibited in State schools, but not private schools. Such discrepancies should not be allowed, since it must be seen to be discriminatory and in violation of children's rights to be treated equally.

States seem to find it more important to prohibit corporal punishment in alternative care settings than in the home. In this regard, 35 States have a prohibition compared to that of 24. There are also 30 other States that lack a full prohibition of corporal punishment in care settings, but guarantee some sort of protection to children in care, but not to children at home. The UK can be used as an example of a State that offers protection to children in care settings, but not to children that have been placed in private foster care or those that live at home with their family. It is very sad to see that less than 17% of the States in the Chart provide for the full prohibition of corporal punishment in alternative care settings and only 12% of the States has prohibited such violence in the home. How can they argue that punishment, which should be prohibited in one setting, can be allowed in another?

As a conclusion, States worldwide seem to be of the opinion that corporal punishment can be accepted in some instances, but not others. They find it more important to prohibit its use when conducted by State officials within the penal system than elsewhere. This is probably the case since the States argue that it is easier to fulfil the vertical obligations of the human rights obligations between the State and the individual, than to regulate and ensure the horizontal effects that the human rights should have between private individuals. Half of the States in the world have some sort of prohibition of

this type of punishment within the school system, but it is very rarely prohibited in the home or alternative care institutions where children should feel loved and secure. It is very difficult to understand why such degrading and inhuman punishment still exists in so many settings worldwide. If you consider that 193 States have agreed to be bound by the articles in the CRC, then it is interesting to analyse how the situation of such widespread use of corporal punishment is compatible with their obligations under this Convention.

## **6.2 Corporal punishment and its incompatibility with the CRC**

### **6.2.1 Corporal punishment in relation to the preamble and general principles of the CRC**

The use of corporal punishment cannot be seen to be compatible with the preamble or the general principles of the CRC. This convention was created as an international instrument to deal with problems facing children worldwide because of their inherent vulnerability and need for special protection. Its main purpose was to make sure that children would be identified as individuals and as such holders of human rights too. In other words, they should not be seen as anybody's property, but should instead be treated as equals to adults and be equally protected under the law. The CRC has now been in force for almost twenty years, but still adults are given better protection in the area of this thesis than children are. Adults worldwide are covered by the criminal laws in their countries forbidding acts of assault. These laws are usually put out of place for children by rules allowing for "reasonable chastisement" of children". In other States, the use of corporal punishment is socially accepted and such a case would never be prosecuted and brought to justice.

The CRC deals with matters that in many cultures are seen as private matters and one of these issues is that of ill-treatment by parents and whether the State should have a right to intervene. The CRC cannot be understood as being hostile to the family institution. The family is rather to be seen as the most important institution for the child. Only when the child in one way or the other is seriously threatened by the family environment can and should the State intervene.

It is strange to notice that there is an almost universal consensus on the need for additional protection for children, since this was the reason for the creation of the CRC, but at the same time, adults receive more protection in criminal laws against assault. Comparisons could be made between the ownership relations between parents and children that still exist today with those of the slave trade system that has successfully been prohibited for many years. One could also compare it with the former right of men to treat

their women as their property. Such behaviour has successfully been outlawed, but towards children such property rights are still being argued for not outlawing certain types of violence.

Since children are entitled to a so-called special protection due to their physical and mental immaturity, it comes naturally that they should not have to experience more violence than any other groups in society, such as adults. This special protection has not been understood by State parties to include a right not to be subjected to corporal punishment. A child is just as vulnerable and in need of protection from violence from the State as it may be from their violent parents or carers. This is an issue that several States worldwide need to consider.

The fact that so many articles in the CRC are in place to protect children from violent acts such as corporal punishment must mean that this was one of the main objectives and purposes of adopting it. States should therefore not be allowed to make reservations against such articles, since this is contrary to the object and purpose of the CRC. Children's rights to inherent dignity and equal and inalienable rights, which are emphasised in the preamble, must be seen to be violated in States that allow for the use of corporal punishment. It is as mentioned above not equal to allow for assault on children, but not on adults. The dignity of children is also interfered with when such punishment and violence is committed.

It is also interesting to note that the States in the preamble commit to ensuring that children are brought up in a family situation, which affords the children peace, tolerance, dignity, equality and solidarity. All those requirements are being breached if States fail to protect a child from regular use of corporal punishment by parents. Corporal punishment is a form of violence that can not be understood to be peaceful. If it is being used the rights of the child can not be said to be tolerated. The dignity of the child is violated by such punishment and the harm it causes and the equality of protection for adults and children can as mentioned above be questioned. The solidarity that children should be offered as a vulnerable group is also a requisite that should preclude any use of violence against children. All children under the age of 18 in the member States are to be protected by and should enjoy the rights in the CRC according to article 1.

The basic principles of the CRC can also be used to argue against the use of corporal punishment of children. First of all the CRC contains a non-discrimination-rule which means that children should not be treated differently in comparison with other groups in society, but also that some children should not be treated differently from others. This rule cannot be said to be implemented in States where children are not protected against assault in the way that adults are. It must also be considered discriminatory that some States forbid the use of corporal punishment in public orphanages and other institutions, but not for children living at home or with foster parents. The same can be said about the discrepancies between private and State schools.

There cannot be a difference in the vulnerability and helplessness of these children just because the violence is being perpetrated by people with different relationships with the child. The same type of corporal punishment executed by a parent or a teacher has the same impact on the child's body. The mental impact may be of some difference though. A child may feel more embarrassed when hit in front of other school students, but a hitting in the home may give rise to a greater feeling of insecurity, since the violence is perpetrated by one of the persons who is supposed to love and care for them the most.

The best-interest-of-the-child-principle must also be complied with by all State parties. This is said to be the guiding principle of the whole convention. Acts such as corporal punishment cannot be said to be in the best interest of the child. Since the convention on several occasions claims that a child should be protected from violence of this kind, then this must be understood to be in the child's best interest. All the rights in the CRC are to be complied with in order to ensure the best interest of the child. Both objective and subjective feelings are to be taken into account when deciding what is best for the child. Considering the many reports on the negative consequences and harmful outcomes of corporal punishment taken together with children's fear and helplessness in relation to such violence it is evident that such punishment can never be in the best interest of any child.

The article concerned with the right to life, survival and development has been interpreted as meaning a right to physical and mental health. This is not the case with children that repeatedly are being subjected to acts of corporal punishment. Most of them feel embarrassed and ashamed. Such violence also results in bruises, broken bones or worse. It is degrading and inhuman and therefore contrary to the health and well-being of the child. Children should also have a right to an opinion and have it respected. If children express their fear and dislike of disciplinary methods such as corporal punishment, then the perpetrators should have to respect this and understand that their actions are wrong.

The participation right of a child has also been said to include the important right to a dialogue and peaceful conflict solutions. In other words, children should have a right to solve conflicts with their parents or teachers in a peaceful manner instead of being physically punished without having a say in the matter. This right has also as previously mentioned been said to include a right to complain of violations of their rights. If States have not even prohibited such acts, then how should the children be able to complain about them? Since there is no complaints procedure at the national or international level against the use of corporal punishment in most States, this right cannot be said to have been successfully implemented worldwide.

As a conclusion, it can be said that both the preamble and the general principles of the CRC clearly indicate that the use of corporal punishment is something that is intended to be prohibited in the State parties of the convention. Such violence is contrary to the principle of equal protection

under the law, contrary to the principle of non-discrimination, contrary to the best interest of the child, his/her right to survival and development as well as the right to be heard and respected.

## **6.2.2 Corporal punishment in relation to the CRC articles on rights of protection from violence**

There are three main articles in the CRC that can be discussed to argue that the use of corporal punishment is incompatible with the convention. These are article 37, 19 and 28. There is no explicit reference to corporal punishment in either of these articles, but such acts can be inferred in them after having analysed the Committees interpretations along with case law from other human rights bodies. It has been said that human rights treaties need to be interpreted in a dynamic way, giving rise to better protection to individuals in conformity with changing attitudes in society. The human rights treaties such as the Convention on the Rights of the child shall therefore not be understood as a static piece of law.

### Inhuman and degrading treatment

Traditionally acts of torture are understood as only covering cases of extreme violence causing severe pain and suffering. An article dealing with a prohibition of such acts, as well as acts of an inhuman and degrading nature, is included in the CRC in order to assure that States worldwide protect children against such violence. One of the questions discussed in this thesis is whether this article also covers acts of corporal punishment. When drafting the CRC it was decided that it is not in the best interest of children to be corrected in such a manner and it has been held to be a degrading type of punishment and a violation of the child's personal integrity. Therefore its use must be eradicated in all areas of society.

It has been very interesting to find that the prohibition of torture may be used to claim a protection against corporal punishment. The lack of definitions of the actions in article 37 makes it difficult to establish whether the use of corporal punishment could fall under this heading. With the help of general comments and other sources it has though been made clear that it does. This is interesting since rights of protection against torture and similar acts have gained the status of customary law and jus cogens, which further illustrates their importance in the field of human rights. Acts contrary to these provisions should not be accepted and should not be reserved against.

The lack of a definition of these acts in relation to children makes the protection quite weak. Children are in need of more protection than adults are and their small bodies cannot stand the same amount of force that adult bodies do. It is sad that this is not clearly identified in the CRC and that corporal punishment has not been identified as a violation of this principle in a more clear way. Even if the term torture should be used to prohibit very severe acts of violence, it should be remembered that the other two terms in



the same article are more appropriate to consider with regards to corporal punishment. Such punishment should and must be understood to be inhuman and degrading under all circumstances.

When determining whether there has been a violation of inhuman or degrading treatment as well as acts of torture it is necessary to look at the circumstances in which it occurred. Factors such as age of the victim, the duration of the violence as well as the physical and mental effects must be taken into account when determining whether there has been a violation. Considering the young age of children, the repetitious nature of the use of corporal punishment as well as its scientifically proven physical and mental effects this type of punishment will in most cases qualify as a violation of the right to be free from torture and other inhuman or degrading treatment or punishment.

Violence is inhuman if it causes severe mental or physical suffering and this must be the case when children are subjected to repeated hitting and slapping either by parents, teachers or other individuals. The degrading element is also included in all situations of corporal punishment since children when punished in school feels embarrassed in front of the class, and they also feel humiliated and belittled when punished in that way, as well as when such violence is perpetrated by their parents. It must be very hard for a child to constantly be abused by close family members who they are dependent upon and that are supposed to be the people that love and care for them the most. Since the dividing line between acts of punishment used for correctional purposes and violence constituting abuse are very difficult to separate no violence can ever be admitted.

Acts of corporal punishment can as a conclusion be said to be prohibited in accordance with article 37 of the CRC since this has been the interpretation made by treaty bodies, the ECtHR, other international human rights courts and various authors. States have been held responsible for violations of the rights to protection from inhuman and degrading treatment when children have not been protected from acts of corporal punishment.

#### Physical and mental violence

Article 19 of the CRC clearly says that a child shall not be subjected to ANY forms of physical or mental violence. There are no restrictions to this rule. No violence means no violence and corporal punishment cannot be understood as something else than violence. Such punishment consists of both a physical and mental element. It causes physical injury on the body of the child, but also results in mental injuries and feelings of low self-esteem etc. The terms abuse and neglect have been defined as all acts aimed at harming the child and that is exactly what corporal punishment is all about. It is a punishment that is supposed to scare and hurt a child and act as a deterrent from similar behaviour in the future. In other words, article 19 is in place to protect children from violence, abuse and all sorts of physical and mental suffering. Corporal punishment must be understood to breach all of those rights.

The article is also very useful in order for the States to understand their obligations to prohibit the acts from being performed by non-state actors. All persons who have the care of the child shall be prevented from using such violence. It could in other words be understood as a parent, but also a grandfather, an older cousin, a nanny or a nurse in a residential home or orphanage. No matter in which setting the child is placed he or she shall be protected from ill-treatment from all other individuals. The home and the family setting is no longer a place that should be kept secret and private when it comes to these issues. The home and the school are the two places where children today spend most of their time and should be the two places where children feel most secure. Instead, the reality in most countries is that these are the places in which some of them feel the least secure and in which they are the least protected against assault and violence.

The State parties have signed up to protect the children against violence but some, actually most, refuse to identify corporal punishment as a problem falling within these rights. General comments intended to interpret and identify the meaning and purpose of the rights are not binding, only recommendatory, which leaves us with the situation that the States decide which rights they want to be bound by and they also have the authority to determine the interpretation of such rights. If they choose not to follow the interpretations and concluding observations of the CRC, then little can be done to change the situation.

States may wish to interpret the right not to be subjected to torture or any other type of inhuman or degrading treatment or punishment as only referring to severe acts of abuse, but if an article clearly says that they shall protect children from all types of physical and mental violence, then there is no way to interpret it as giving rise to any defences for corporal punishment. It is difficult to see how a State would be able to escape from this regulation if enforcement mechanisms were in force.

States have been more reluctant to enforce the right not to be physically punished in the home, than in schools and alternative care settings. They have chosen to regard this as a private issue, but the article in question does not give rise to such and interpretation. Instead, parents are explicitly mentioned as possible perpetrators in these situations. The term carer is intended to cover other people responsible for the well-being of the child, such as other family member, but also people working with the care of children in other settings.

It cannot be said that these rules are inadequate. Instead, their scope should be seen as very wide. As mentioned earlier the terms abuse and neglect have not been defined in the convention in order not to restrict their use, and after reading the CRC as a whole, it must be clear that no violence against children in any settings can be tolerated. Article 19 is very clear in its statement that no physical violence against children should be allowed. It also explicitly mentions such violence within the family. The wording of the

article does not give room for an interpretation allowing “some” forms of physical violence but not others. As stated by the special rapporteur for the Study on Violence against Children it should be read as giving room for no violence whatsoever. The fact that it is stated in such a general way is very positive in that it can be used to give the right a dynamic interpretation. It is also interesting to note that article 19 grants children a wider protection against corporal punishment than the ECHR, which in the case of *Costello Roberts v UK* did not consider the punishment to reach the threshold of violence for that convention.

A State may not argue that defences such as corporal punishment being socially accepted and a traditional practice in force for a long time makes it impossible to prohibit. This can be traced back to article 24 (3) of the CRC which expressly says that traditional practices that are harmful and prejudicial to a child’s health cannot be justified.

#### Humane discipline

When examining the different articles in the CRC it is easy to establish a strong argument against the use of corporal punishment against children and it is positive to see that the different articles seem to cover all the areas where acts of corporal punishment of children may take place. A specific reference to humane discipline is found with regard to the school situation. This is very important, since this is the place where children spend most of their time outside of the home. The Committee has explained to the State parties that such violence is not to be used, since it is not compatible with the aims of education.

The education children get in school should be aimed at preparing a child for a life in peace and tolerance. This cannot be achieved by disciplining them, using violence and the use of force. A development of the child’s self-esteem and self-confidence will also be hindered by such actions and the children will instead feel very insecure of themselves. Another aim of the education is for the children to be taught respect for human rights and fundamental freedoms, but how can this be done efficiently when the method used is one of breaching them?

It is important for States to understand the meaning of these articles and that in order to teach children respect and tolerance it is necessary for the teachers to act as good examples. Recently, many States have made progress to abolish this practice in school settings in accordance with article 28 (2), but as mentioned above only about half of the State parties to the CRC have fulfilled the obligation to realize this right for the children within their jurisdiction. In some States, there have only been regulations on the use of corporal punishment in schools, but not an explicit ban on its use. These types of regulations are not sufficient to comply with the obligations in the CRC. States need to fully abolish all types of punishment of this sort otherwise it will be difficult for individual teachers to know where to draw the line.

### Conclusion

More States have abolished the use of corporal punishment within the penal system and the school than at home. This is probably the case since the home has traditionally been a private issue. Maybe it has not been made clear enough that the CRC rights are intended to have horizontal effects and that States have responsibilities not only to stop violating the rights themselves, but also to make sure that the citizens do not violate the rights of others. In the case of corporal punishment this is particularly important. When examining the situation of children with regard to corporal punishment today, as has been presented above, it is easy to draw the conclusion that most of the State parties to the CRC have not lived up to their obligations.

There are several articles in the convention that should provide children with protection against this type of violence, but it has not been granted by the governments in question. The CRC has 193 member states today but only 24 States in the world have fully abolished the use of corporal punishment. States can today no longer rely on justifications for this type of violence by referring to it as a traditional disciplinary measure, which can be difficult to enforce. After signing a treaty as the CRC they must be held responsible for ensuring the rights. These provisions must be very clear to the States and so are the General Comments and the Concluding Observations in the State Reports. So why do States not follow these recommendations? I will now go on to analyse parental versus children's rights and the obligations to prevent corporal punishment that States sign up for when ratifying the CRC.

### **6.2.3 Balance between the parental and childrens rights with regard to corporal punishment**

The CRC clearly sends out the message that the family is the natural environment in which all children, if possible, should be brought up. It must be understood that the parents are the primary caregivers to a child and in charge of most of the decisions surrounding the upbringing. According to the CRC, they are legally responsible for the child and shall provide him or her with appropriate direction and guidance. The way in which such direction and guidance is being administered must comply with the other rights in the CRC and can therefore not include acts of corporal punishment.

There is a limit to the overarching parental responsibility. States that have signed the CRC have also agreed to protect children even from harmful acts by their parents, not just State officials. If the parents become a threat to the child, then it is time for the State to intervene. The State as a party to the CRC has agreed that in the best interest of the child it must ensure children such protection as is necessary for their well-being. Since corporal punishment has been said to be contrary to articles in the CRC such acts are inconsistent with the well-being of children.

Parents carry the primary responsibility for the upbringing and development of the child. Not only in relation to the State, but also to them as parents, must the best interest of the child be the basic concern. Arguments such as corporal punishment being in the best interest of the child can not be upheld in relation to the CRC, since the articles clearly says that such acts should be prohibited at all times. If the parents do not understand how such violence can be contrary to the child's interest, then the State has an obligation to give them the education and assistance on how to discipline their children in other, more positive ways.

State parties to the CRC agreed that all children should have the right to be brought up in the spirit of peace, dignity, tolerance, and equality. The use of corporal punishment by parents would be contrary to all these requisites for a good upbringing. A home situation filled with violence and the threat of punishment cannot be said to be peaceful. Such punishment is in violation of the child's dignity as a person and their views and fear of such violence are not being respected by the perpetrators.

## **6.3 State obligations on how to prevent and stop the use of corporal punishment**

### **6.3.1 State obligations in general**

The CRC could and should be very effective for the children worldwide if you look at the provisions that are in place to protect them from the use of corporal punishment. A child's right to be free from such violence can be inferred from a number of articles in the CRC such as article 2, 3, 6, 19, 28 and 37. The use of corporal punishment can therefore not be said to be compatible with the CRC no matter how or in what manner it is being distributed. It has been positive to note that there are few reservations made by States in regard to these articles on the protection of children, but again sad to see that the States have done so little to enforce them. The States have themselves declared that when signing and ratifying the CRC they agree to improve the situation of the children within their jurisdiction and to grant them all the rights in the CRC. For the children worldwide this is not the reality, especially not when it comes to the question of corporal punishment.

The State parties to the CRC have several obligations to fulfil in order to stop corporal punishment from occurring. The first and most important one, usually stressed by the Committee, is to make sure that its use is specifically and explicitly prohibited in the law. This measure should be in place not only for the use of prosecuting violators, but also to raise the awareness and knowledge of the fact that the society no longer accepts that type of behaviour from anyone dealing with children. It is necessary that the new law and prohibition of this type of violence becomes publicly known and

that the new rules are enforced to ensure that the State take them seriously. With regard to corporal punishment, the de minimis rule will apply to prevent prosecutions of minor offences. It is on the other hand important to stress that even if there is no prosecution for such acts they must be seen as illegal and be reported. Repeated offences of this kind should be taken more seriously.

The Committee has in several State reports urged the State parties to do something about this situation. As a first measure, they usually ask them to prohibit its use by law. This has not been done by many and it is frightening to see that even in the third State report and after being reminded twice about this issue, the States decide not to deal with the question. It is though positive to note that most States have abolished this type of punishment within the penal system and the school, but it is very serious that they do not take the question seriously when it comes to such violence in the home, since this is where it is most commonly perpetrated.

The obligation to prohibit acts of corporal punishment has been said to be of an immediate and unqualified nature, which means that State parties to the CRC can have no excuses for not having done so. It should be very easy for a State to make a decision in the Government and then to pass a law prohibiting the use of corporal punishment all over the country and in all different settings. Such an enactment does not require a lot of resources. After this is done, the State will at least have fulfilled one obligation in this regard and the other more economic, social and cultural obligations in relation to this right of protection are to be realized to the maximum of available resources. After the prohibition is in place the State will prosecute individuals for the fact that such acts are taking place instead of itself being held responsible for still accepting such.

A legal rule prohibiting the use of corporal punishment of children should also be included in different areas of the law in order to make the protection even stronger. Such a rule could as has been mentioned before be of relevance for the criminal law, family law and educational law. In that way, its message will be highlighted in many areas and its substance will be discussed and analysed more thoroughly.

With regard to the obligation of States to prohibit acts of corporal punishment, the CRC does not give any room for the justifications used in national legislation worldwide. No violence shall be subjected to children whatsoever. This was the conclusion of the UN Study Report on Violence against children and this is also the conclusion to be reached after analysing the articles in the CRC. The fact that some States today still retain a justification or defence for people that have hit children is very sad to see. In the previous part of this analysis, it was made clear that there are several articles in the CRC that leave no room for any justifications of violence against children. A defence of such violence would also, in all circumstances, be a contravention of the right to equal protection, which is one of the corner stones of the human rights system. A law banning all

corporal punishment is not only necessary in order to be able to punish those responsible, it is also necessary to change the attitudes towards the social acceptance of this problem. There are many people who would never hurt a child because of their own moral and ethical values, but if such acts are not formally prohibited by the State nobody can challenge such bad behaviour performed by others.

A prohibition must of course be followed by effective remedies for those that have had their rights violated. In accordance with article 12 of the CRC children should be offered a right to complain of such violence and the States are therefore under an obligation to set up child friendly procedures for such actions. First of all, it might be necessary to establish anonymous call lines for children in need, where they could report people and institutions for investigation. In that way, the State would get help to identify perpetrators of such violence and may stop them before the situation deteriorates into more serious assaults that might lead to intervention and prosecution. The creation of children's ombudspersons or children's commissioners may also be necessary in order for the States to fulfil their self-monitoring obligations. According to the CRC, they must on a regular basis disseminate the domestic law to identify if it is up to date and complying with the rights in the CRC.

Apart from creating a law forbidding the use of corporal punishment and making sure that there are effective sanctions for violations the general State obligations according to the CRC also makes it obligatory for the State parties to put corporal punishment on the national strategy for the implementation of human rights in order to highlight the importance of the issue. In this strategy, the State shall describe what strategies it tends to use in order to eradicate the use of such violence against children. Awareness raising and education of the new law is also of crucial importance. If people are not educated about the harmful effects of such practices and its unlawfulness, then they will not change their traditional disciplinary methods. States must also give advice and suggestions on alternative methods according to the CRC and the Committee. It is for example necessary for teachers and parents to teach children right from wrong in a humane manner which does not breach the children's rights to be free from violent acts such as corporal punishment. This should be included as a part of all education for teachers as well as information provided to parents before or at the time of birth of their children.

States must also ensure that private service providers respect the human rights that the State has signed up to ensure. With regards to corporal punishment and children this can be illustrated by the right to humane school discipline. States are obliged to make sure that acts of corporal punishment do not only occur in state run schools, but also those that are being run by private individuals or companies.

Other types of awareness programmes are also necessary to educate the public that the attitudes towards children and discipline must change. It

must be understood that children are in need of being better (not less) protected than adults. The harmful effects of corporal punishment must be explained and new methods of discipline should be introduced. In order to make the CRC effective it is very important to spread the knowledge of its content and to make it the one of the main objectives for politics.

The preventive action can be said to be the most important State obligation with regards to corporal punishment. It is in the best interest of the child that such violent acts are prevented from occurring rather than rehabilitating child victims afterwards. In order for the States to understand the extent and nature of the type of corporal punishment that is being administered within their borders, it is also important to collect data and research on the matter. Such information will help the States decide the most appropriate measures to combat the violence.

As a conclusion to the way that the general obligations to all articles in the CRC should affect the use of corporal punishment it is easy to establish that the first and most important obligation for State parties to the CRC is to make sure that they have a full prohibition of such violence against children in their domestic law. It should be backed up by effective sanctions and efforts must be made to spread the knowledge of its content and implications across the country. Research will be needed on the extent of such violence to quickly arrange a national strategy on how to eradicate its use and awareness raising of the new prohibition will be of crucial importance.

### **6.3.2 State obligations regarding rights of protection from violence**

The general State obligations that are applicable to all the rights in the CRC are found in article 4 and have been discussed above. In relation to protection of children and the rights that deal with these issues the States, when drafting the convention, agreed that there should be additional State obligations for these types of problems. Prohibition and awareness raising was not seen to be enough for the type of violations that could occur in relation to such acts. The States had to do more to ensure that the rights were fulfilled. These far-reaching obligations would achieve a lot to protect children from violence if they were all implemented in reality.

From reading these articles, it is clear that the emphasis was put on preventing such acts from ever occurring and for the States to act in order to protect children before they have been subjected to any harm. States must investigate, report, and sometimes intervene in the life of children to protect them from such violence. However, this was not seen to be enough for the States that were engaged in the drafting of the CRC. When ratifying the CRC all the other States also agreed that measures should be offered to children that had been victimised and they should be offered recovery and rehabilitation and other follow-up in cases of abuse. It is very interesting to identify these very wide-ranging responsibilities that the State parties chose



to sign up to when you today can see that many of them did not do as much as prohibit such acts!

Arguments saying that the States do not want to interfere with the family life cannot be upheld. The rights of adults do not have priority over those of the child. The State should help parents understand their rights and duties and teach them about child rearing. An intervention to remove a child from a violent home situation threatening the well-being of the child is in the best interest of the child and therefore a clear State obligation. Even if such decisions are problematic and difficult to make they must be seen and understood to be of extreme importance. If a child has been subjected to unlawful violence it is the States responsibility to identify this, report it, prosecute if necessary, but also to afford the child alternative care and rehabilitation. These measures can be very expensive for the States, but they are under an obligation to put children's issues high on the political agenda and use a big part of the budget for these purposes.

States have also taken on extra obligations when it comes to children in care institutions, orphanages etc. These children should also in all cases be protected against violence and corporal punishment and it has therefore been decided that State agents need to review the treatment on a regular basis to make sure that the rights of the child are being upheld. If abuse or other types of violence have been discovered the State is responsible for putting a stop to it just like in the schools or in the family home.

Recovery and rehabilitation is necessary for children that have been subjected to acts of corporal punishment over a longer period of time, since it may have resulted in serious damages to the child's mental and physical health. Such a recovery will then most likely be both lengthy and costly for the States. It is an obligation that they have signed up to assure to these children, but their realization will in the end again depend on the States willingness to set up such programmes and its willingness to allocate resources to such projects. Little can be done to enforce them.

The reason for including extra obligations on States to protect children from violence must be seen as another incentive to the fact that these issues are very important for the well-being of children and something that State parties are requested to deal with urgently. Since corporal punishment is to be included as the type of violence children shall be protected against, then it is very positive to note that the CRC has such far-reaching obligations on the State parties. Some of the articles dealing with the protection of children can be put in the category of economic, social and cultural rights, such as those of protective measures and recovery and rehabilitation of victims. These should be realized by the States by using the maximum of their resources. Unfortunately, the general obligations have not been fulfilled in most of the State parties yet, which in other words means that State parties must be far from fulfilling these additional obligations at present.

### 6.3.3 Reservations to rights of protection

All the rights in the CRC are binding upon the States that sign and ratify it, unless they have made reservations to some of them. No State, apart from the State of Singapore, has made a specific reservation to either article 19, 28 (2) or 37 (a), but the problem is that the kind of wide-ranging reservations that some States have adopted might result in such rights being set aside. If we look at the reservations saying that the States national constitutions or the Islamic law will prevail the rights in the CRC, then it is obvious that if these other instruments allow for corporal punishment to take place, then the State is not bound to outlaw it even if it is a party to the CRC.

In chapter 4 above, the question of reservation was discussed as well as the fact that if a reservation is incompatible with the CRCs objects and purposes then it should not be allowed. Such objects and purposes of a Convention can be found and identified when examining the preamble and all the substantive rights. The CRC preamble specifically states that the purpose of the Convention is to give extra protection to children as vulnerable members of society and one of its objectives is to ensure them equal rights to adults. In other words does this mean that reservations allowing for assault on children but not on adults are incompatible with the object and purpose of the CRC. It is also relevant to notice that three substantive articles are in place to protect children from violence, one of them of jus cogens character, and this must mean that such issues were of high importance for the contracting parties. This fact further illustrates that a reservation of this nature is incompatible with the object and purpose of the CRC and should be considered to be invalid.

The problem with this is that there are no sanctions against a State that has made an “illegal” reservation. The Committee has not done anything about such reservations so far and other States can only object to them. This means that for children in some States, the CRC could not be said to provide them with an effective protection against corporal punishment. It is up to the State to decide whether such protection should be granted and the international community can do nothing about it even if the State in question has signed and ratified the same treaty as them, for the purpose of improving the well-being and situation of children.

One may question if it would be helpful to exclude or warn States about such invalid reservations, but on the other hand it has been said that the UN aims at full ratification rather than full compliance. It is difficult to see how this could be the case. There does not seem to be much use of having States sign up for something that they in the end do not have intentions to ensure. In the current system States can sign up for obligations, but at the same time choose to ignore them. The examination of State reports that fail to identify the problems faced and which does not result in any constructive dialogue and follow-up of concluding observation only seems to be a waste of time.

It is also unfair for all the individuals in the State parties to constantly have their rights violated with no possibility of redress.

## **6.4 States responsibility for violations of childrens rights – a need for a more effective monitoring system?**

### **6.4.1 Efficiency of current monitoring mechanisms**

The current system of monitoring of the CRC has advantages and disadvantages. It is positive that the States themselves are involved in the procedure and that they have the possibility to show their commitment to improving the situation for all children within their jurisdiction. Many States have showed an interest in signing up for Conventions of this type, since the procedure does not intervene with the sovereignty of the State and it cannot be compelled to act in a certain manner. Instead, the States are asked to identify their progress and problems and receive recommendations for further improvement by an independent body. Unfortunately, this system has failed the hopes of many children worldwide.

The procedure of State reporting as a form of constructive dialogue could have been efficient if all States put an effort into it and took their obligations seriously. Only very few have in reality. Twenty years after its adoption, only 12 % have abolished the use of all corporal punishment, which clearly is a right that should be granted to children. According to the State reports that I have looked into, the concluding observations in this regard have not been addressed appropriately. States that send reports to the Committee for the third time have still not made any progress on this point.

The main problem that has been identified in this thesis is that States, when reporting on the situation in their countries, seem to choose to ignore the previous concluding observations made by the Committee. Very few States have decided to take action against the use of corporal punishment after this has been suggested by the Committee for a third time. Such violence may not be seen as the issue of highest importance to governments worldwide, but for the children that are being subjected to it every day it is. If the States do not fulfil their obligations and ignore the system of monitoring in this way, then can we really consider the CRC to contain rights for children, or should they be seen merely as moral principles that States may find attractive and willing to ensure at some later point? If States ignore the concluding observations then it is also possible to question the constructiveness of the dialogue between the State and the Committee. Why should the Committee spend its valuable time coming up with suggestions for States if they tend not to be followed or acknowledged?

State reporting cannot be said to have been very efficient in changing the States attitudes in this regard. The Committee on the Rights of the Child takes the question of corporal punishment very seriously and have in most concluding observations made it very clear that the States have failed in their obligations when it comes to this right. It has also been stressed that the obligation to prohibit such violence is an immediate obligation, which should not take more than 20 years to realize. It has also recommended States to seek technical assistance from other UN bodies in order to improve the CRC compliance, but this has not seemed to help. The work to realize human rights is a very lengthy procedure and in order to make the rights efficient it will be necessary for States to take many steps not only to change their own attitudes and regulations, but also to influence the values of the public.

It is understandable that a Convention of the size of the CRC with over 40 articles granting children rights in all aspects of their lives will take time to realize. For most States the reporting procedure is very difficult and time consuming. Some States have problems collecting information on the situation of children and others may not have the resources to carry out the relevant research. Three hours in front of the Committee to discuss the progress that a whole country has made with regards to all the rights in the CRC is not enough. This can not be questioned, but due to the backlog in the State reporting system, the lengthy and time-consuming reports covering all articles and the very limited time for a constructive dialogue, States have been asked to focus on addressing issues in the concluding observations in their future reports. Since these observations repeatedly have urged States to prohibit and take action against this type of violence against children, States should not be satisfied with or proud of their efforts.

The problem with international Conventions such as the CRC is that it is not possible for anyone to enforce the rights it contains at the international level. As mentioned earlier in the presentation, it is up to the governments of the States Parties to decide what to do in relation to the CRC and it is also the government that evaluates its own progress. One may then question whether there is a real difference between the former declarations and the current binding Convention on children's rights. It is also possible to question whether its articles should be referred to as rights or merely moral standards, since none of them can be claimed unless the States have put such procedures in place. The fact that a State is a party and has agreed to be bound by the CRC does not mean that its citizens benefit from them and with the current monitoring system all you can do is suggest a change of attitude.

The General Comments produced by the Committee will hopefully give the States another push towards an abolition of the use of corporal punishment, but the concluding observations have not proved to be of much success in relation to the issue of corporal punishment to this date. When analysing the most recent State reports it is positive to note that most States have decided to outlaw the practice of corporal punishment in some settings. Since all

types of corporal punishment should be prohibited according to the CRC, this has been restated by the CCRC in several concluding observations and this is an obligation yet to be fulfilled in most countries worldwide. It is positive that the Committee itself has set up measures other than that of State reporting. If a State does not submit a report or if the Committee otherwise gets information about an urgent human rights situation in the country, then it has the power to contact the State and sometimes even arrange a visit there. Such a visit would most probably be dependent upon an invitation and the compliance would in the end rely solely on the commitment of the State in question to stop the violations. Therefore, it is doubtful whether such a procedure will be used and efficient.

As a conclusion to the discussion of the present monitoring system, available for State parties to the CRC, it can be said that its effectiveness and success will depend solely on the effort and open-mindedness of the States. If they keep sending reports to the monitoring body and choose to keep ignoring the views and interpretations of the Committee nothing will or can be done to improve the situation for children within their jurisdiction. We have to hope that this situation can be overcome and that we can do something to improve the monitoring mechanism. The articles in place today are clear as to the nature of the rights and the obligations that they are accompanied by. Further lobbying and awareness raising of NGOs will hopefully help to increase the knowledge of the harmful effects of the use of corporal punishment as well as the insight that equal protection for children is of crucial importance. Some States have already taken steps to ensure these rights in reality and now it is up to the rest of the world to do the same.

## **6.4.2 Alternatives for the future**

### An Optional Protocol

The holders of the rights in the CRC have no opportunity to claim them and you may therefore question the effectiveness of the rights of children. A child that lives in a State which refuses to implement an article concerned with his or her right to protection from violence, or that has made wide-ranging reservations to the CRC, has no opportunity to claim this right. Problems for individuals also arise in States where the rights may be implemented, but not realized in practice. Should a child be able to claim compensation for this? If it did, while using a complaints procedure at the international level, would this change the stand taken by the State?

The reason for not including such a complaints procedure in the CRC in the first place was said to be the fear of an overload of work for the Committee. The problem is that the system of State reporting also results in such an overload. The CRC has the most signatories of all human rights Conventions in force today, which results in the lengthy reports of all State parties. It is of course very positive to see that so many States have signed up to improve the situation of children, but the procedure to ensure this must be made more effective. State reports are often submitted too late, they lack information and show a positive situation, which is not always true. Since

these have been said to be repetitive, non-objective and general in the way that they try to cover all areas of the CRC, a complaints procedure might be a good option to give individuals a possibility to demonstrate the issues that they feel are of importance and that have not been addressed appropriately.

For those States that really care about making all the rights of the child a reality within their borders, an optional protocol should be an option. It would create a better scrutiny of how well the State is fulfilling its obligations and would send out a signal to the people that the States intend to take the rights seriously. Such a system has proved very efficient within the European system and is being used in the other UN treaty bodies. States would still not be obliged to follow the decisions, but they would create an incentive for doing so and would highlight problems that States have failed to identify.

The fact that there was a right to claim violations could result in a new interest in the CRC and both children and the people caring for them would realize that the rights in the CRC could actually be used to improve their situation. It would probably result in more knowledge about the rights in all the State parties and cases would be reported on in the media. This would create an even bigger awareness. States would then feel obligated to take some action. If they fear such pressure then they might not be willing to sign an optional protocol, but they should be convinced that such scrutiny would benefit them in the end and enable them to see in which areas of the CRC that they have to make improvements.

In the end, it must be remembered that the CRC and the Committee was established by the States and not the individuals within the States. It is up to the decision-makers in each State to decide in what way they want to be compelled to act in accordance with the CRC. Most States still want to contain their sovereignty from outside pressure. If a complaints procedure would be set up in the future it would have to be optional. Consequently, the protocol would not be of much help for the children in the States that still accept corporal punishment, since the right to complain of such violence would most likely not be granted to them, but rather to those children that already have some protection against it.

Even if the Optional Protocol with a complaints procedure would not offer the possibility for the Committee to give binding decisions like in the ECtHR, it would nevertheless help to put critical issues of children's rights on the agenda by the media coverage it would create and individuals would feel more engaged and active in their rights and how to have them ensured. The De-minimis rule in relation to the right of corporal punishment would be used to stop minor offences/violations from burdening the Committee with too many complaints. It would only consider cases of a specific severity or violations that are very widespread and that States would have to be highlighted on. Such a procedure would also result in a consistent jurisprudence for the State parties to follow.

It must be seen as discriminatory that all the other human rights instruments contain a right to complain, but not the one concerning children. All the other Committees have the possibility to manage both a reporting procedure and a complaints procedure. Are there too many signatories to the CRC and is this a valid reason for not including such? If States have agreed that the children's rights should be given priority, then should this not also be reflected in the work of the Committee? The Committee on the CRC could not have been intended to be the least effective. Some argue that the full ratification of the human rights treaties is the main goal, not the full compliance with the rights they contain. Such an argument is questionable. If States ratify Conventions only to be seen as child friendly, but fail to implement the rights to the children in reality, then how can we say that the system has succeeded? The dialogues at the Committee will be important in order to try to persuade States to take action, but it may also result in a waste of time that could have been used investigating complaints against States, which are willing to make a change.

The European Human Rights system and its complaints procedure can be used as a positive example. After several cases were brought to the European Court of Human Rights on the question of corporal punishment in English schools, the UK government decided to change its laws and prohibit that practice. The complaints procedure used within the European Convention on Human Rights has proved to be useful in changing the States attitudes towards these issues and legislation forbidding such violence has now been enacted in most European States since they are all bound by its decisions. The case of *A v UK* concerning corporal punishment in the home explained that the UK had failed in its obligations to protect the child and it is yet to be seen what action the UK will take as a result of this decision.

#### Making use of other complaints procedures

It has been interesting to note that other international human rights courts take account of the CRC and the Committees interpretations of its articles when delivering their judgments. Since there is no complaints procedure for the CRC, these regional complaints procedures as well as the other Human Rights treaty bodies could be used by children or their representatives as other avenues to redress their human rights violations. In order to be able to complain of violations in front of these other bodies it will be necessary to examine whether the State in question has granted this opportunity to its citizens. If it has, children should be able to submit complaints of violations of protection of violence such as corporal punishment, but would then have to rely on articles in other Conventions. States that have not signed up for the possibility for complaints in other systems will unlikely agree on such a procedure for children either.

The issue of corporal punishment has been challenged in other treaty bodies and human rights courts, but usually only with regards to adults and when the punishment has been administered as a sentence. It is only the European system that has developed a useful jurisprudence on the issue of corporal punishment of children. When analysing these cases it has been interesting

to note that in order to qualify as a violation, the violence has to reach a certain threshold to qualify as inhuman or degrading treatment. The question is whether article 19 of the CRC would be able to grant children a wider protection with its provision granting children protection from “all” violence.

The European Court of Human Rights is the only one that has made binding decisions on the use of corporal punishment of children as a violation of human rights. These cases have dealt with such violence in schools and in the home. Other complaint systems such as the Inter-American and the African Court of Human Rights have so far only delivered judgments on the use of corporal punishment as a sentence. Since this practice now has been shown to be eradicated in most countries in the world, it will be interesting to see how these courts will deal with other types of corporal punishment in the future.

In this thesis, it has been said that corporal punishment may in some cases be included in the definition of torture. Therefore, it might be possible to argue that children could complain of such violence under Convention against torture since this Convention contains such a procedure. The problem with this is that the CAT has a lot fewer signatories and that the definition in CAT was not written to apply especially to cases of children who in relation to such violence is much more vulnerable and might need more protection than what can be offered according to CAT's definition. This Convention's main purpose was instead intended to eradicate the use of torture of a certain severity perpetrated by State officials and it will in most cases be difficult to argue that corporal punishment of children should be protected under the same regulations.

The Human Rights Committee, the monitoring body of the ICCPR, has repeatedly stated that corporal punishment is a violation of the right to be free from torture and other inhuman and degrading treatment and punishment. So far most cases concerning corporal punishment in front of this Committee have also dealt with the use of such violence in relation to the penal system, but if more children chose to confront States of such practices in schools and the home the Committee would most likely regard that as a serious violation of article 7 too. In order to receive such complaints the wider population would have to be educated and made aware of such procedures. Today the human rights system with its closed State reporting procedures seem to be too anonymous and unknown to the people that should be the holders of the rights.

#### Expansion of NGO involvement

Most States seem to be unwilling to identify the issue of corporal punishment in their State reports. Since this is the only available monitoring mechanism, it should be seen as a very big problem. Fortunately, the NGOs have a big role to play here. They represent the children when sending alternative reports on the “real” situation of children in the State at question. This provides the Committee with a more correct view of the problems.



These NGOs are also welcome to attend the meetings between the States and the Committee, but unfortunately they have no right to participate in the dialogue. Such a participation would most likely benefit both the Committee and the States. NGO representatives would be able to defend their research and raise issues that the Committee, due to its work overload, have been unable to identify.

Another way of strengthening the work of the NGOs would be to include children in the preparations of their reports. This could for example be done by letting children complain of violations of their rights to an NGO, which would then group the complaints together and present them at the meeting for the constructive dialogue. Such a procedure would eliminate the danger of overloading the Committee with complaints. Only the complaints of the most immediate and occurring violations, as well as the most widespread violations would be highlighted. This way, individuals would feel that they had a right to participate and change their situation.

The specialized NGO group would identify the most relevant and urgent petitions. Those could then be presented before the Committee and the State would be able to offer a defence or explanation. The Committee could then come up with recommendations for the future, but it would still not be a judicial procedure, since States seem to be against that. If such a procedure would be established it could be compared to the one in place for the European Social Charter, which recently has challenged the use of corporal punishment in some European States. That procedure does not allow for individuals to complain, but group complaints. Such a procedure would be positive in the case of children who in most cases will be unable to make a claim and represent their own cases.

It is only fair that children with the knowledge of their rights gained in schools should have the right to complain and make their voices heard through representatives. Of course, parents and others should have the right to identify violations too. A procedure like the one presented above would avoid the extra work that is being carried out today, when trying to cover all issues in the reports and not focusing on specific articles of concern to the specific country. In this way, the Committee would not have to read lengthy reports, but rather get information on children's rights issues that the States need some help with. Of course, it would be necessary that a new State party makes an initial report on all the measures taken, but to repeat these in later reports is not very efficient. Instead the State could present only new measures taken in a report and then be asked to answer allegations of violations/failures by an NGO group in cooperation with civil society.

One could argue that the NGOs are able to disseminate such problems of violations in their reports today and that the success in changing the attitudes of the States does not lie in the introduction of another procedure, but rather in the fact that the Committee lacks enforcement mechanisms. It is true that an optional protocol providing for individual or group complaints would not ensure the enforcement of the rights in any other way than the

reports do today. However, it is important to remember the other factors that such a procedure would create. It would make individuals engaged in the realization of the rights and enhance the knowledge and awareness of the rights as well as the State obligations.

# 7 Conclusion

## 7.1 Do the articles in the CRC effectively cover a right to protection from acts of corporal punishment?

Corporal punishment is not compatible with the CRC in either the home, school or other alternative settings. This has not been explicitly stated in any of the articles in the CRC, but can and should as we have seen be interpreted as being included in various rights concerning protection of children. Its use is contrary to the aims and purposes of the convention as well as the general principles that have been agreed upon by all State parties. Such violence is contrary to the principles in the preamble as well as the principles of non-discrimination, the best interest of the child, the right to life, survival and development and the right to participation.

Three specific rights also deal with the right to protection from violence and these rights must be understood to include a right not to be subjected to acts of corporal punishment. Article 37 prohibits acts of torture as well as acts that consist of inhuman or degrading treatment and punishment. This article has been interpreted to prohibit acts of corporal punishment in the General Comment by the Committee, but also in the literature and case law from other human rights instruments. Article 19, which is intended to protect children from all forms of violence, must also be understood to be in place to offer such protection. There is even a specific reference in the CRC that has been put into place to make sure that States protect children from the use of corporal punishment in schools, article 28(3).

After having analysed the meaning of the preamble, the general principles of the CRC as well as the three articles in place to protect children from acts of violence it must be concluded that no acts of corporal punishment can be justified. Therefore, it can also be concluded that the articles and rights in place are effective so as to protect children from such acts. They cover all types of violence and all the settings in which such violence may take place.

## 7.2 Are the State obligations, provided for in the CRC, enough to effectively prevent and stop such violence?

Apart from realizing that the abovementioned articles should be used to protect children from acts of corporal punishment, the States must also understand that there are several obligations that they have to fulfil in order to realize these rights and grant the children the proper protection that they need against such violence. Some obligations are of a general nature and

others have been designed specifically to accompany the rights of protection. The general obligations that a State party to the CRC has to fulfil is to prohibit the use of corporal punishment by law, to ensure effective remedies and sanctions for victims and offenders and to make sure that the content of the new legal provisions are acknowledged in all areas of society and across the country. These measures are efficient in order to change the attitudes towards the negative aspects of such child disciplining methods, but before a total change of values has taken place other types of States obligations will be necessary to fulfil in order to protect the children that are still at risk.

Such further State obligations have been incorporated into the CRC. When drafting the Convention it was realised that the protection of children against violence will require extra efforts from the States. To change a traditional behaviour, like the one of corporal punishment of children will take some time, and it will therefore be necessary to take more measures than just to pass a law and raise awareness of this. If violations still occur, the States must provide the children with extra protection. Investigations into the violations must be taken and children might have to be removed from the violent environment, which could be the family home, the foster home or the orphanage. Such an intervention will also need to be followed up with rehabilitation of the child.

These obligations are clearly spelt out in the text of the CRC and if they were all implemented at the national level the violations of rights of protection for children would most likely decrease significantly. These obligations all present effective methods to combat the use of corporal punishment of children and they all complement each other. However, it is sad to see that most States have failed to live up to these obligations. The first obligation to prohibit the use of corporal punishment of children has only been achieved in 12% of all the States parties, which means that the other obligations are far from being fulfilled as well.

### **7.3 Is the monitoring system of the CRC effective to enforce these rights and obligations?**

State reporting is the method used today to ensure international accountability of the State obligations with regards to the rights in the CRC. This monitoring mechanism consists of reports that are being prepared and sent to a Committee of experts by the States themselves. This submission is followed by a meeting for a constructive dialogue between the experts and the government representatives on the progress of the human rights situation in the country and the realisation of the rights to the children within their jurisdiction. There are many problems attached to this procedure and the issue of corporal punishment has not been sufficiently addressed in these reports.

There are many reasons for this failure, but in the end the States are the ones responsible for the failure to ensure the rights to their citizens. The preparations of the reports are very time-consuming and requires resources to collect relevant data and research. The problem is that this research is usually insufficient and the States are usually reluctant to present their weaknesses and problems encountered in the implementation of the CRC. The alternative reports from NGOs that are also being submitted to the Committee bring some of these problems to the surface and the Committee may rely on such additional information when delivering its concluding observations.

It is very positive that the Committee meets with the representatives from States across the world on a regular basis to offer its expertise on how to successfully implement all the rights in the CRC. This offers the States a great opportunity to enhance their knowledge and awareness of their obligations and on the measures to be used to fulfil them. Unfortunately, most States have proven to be unwilling to follow the Committees recommendations when it comes to the issue of corporal punishment. Since none of the decisions or recommendations of the Committee are binding there is not much that can be done in terms of enforcement at the international level. The only way to change the current inefficiency will be to, either establish an optional protocol to provide the individuals in these countries with a right to complain of violations, or in other ways enhance the awareness of the rights and content of the CRC so as to proclaim their importance and put pressure on the States to take them seriously. To quote Eugeen Verhellen who has written on the issue of monitoring of children's rights: "a treaty is as effective as its monitoring system".<sup>214</sup>

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<sup>214</sup> Verhellen, Eugeen "Monitoring Childrens Rights" p. 73

# Supplement A

## Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

Entry into force 2 September 1990, in accordance with article 49.

### Preamble

The States Parties to the present Convention,  
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,  
Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.



### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

### **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The

right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

### **Article 19**

1. States Parties shall 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.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling

States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### **Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other

consideration relevant to an application for benefits made by or on behalf of the child.

#### **Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

#### **Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) Make educational and vocational information and guidance available and accessible to all children;
  - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 29**

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;



- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to

maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### **Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### **Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

## **PART II**

#### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.<sup>u</sup> The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or

indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **PART III**

#### **Article 46**

The present Convention shall be open for signature by all States.

#### **Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### **Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General

Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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<sup>1/</sup> The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word "ten" with the word "eighteen". The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

## Global progress towards prohibiting all corporal punishment (January 2008)

Please note: The following information has been compiled from many sources, including reports to and by the United Nations human rights treaty bodies. Information in square brackets is unconfirmed. We are very grateful to government officials, UNICEF and other UN agencies, NGOs and human rights institutions, and many individuals who have helped to provide and check information. Please let us know if you believe any of the information to be incorrect: [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org).



State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Austria	YES <sup>1</sup>	YES	YES	YES	YES
Bulgaria	YES <sup>2</sup>	YES	YES	YES	YES
Chile	YES <sup>3</sup>	YES	YES	YES	YES
Croatia	YES <sup>4</sup>	YES	YES	YES	YES
Cyprus	YES <sup>5</sup>	YES	YES	YES	YES
Denmark	YES <sup>6</sup>	YES	YES	YES	YES
Finland	YES <sup>7</sup>	YES	YES	YES	YES
Germany	YES <sup>8</sup>	YES	YES	YES	YES
Greece	YES <sup>9</sup>	YES	YES	YES	YES
Hungary	YES <sup>10</sup>	YES	YES	YES	YES
Iceland	YES <sup>11</sup>	YES	YES	YES	YES
Israel	YES <sup>12</sup>	YES	YES	YES	YES
Latvia	YES <sup>13</sup>	YES	YES	YES	YES
Netherlands	YES <sup>14</sup>	YES	YES	YES	YES
New Zealand	YES <sup>15</sup>	YES	YES	YES	YES
Norway	YES <sup>16</sup>	YES	YES	YES	YES
Portugal	YES <sup>17</sup>	YES	YES	YES	YES
Romania	YES <sup>18</sup>	YES	YES	YES	YES

<sup>1</sup> Prohibited in 1989 by section 146a of General Civil Code

<sup>2</sup> Prohibited in 2000 Child Protection Act (amended 2003) and 2003 Regulation on the Implementation of the Child Protection Act

<sup>3</sup> Prohibited in 2007 amendment to Civil Code

<sup>4</sup> Prohibited explicitly in 1998 Family Act, replaced by 2003 Family Act

<sup>5</sup> Prohibited in 1994 Violence in the Family (Prevention and Protection of Victims) Law, reiterated in 2000 Act on Violence in the Family; response to governmental questionnaire in UN Secretary General's Study on Violence against Children (August 2005) stated Children Law provides for "right to administer punishment", but this provision expected to be removed following review

<sup>6</sup> Prohibited in 1997 amendment to 1995 Parental Custody and Care Act

<sup>7</sup> Prohibited in 1983 Child Custody and Right of Access Act

<sup>8</sup> Prohibited in 2000 amendment to Civil Code

<sup>9</sup> Prohibited in 2006 Law 3500/2006 on the Combating of Intra-family Violence

<sup>10</sup> Prohibited in 2004 amendment to Hungarian Child Protection Act

<sup>11</sup> Prohibited in 2003 Children's Act

<sup>12</sup> 2000 Supreme Court ruled against all violence in childrearing; "reasonable chastisement" defence removed from legislation in same year

<sup>13</sup> Prohibited in 1998 Children's Rights Protection Law

<sup>14</sup> Prohibited in 2007 amendment to the Civil Code

<sup>15</sup> Prohibited by Crimes (Substituted Section 59) Amendment Act, in force July 2007

<sup>16</sup> Prohibited in 1987 amendment to 1981 Parent and Child Act; but Supreme Court decision 30 November 2005 interprets Penal Code as allowing "lighter smacks"; government is reviewing this provision

<sup>17</sup> Prohibited in 2007 amendment to Penal Code



State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Spain	YES <sup>19</sup>	YES	YES	YES	YES
Sweden	YES <sup>20</sup>	YES	YES	YES	YES
Ukraine	YES <sup>21</sup>	YES	YES	YES	YES
Uruguay	YES <sup>22</sup>	YES	YES	YES	YES
Venezuela	YES <sup>23</sup>	YES	YES	YES	YES

Prohibition by Supreme Court ruling					
State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Italy	YES <sup>24</sup>	YES	YES	YES	YES
Nepal <sup>25</sup>	NO <sup>26</sup>	NO <sup>27</sup>	SOME <sup>28</sup>	NO <sup>29</sup>	NO <sup>30</sup>

States committed to full prohibition					
State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Afghanistan <sup>31</sup>	NO	NO <sup>32</sup>	YES	NO <sup>33</sup>	NO
Bangladesh <sup>34</sup>	NO	NO <sup>35</sup>	NO	NO	NO
Bhutan <sup>36</sup>	NO	NO	???	NO	NO
Czech Republic <sup>37</sup>	NO	NO	YES	YES <sup>38</sup>	NO
Estonia <sup>39</sup>	NO	YES <sup>40</sup>	YES	YES	NO
Ireland <sup>41</sup>	NO	YES	YES	YES	SOME <sup>42</sup>
Lithuania <sup>43</sup>	NO	YES <sup>44</sup>	YES	YES <sup>45</sup>	YES

<sup>18</sup> Prohibited in 2004 Law on Protection and Promotion of the Rights of the Child

<sup>19</sup> Prohibited in 2007 amendment to Civil Code

<sup>20</sup> Prohibited in 1979 amendment to Parenthood and Guardianship Code

<sup>21</sup> Prohibited in 2003 Family Code

<sup>22</sup> Prohibited in 2007 amendments to Civil Code and Children and Adolescents Code

<sup>23</sup> Prohibited in 2007 amendment to Law for the Protection of Children and Adolescents

<sup>24</sup> 1996 Supreme Court ruling prohibited all violence in childrearing, but as at December 2007 not confirmed in legislation

<sup>25</sup> Commitment to prohibition in all settings, including the home, made at July 2006 meeting of the South Asia Forum, following 2005 regional consultation of the UN Secretary General's Study on Violence against Children

<sup>26</sup> 2005 Supreme Court ruling removed legal defence available to parents, guardians and teachers

<sup>27</sup> 2005 Supreme Court ruling removed legal defence available to parents, guardians and teachers; legislation prohibiting corporal punishment in schools possibly in preparation (December 2006)

<sup>28</sup> Prohibited in state laws, but permitted in Maoist courts

<sup>29</sup> 2005 Supreme Court ruling removed legal defence available to parents, guardians and teachers

<sup>30</sup> 2005 Supreme Court ruling removed legal defence available to parents, guardians and teachers

<sup>31</sup> As for Nepal (note 25)

<sup>32</sup> Ministry of Education announced in June 2006 that "the use of any form of violent behaviour and beating and humiliation of children is strictly prohibited", but this yet to be confirmed in legislation

<sup>33</sup> Prohibited by policy and practice in the Children's Rehabilitation Centre and as at September 2005 Regulations for the Children's Rehabilitation Centre under discussion

<sup>34</sup> As for Nepal (note 25)

<sup>35</sup> Ministerial directives advise against use

<sup>36</sup> As for Nepal (note 25)

<sup>37</sup> Government committed to prohibition; discussions on reform due to begin September 2007

<sup>38</sup> But no explicit prohibition

<sup>39</sup> Government committed to prohibition and draft legislation under discussion (July 2007)

<sup>40</sup> But no explicit prohibition

<sup>41</sup> Government has stated long-term commitment to prohibition but given no indication of timing

<sup>42</sup> Prohibited in pre-school settings except for childminders caring for children of relatives, children of same family or up to three children from different families; prohibited in foster care and residential care services by guidance

<sup>43</sup> Government stated its intention to introduce prohibition in law during January 2006 examination by the Committee on the Rights of the Child

<sup>44</sup> But no explicit prohibition

<sup>45</sup> But no explicit prohibition

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Luxembourg <sup>46</sup>	NO	YES	YES	YES	NO
Maldives <sup>47</sup>	NO	YES <sup>48</sup>	NO	NO	SOME <sup>49</sup>
Pakistan <sup>50</sup>	NO	SOME <sup>51</sup>	SOME <sup>52</sup>	NO <sup>53</sup>	NO
Serbia <sup>54</sup>	NO	YES	YES	YES	NO
Slovakia <sup>55</sup>	NO	YES	YES	YES	YES
Slovenia <sup>56</sup>	NO	YES	YES	YES	SOME <sup>57</sup>
Sri Lanka <sup>58</sup>	NO	NO	YES	YES	NO
Taiwan <sup>59</sup>	NO	YES	YES	YES	???

<b>Legal reform in progress but no explicit commitment to full prohibition</b>					
State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Brazil <sup>60</sup>	NO	NO	YES	NO	NO
Canada <sup>61</sup>	NO	YES <sup>62</sup>	YES	YES	SOME <sup>63</sup>
Costa Rica <sup>64</sup>	NO	NO	YES	YES	NO
Nicaragua <sup>65</sup>	NO	NO	YES	YES	NO
Peru <sup>66</sup>	NO	NO <sup>67</sup>	YES	NO	NO

<sup>46</sup> Government has stated its intention to prohibit in the home; as at May 2007 a Bill was pending that would prohibit in the family and educational settings

<sup>47</sup> As for Nepal (note 25), but Government has also stated commitment to retaining corporal punishment under Islamic law (2006) and according to Committee on the Rights of the Child as at June 2007 draft Penal Code legalizes corporal punishment in the home, schools and institutions

<sup>48</sup> But as at June 2007, new draft Penal Code legalizes corporal punishment in schools (information unconfirmed).

<sup>49</sup> Prohibited in the Education and Training Centre for Children

<sup>50</sup> As for Nepal (note 25); as at June 2007, draft Protection of Children Act (2005) which would introduce full prohibition under discussion; 2005 National Child Policy recognises right of the child to protection from corporal punishment

<sup>51</sup> Prohibited in North West Frontier, Punjab and Sindh Provinces by directive

<sup>52</sup> Prohibited in 2000 Juvenile Justice System Ordinance but as at June 2006 this not implemented in tribal areas and other legislation not amended

<sup>53</sup> See previous note

<sup>54</sup> Government has stated commitment to prohibition (December 2007)

<sup>55</sup> Government stated commitment to full prohibition in 2005, expected to be included in new Family Code for public debate January/February 2007

<sup>56</sup> Government stated intention to explicitly prohibit in the home during 2004 drafting of domestic violence law; as at January 2007, draft Family Bill which would prohibit in the home under discussion

<sup>57</sup> Prohibited in day care centres and residential schools

<sup>58</sup> As for Nepal (note 25)

<sup>59</sup> Government stated commitment to prohibition in August 2005

<sup>60</sup> As at September 2007, Bill which would prohibit in all settings, including the home, has been under discussion but met some resistance; the possibility of re-submission in 2008 is under consideration

<sup>61</sup> As at November 2007, Bill S-209 which would repeal section 43 of the Criminal Code, which allows for the use of force "by way of correction", was under discussion in the Senate, and the Standing Senate Committee on Human Rights had recommended repeal of the defence by 2009; 2004 Supreme Court ruling upheld parents' right to administer corporal punishment to children aged 2-12 years, but not using objects and not involving slaps or blows to the head

<sup>62</sup> 2004 Supreme Court ruling limited use of force by teachers to restraint and removal and excluded corporal punishment; as at March 2007, no prohibition in legislation relating to private schools, or to any schools in Alberta, Manitoba and Ontario

<sup>63</sup> Prohibited in state provided care in Alberta, British Columbia and Manitoba; in Ontario prohibited in provincially-licensed childcare programmes and foster homes and for all children receiving services from a child protection agency or other service provider licensed or approved by the province; in Quebec no right of correction under the Civil Code but right of correction in Federal Criminal Code applies

<sup>64</sup> 2004 draft Law on the Abolition of Corporal Punishment Against Minors would prohibit in all settings, including the home; 2005 ruling by Criminal Court of Cassation, San Jose, stated legal duty on those with paternal authority over children to moderately correct them did not entail right to hurt them

<sup>65</sup> In October 2007, consultation will begin, initiated by the Children's Ombudsman's Office, on law reform to achieve full prohibition

<sup>66</sup> Legislation which would prohibit all corporal punishment, including in the family, under discussion (2007)

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Philippines <sup>68</sup>	NO	YES	YES	YES	SOME <sup>69</sup>
South Africa <sup>70</sup>	NO	YES	YES	YES	YES

### Others – prohibition incomplete and no commitment to reform

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Albania	NO	YES	YES	YES <sup>71</sup>	NO
Algeria	NO	YES	YES	[NO]	NO
Andorra	NO <sup>72</sup>	YES <sup>73</sup>	YES	YES	NO
Angola	NO	YES	YES <sup>74</sup>	NO	NO
Antigua & Barbuda	NO	NO	NO	NO	NO
Argentina	NO	NO	YES	NO	NO
Armenia	NO	YES	YES	YES	NO
Australia	NO <sup>75</sup>	SOME <sup>76</sup>	YES	SOME <sup>77</sup>	SOME <sup>78</sup>
Azerbaijan	NO	YES	YES	YES	NO
Bahamas	NO	NO	NO	NO	NO
Bahrain	NO	YES	YES	???	???
Barbados	NO	NO	NO	NO	SOME <sup>79</sup>
Belarus	NO	YES	YES	YES	SOME <sup>80</sup>
Belgium	NO <sup>81</sup>	YES	YES	YES	SOME <sup>82</sup>
Belize	NO	NO	YES	SOME <sup>83</sup>	SOME <sup>84</sup>
Benin	NO	NO <sup>85</sup>	YES	[YES]	NO
Bolivia	NO	NO <sup>86</sup>	SOME <sup>87</sup>	NO	NO
Bosnia & Herzegovina	NO	YES <sup>88</sup>	YES	YES	NO
Botswana	NO	NO	NO	NO	NO
Brunei Darussalam	NO	NO	NO	NO	NO

<sup>67</sup> Prohibited by Decree, but not in law

<sup>68</sup> Bill which would prohibit corporal punishment, including by parents, under consideration (October 2007)

<sup>69</sup> Prohibited in residential institutions and day care centres

<sup>70</sup> A clause which would prohibit in the home was removed from the Children's Bill passed by Parliament in 2007 pending further investigation; it is expected to be reintroduced to Parliament in a proposed Amendment Bill in 2008

<sup>71</sup> But no explicit prohibition

<sup>72</sup> Government has claimed existing laws prohibit in all settings (2004), but no explicit prohibition in legislation

<sup>73</sup> No explicit prohibition, but education law and regulations recognise dignity of the child

<sup>74</sup> Prohibited for persons under 16 years; prohibition for 16 and 17 year olds unconfirmed

<sup>75</sup> In 2003, Law Reform Institute in Tasmania recommended abolition of reasonable correction defence from criminal and civil law; as at April 2007, no changes in the law had been made; 2002 law in New South Wales prohibits force to head or neck of child and to any part of the body where likely to cause harm lasting more than a short period

<sup>76</sup> Prohibited in state schools and independent schools in Australian Capital Territory, Tasmania and Victoria; prohibited by Ministerial guidelines in New South Wales and by policy in Queensland and Western Australia but "reasonable chastisement" defence potentially available

<sup>77</sup> "Reasonable chastisement" defence potentially available in Queensland and Tasmania

<sup>78</sup> Prohibited in child care centres except in Northern Territory; prohibited in residential centres in New South Wales, Queensland, South Australia and Victoria; prohibited in foster care in Queensland, South Australia, Tasmania and New South Wales, but "reasonable chastisement" defence available in all but New South Wales

<sup>79</sup> Prohibited in state-arranged foster care and pre-school settings, and in day care centres and children's residential centres run by Child Care Board, but lawful in private foster care

<sup>80</sup> Prohibited in boarding institutions; not prohibited in foster care

<sup>81</sup> In 2005, a proposed amendment to the Civil Code which would prohibit all corporal punishment including in the home was pending before the Senate, but we have no information on any progress made

<sup>82</sup> Prohibited in institutions and foster care by decrees in some communities; not prohibited in non-institutional childcare

<sup>83</sup> Prohibited in "Youth Hostel" detention centre but lawful in prisons and by law enforcement officials

<sup>84</sup> Prohibited in residential care facilities and in day care centres

<sup>85</sup> Prohibited in formal education by government circular

<sup>86</sup> Prohibited by regulation

<sup>87</sup> Prohibited in state laws, but ordered by community elders in traditional Indian justice systems

<sup>88</sup> No explicit prohibition, but unlawful under child protection laws

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Burkina Faso	NO	YES	YES	YES	SOME <sup>89</sup>
Burundi	NO	NO	YES	NO	NO
Cambodia	NO	SOME <sup>90</sup>	YES	YES	NO <sup>91</sup>
Cameroon	NO	YES	YES	YES	NO
Cape Verde	NO	NO <sup>92</sup>	YES	YES	[YES]
Central African Rep.	NO	NO	???	???	???
Chad	NO	NO	YES	NO	NO
China	NO	YES	YES	YES	???
Colombia	NO	NO <sup>93</sup>	SOME <sup>94</sup>	NO <sup>95</sup>	NO
Comoros	NO	NO	[YES] <sup>96</sup>	NO	NO
Congo, Republic of	NO	[YES]	YES	NO	NO
Cook Islands	NO	NO	YES	NO	NO
Cote d'Ivoire	NO	???	YES	YES	NO
Cuba	NO	NO	YES	NO	NO
DPR Korea	NO	NO <sup>97</sup>	YES	YES	???
DR Congo	NO	YES	YES	SOME <sup>98</sup>	NO
Djibouti	NO	[YES]	???	NO	???
Dominica	NO	NO	NO	NO	NO
Dominican Republic	NO	YES	YES	NO	???
Ecuador	NO	YES	YES <sup>99</sup>	NO	SOME <sup>100</sup>
Egypt	NO	YES	YES	YES <sup>101</sup>	NO
El Salvador	NO	YES	YES	YES	???
Equatorial Guinea	NO	NO	???	???	NO
Eritrea	NO	NO <sup>102</sup>	NO <sup>103</sup>	???	NO
Ethiopia	NO	YES <sup>104</sup>	YES	YES	SOME <sup>105</sup>
Fiji <sup>106</sup>	NO	YES <sup>107</sup>	YES <sup>108</sup>	YES	NO
France	NO	NO <sup>109</sup>	YES	YES <sup>110</sup>	NO
Gabon	NO	YES	???	???	???
Gambia	NO <sup>111</sup>	NO <sup>112</sup>	YES	NO <sup>113</sup>	NO
Georgia	NO <sup>114</sup>	YES <sup>115</sup>	YES	YES	SOME <sup>116</sup>

<sup>89</sup> Prohibited in institutions; not prohibited in foster care

<sup>90</sup> Prohibited in primary schools but not explicitly in secondary schools; prohibited in draft Education Law (2005)

<sup>91</sup> Draft Minimum Standards would prohibit

<sup>92</sup> Prohibited by Ministry of Education guidelines

<sup>93</sup> But corporal punishment resulting in injury is prohibited

<sup>94</sup> Prohibited in laws of the Republic, but under Constitutional case law permitted among indigenous Indian communities

<sup>95</sup> See note 98

<sup>96</sup> Possibly lawful under Shari'a law

<sup>97</sup> Prohibited in policy, but as at April 2004 not in law

<sup>98</sup> Prohibited in Antoinette Sassou-Nguessou Re-education Centre

<sup>99</sup> But possibly lawful among indigenous communities

<sup>100</sup> Prohibited in institutions but lawful in other childcare settings

<sup>101</sup> But possibly permitted in social welfare institutions

<sup>102</sup> Prohibited by policy

<sup>103</sup> Lawful under Transitional Penal Code but prohibited in Draft Penal Code

<sup>104</sup> Prohibited by government directive and Constitution, but "reasonable chastisement" defence potentially available

<sup>105</sup> Prohibited in institutions by Constitution, but "reasonable chastisement" defence available

<sup>106</sup> According to Save the Children (January 2007), public request for full prohibition has been made

<sup>107</sup> Ruled unconstitutional in 2002 High Court ruling, but as at March 2007 legislation not amended

<sup>108</sup> See previous note

<sup>109</sup> 1889 High Court ruling allowed "right to correction" for teachers; 2000 ruling stated that habitual and non-educational corporal punishment not covered by this

<sup>110</sup> But no explicit prohibition

<sup>111</sup> But 2005 Children's Act provides for the responsibility of parents to "ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child"

<sup>112</sup> Possibly prohibited in 2005 Children's Act

<sup>113</sup> See previous note

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Ghana	NO	NO	YES	NO	NO
Grenada	NO	NO	NO	NO	SOME <sup>117</sup>
Guatemala	NO	NO	SOME <sup>118</sup>	NO	NO
Guinea	NO	YES	[NO]	???	NO
Guinea-Bissau	NO	YES	YES	YES	???
Guyana	NO	NO <sup>119</sup>	NO	NO	NO <sup>120</sup>
Haiti	NO <sup>121</sup>	YES	YES	YES	YES
Honduras	NO	YES	YES	NO	NO
India <sup>122</sup>	NO	SOME <sup>123</sup>	SOME <sup>124</sup>	NO <sup>125</sup>	NO
Indonesia	NO	NO	SOME <sup>126</sup>	NO <sup>127</sup>	NO
Iran, Islamic Rep. of	NO	YES	NO	NO	NO
Iraq	NO	YES	YES	???	???
Jamaica	NO	SOME <sup>128</sup>	YES	YES	YES
Japan	NO	YES	YES	YES	SOME <sup>129</sup>
Jordan	NO <sup>130</sup>	YES	YES	YES	[YES]
Kazakhstan	NO	SOME <sup>131</sup>	YES	YES	SOME <sup>132</sup>
Kenya	NO	YES	YES	YES <sup>133</sup>	SOME <sup>134</sup>
Kiribati	NO	YES <sup>135</sup>	NO <sup>136</sup>	NO	NO
Kuwait	NO	YES	YES <sup>137</sup>	NO	???
Kyrgyzstan	NO	YES	YES	YES	SOME <sup>138</sup>
Lao PDR	NO	NO	YES	YES	NO
Lebanon	NO	NO <sup>139</sup>	YES	YES	SOME <sup>140</sup>
Lesotho	NO	NO <sup>141</sup>	NO	NO	NO

<sup>114</sup> In 2000 under examination by the Committee on the Rights of the Child government stated intention to prohibit in the family, and response to governmental questionnaire of the UN Secretary General's Study on Violence against Children indicated all corporal punishment is prohibited, but no explicit prohibition in legislation

<sup>115</sup> But no explicit prohibition

<sup>116</sup> Prohibited in institutional care establishments

<sup>117</sup> Prohibited in child care homes by licensing requirements

<sup>118</sup> Unlawful in state laws but permitted in traditional justice systems

<sup>119</sup> Motion calling for prohibition pending before Parliament (July 2007)

<sup>120</sup> Prohibited in childcare and childminding services in Children's Bill, as at February 2005 not in force

<sup>121</sup> Possibly prohibited by 2001 law, but no unequivocal confirmation

<sup>122</sup> Government has committed to prohibition in schools and other settings outside the home; 2003 National Charter for Children recognises children's right to protection from corporal punishment

<sup>123</sup> Prohibited in 8 out of 35 states and territories; National Policy on Education recommends prohibition; 2005 National Plan of Action for Children includes goal of prohibition in schools; as at April 2006, prohibited at national level in draft Free and Compulsory Education for Children Bill

<sup>124</sup> Prohibited in state laws, but used in traditional justice systems

<sup>125</sup> 2005 National Plan of Action for Children includes goal of prohibition in relation to children in difficult circumstances; prohibited in institutions in Offences Against Children (Prevention) Bill (2006)

<sup>126</sup> Prohibited in Criminal Code but permitted under Shari'a law in Aceh province and in regional regulations based on Islamic Law in other areas

<sup>127</sup> As at January 2005 Penal Code and juvenile justice system were under review

<sup>128</sup> Prohibited in schools for children up to the age of 6 years

<sup>129</sup> Prohibition in day care centres and residential institutions unconfirmed; lawful in foster care

<sup>130</sup> In September 2006, government stated corporal punishment by parents prohibited in new legislation, but no explicit prohibition and Penal Code allows for parental discipline within limits established by "general custom" (article 62)

<sup>131</sup> Prohibited in regular schools but not in military schools

<sup>132</sup> Prohibited in children's villages, youth homes and other institutions, but no prohibition in foster care or kinship care

<sup>133</sup> But as at March 2007 some legislation not amended

<sup>134</sup> Prohibited in institutions

<sup>135</sup> Statutory provisions allowing for corporal punishment repealed but no explicit prohibition in legislation

<sup>136</sup> Government committed to prohibition (2006)

<sup>137</sup> But reintroduction possibly proposed

<sup>138</sup> Prohibited in residential institutions

<sup>139</sup> Government committed to law reform (2006)

<sup>140</sup> Prohibition in day care centres unconfirmed; lawful in other alternative care settings

<sup>141</sup> Prohibited in Education Bill (2006)

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Liberia	NO	NO	YES	NO	NO
Libyan Arab Jamahiriya	NO	YES	NO	???	???
Liechtenstein	NO <sup>142</sup>	YES	YES	YES	SOME <sup>143</sup>
Madagascar	NO	NO	YES	???	NO
Malawi	NO	YES <sup>144</sup>	YES <sup>145</sup>	YES <sup>146</sup>	SOME <sup>147</sup>
Malaysia	NO	NO	NO <sup>148</sup>	NO <sup>149</sup>	NO
Mali	NO <sup>150</sup>	YES	YES	YES <sup>151</sup>	NO
Malta	NO	YES <sup>152</sup>	YES	YES	NO
Marshall Islands	NO	YES	YES	YES	NO
Mauritania	NO	NO <sup>153</sup>	???	NO	NO
Mauritius	NO	YES	YES	NO	NO
Mexico	NO <sup>153</sup>	NO <sup>150</sup>	YES	NO	NO
Micronesia, Fed. States	NO	[YES]	YES	NO	NO
Monaco	NO	NO	YES	YES <sup>157</sup>	NO
Mongolia <sup>158</sup>	NO	YES	YES	NO	NO
Montenegro	NO	YES	YES	YES	NO
Morocco	NO	NO <sup>159</sup>	YES	YES	NO <sup>160</sup>
Mozambique	NO	NO <sup>161</sup>	YES	[NO]	NO
Myanmar	NO	NO <sup>162</sup>	YES <sup>163</sup>	NO	NO
Namibia	NO	YES	YES	YES <sup>164</sup>	SOME <sup>165</sup>
Nauru	NO	???	SOME <sup>166</sup>	NO	???
Niger	NO	NO	[YES]	[NO]	NO
Nigeria	NO	NO	SOME <sup>167</sup>	[NO]	NO
Niue	NO	???	YES	???	???
Oman	NO	YES	???	NO	NO
Palau	NO	NO	YES	NO	NO
Palestine	NO	SOME <sup>168</sup>	YES <sup>169</sup>	NO	NO

<sup>142</sup> Penal Code prohibits physical and psychological harm and government has stated (January 2006) corporal punishment not permitted, but no explicit prohibition

<sup>143</sup> Prohibited in state alternative care settings but not in privately run alternative care settings

<sup>144</sup> Prohibited in Constitution

<sup>145</sup> Prohibited in Constitution, but permitted in other legislation

<sup>146</sup> See previous note

<sup>147</sup> Prohibited in state institutions by Constitution

<sup>148</sup> Government committed to prohibition (2007)

<sup>149</sup> See previous note

<sup>150</sup> But Government stated commitment to implementation of all the recommendations of the UN Secretary-General's Study on Violence against Children during examination by the Committee on the Rights of the Child in January 2007

<sup>151</sup> But no explicit prohibition

<sup>152</sup> But no explicit prohibition

<sup>153</sup> Prohibited by Ministerial Order

<sup>154</sup> Possibly lawful under Islamic law

<sup>155</sup> But "right of correction" removed from the Civil Code of the Federal Territory

<sup>156</sup> Except possibly in Sonora

<sup>157</sup> But no explicit prohibition

<sup>158</sup> Government is considering prohibition (2007)

<sup>159</sup> Prohibited by Ministerial direction

<sup>160</sup> No prohibition in foster care; possibly no prohibition in other alternative care settings

<sup>161</sup> Prohibited by Government directive

<sup>162</sup> Prohibited by Government directive

<sup>163</sup> But some legislation not amended/repealed

<sup>164</sup> Declared unconstitutional in 1991 Supreme Court ruling; as at May 2007 not confirmed in legislation though Child Justice Bill under discussion

<sup>165</sup> Unlawful in state institutions under 1991 Supreme Court ruling, but not confirmed in legislation; not prohibited in privately administered settings

<sup>166</sup> Prohibited for children under 16 years, but permitted for older children

<sup>167</sup> Prohibited as sentence in 2003 Child Rights Act, but this not enacted in all states and other legislation not amended

<sup>168</sup> Prohibited in UNRWA schools; prohibited by Ministerial direction in public schools

<sup>169</sup> But possibly permitted under Shari'a law

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Panama	NO	NO	YES	YES	NO
Papua New Guinea	NO	YES <sup>170</sup>	YES	NO <sup>171</sup>	NO
Paraguay	NO	NO <sup>172</sup>	YES	YES	NO
Poland	NO <sup>173</sup>	YES	YES	YES	YES <sup>174</sup>
Qatar	NO	NO <sup>175</sup>	NO	NO	NO
Republic of Korea	NO	NO	YES	YES	NO
Republic of Moldova	NO	YES	YES	YES <sup>176</sup>	NO
Russian Federation	NO	YES	YES	YES	NO
Rwanda	NO	NO <sup>177</sup>	YES	YES	SOME <sup>178</sup>
Saint Kitts & Nevis	NO	NO	NO	NO	NO
Saint Lucia	NO	NO	YES	NO	NO
Saint Vincent & Grenadines	NO	NO	NO	NO	NO
Samoa	NO	NO <sup>179</sup>	YES	[YES]	NO
San Marino	NO <sup>180</sup>	YES	YES	YES	NO
Sao Tome & Principe	NO	[YES]	SOME <sup>181</sup>	???	NO
Saudi Arabia	NO	NO <sup>182</sup>	NO	NO	NO
Senegal	NO	YES	YES	SOME <sup>183</sup>	NO
Seychelles	NO	NO <sup>184</sup>	YES	[YES]	[YES]
Sierra Leone	NO <sup>185</sup>	NO <sup>186</sup>	NO <sup>187</sup>	NO <sup>188</sup>	NO
Singapore	NO	NO	NO	NO	SOME <sup>189</sup>
Solomon Islands	NO	NO	YES	NO	NO
Somalia	NO	NO	NO <sup>190</sup>	YES	NO
Sudan	NO	NO <sup>191</sup>	NO	NO	NO
Suriname	NO	NO <sup>192</sup>	YES	YES	NO <sup>193</sup>
Swaziland	NO	NO <sup>194</sup>	NO	NO	NO
Switzerland	NO <sup>195</sup>	YES <sup>196</sup>	YES	YES	YES
Syrian Arab Republic	NO	NO <sup>197</sup>	YES	???	NO

<sup>170</sup> But as at April 2005, right of correction still in Criminal Code  
<sup>171</sup> Prohibited in draft Juvenile Justice Act, as at April 2005 intended to replace the Juvenile Courts Act  
<sup>172</sup> Legislation protects dignity but does not explicitly prohibit corporal punishment  
<sup>173</sup> Prohibited in 1997 Constitution, but not confirmed in law  
<sup>174</sup> Prohibition in private institutions unconfirmed  
<sup>175</sup> Prohibited by Ministerial Decree  
<sup>176</sup> But no explicit prohibition  
<sup>177</sup> Legislation in preparation (2005)  
<sup>178</sup> Prohibited in child care centres  
<sup>179</sup> Prohibited by policy; possibly prohibited in the Education Bill (2006), as at August 2006 still under discussion  
<sup>180</sup> Government has stated Penal Code provision for "abuse of the powers of correction or discipline" (article 234) effectively prohibits corporal punishment, but no explicit prohibition in law  
<sup>181</sup> Prohibited for persons under the age of 17 years, but possibly lawful for those aged 17 years  
<sup>182</sup> Prohibited by Ministerial circulars  
<sup>183</sup> Prohibited in prisons and in training centres but possibly lawful in other penal institutions  
<sup>184</sup> Prohibited by policy  
<sup>185</sup> Sierra Leone Truth and Reconciliation Commission has recommended prohibition in the home and schools (2004)  
<sup>186</sup> See previous note  
<sup>187</sup> Prohibited in 2005 Child Rights Bill, under discussion (May 2007)  
<sup>188</sup> Possibly prohibited in 2005 Child Rights Bill, under discussion (May 2007)  
<sup>189</sup> Prohibited in child care centres  
<sup>190</sup> Ordered by Islamic courts  
<sup>191</sup> 1993 School Regulations prohibit for girls but allow four lashes for boys  
<sup>192</sup> Prohibited by government directives  
<sup>193</sup> Prohibited in private and state institutions in draft Children's Home Bill due for presentation early 2005  
<sup>194</sup> Prohibition proposed in new legislation due for presentation late 2006  
<sup>195</sup> 2003 Federal Court ruling stated repeated and habitual corporal punishment unacceptable, but did not rule out right of parents to use corporal punishment  
<sup>196</sup> Prohibited by federal law pursuant to cantonal legislation; 1991 Federal Court ruled it permissible in certain circumstances, but this considered impossible under current (2005) legislation  
<sup>197</sup> Ministry of Education advises against its use

State	Prohibited in the home	Prohibited in schools	Prohibited in penal system		Prohibited in alternative care settings
			As sentence for crime	As disciplinary measure	
Tajikistan	NO	NO	YES	NO	NO
Thailand	NO	YES	YES	YES	NO
TFYR Macedonia	NO	YES	YES	YES	YES
Timor-Leste, DR	NO	NO <sup>198</sup>	YES	YES	NO <sup>199</sup>
Togo	NO	NO <sup>200</sup>	SOME <sup>201</sup>	YES	NO
Tonga	NO	YES	NO	NO	NO
Trinidad & Tobago	NO	NO <sup>202</sup>	YES	NO	NO <sup>203</sup>
Tunisia	NO	NO <sup>204</sup>	YES	YES	NO
Turkey	NO	YES	YES	YES	NO
Turkmenistan	NO <sup>205</sup>	YES	YES	YES	???
Tuvalu	NO	NO	YES	NO	NO
Uganda <sup>207</sup>	NO	NO <sup>208</sup>	YES	YES	NO
United Arab Emirates	NO	YES	NO	NO	NO
UK	NO <sup>209</sup>	YES	YES	YES <sup>210</sup>	SOME <sup>211</sup>
United Rep. of Tanzania	NO	NO	NO	NO	NO
USA	NO	SOME <sup>212</sup>	YES	SOME <sup>213</sup>	SOME <sup>214</sup>
Uzbekistan	NO	YES	YES <sup>215</sup>	YES	NO
Vanuatu	NO	YES	SOME <sup>216</sup>	[YES]	NO
Viet Nam	NO	NO	YES	YES	NO
Western Sahara	NO	[NO]	[YES]	[YES]	[NO]
Yemen	NO	YES	NO	NO	NO
Zambia	NO	YES	YES <sup>217</sup>	YES <sup>218</sup>	NO
Zimbabwe	NO	NO	NO	NO	NO

<sup>198</sup> Government committed to prohibition (2005)

<sup>199</sup> Prohibited by policy in child care centres, orphanages and boarding houses from April 2005

<sup>200</sup> Prohibited in 1980 Ministerial Order

<sup>201</sup> Prohibited in state legislation but used in traditional courts

<sup>202</sup> Prohibited by 2000 Children (Amendment) Act, as at February 2007 not in force

<sup>203</sup> Prohibited in health care and psychiatric institutions by policy

<sup>204</sup> Prohibited by Ministerial circular

<sup>205</sup> Possibly prohibited under 2002 Rights of the Child (Guarantees) Act

<sup>206</sup> See previous note

<sup>207</sup> According to ANPPCAN (November 2006), Children Act under review and full prohibition likely to be proposed

<sup>208</sup> Prohibited in state schools by Ministerial circular

<sup>209</sup> Scotland: 2003 Criminal Justice (Scotland) Act restricts common law defence by introducing concept of "justifiable assault" of children and defining blows to head, shaking and use of implements as unjustifiable; England and Wales: 2004 Children Act maintains "reasonable punishment" defence for cases of common assault; similar provision introduced in Northern Ireland by the 2006 Law Reform (Miscellaneous Provisions) (Northern Ireland) Order

<sup>210</sup> But no explicit prohibition

<sup>211</sup> Prohibited in residential care institutions and foster care arranged by local authorities or voluntary organisations, and in day care institutions and childminding in England and Wales and Scotland; prohibited by guidance in day care institutions and childminding in Northern Ireland; not prohibited in private foster care

<sup>212</sup> Prohibited in public and private schools in Iowa and New Jersey, in public schools in a further 26 states and District of Columbia, and in some large city school districts in other states

<sup>213</sup> Prohibited in 31 states

<sup>214</sup> Prohibited in all alternative care settings in 30 states and in some settings in other states and District of Columbia

<sup>215</sup> But possibly permitted under mahallyas system

<sup>216</sup> Used in rural areas for punishment of young boys and girls found to have broken village or custom rules

<sup>217</sup> Ruled unconstitutional by Supreme Court in 1999, but as at May 2007 some legislation not amended

<sup>218</sup> See previous note



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